

CAYMAN ISLANDS



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**STATUTORY INSTRUMENTS**

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**2009 No. 224**

**THE JUDICIAL COMMITTEE (APPELLATE JURISDICTION)  
RULES ORDER 2009**

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STATUTORY INSTRUMENTS

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**2009 No. 224**

**JUDICIAL COMMITTEE**

**The Judicial Committee (Appellate Jurisdiction) Rules Order 2009**

*Made*

*11th February 2009*

*Coming into force in accordance  
with Article 1*

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At the Court at Buckingham Palace, the 11th day of February 2009

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by and with the advice of Her Privy Council, in exercise of the powers conferred by section 24 of the Judicial Committee Act 1833(1), section 1 of the Judicial Committee Act 1844(2), section 17 of the Veterinary Surgeons Act 1966(3) and section 1 of the Brunei (Appeals) Act 1989(4), orders as follows:

### **Citation and commencement**

1. This Order may be cited as the Judicial Committee (Appellate Jurisdiction) Rules Order 2009 and shall come into force on 21st April 2009, except for article 4(2) which shall come into force on 1st October 2009.

### **The Judicial Committee (Appellate Jurisdiction) Rules 2009**

2. The Schedule to these Rules (which contains the Judicial Committee (Appellate Jurisdiction) Rules 2009) has effect.

### **Transitional provisions**

3. The Rules in the Schedule shall apply, with any necessary modifications, to appeals and applications which were filed before 21st April 2009.

### **Revocations**

4. (1) The instruments listed in column 1 of the following table (which have the references listed in column 2) are revoked to the extent (if any) indicated in column 1.

<i>Column 1</i>	<i>Column 2</i>
<i>Title</i>	<i>Reference</i>
The Barbados (Procedure in Appeals to Privy Council) Order 1966	S.I. 1966/1456
Article 4 of, and Schedule 2 to, the Brunei (Appeals) Order 1989 (5)	S.I. 1989/2396
The Gambia Appeals to Judicial Committee Order 1970	S.I. 1970/1114
The Judicial Committee (General Appellate Jurisdiction) Rules Order 1982	S.I. 1982/1676
The Judicial Committee (General Appellate Jurisdiction) Rules (Amendment) Order 2003	S.I. 2003/1879
The Judicial Committee (General Appellate Jurisdiction) Rules (Amendment) Order 2005	S.I. 2005/1139
The Judicial Committee (General Appellate Jurisdiction) Rules (Amendment) Order 2008	S.I. 2008/300
The Judicial Committee (Veterinary Surgeons Rules) Order 1967	S.I. 1967/1150

(2) The instruments listed in column 1 of the following table (which have the references listed in column 2) are revoked.

<i>Column 1</i>	<i>Column 2</i>
<i>Title</i>	<i>Reference</i>
The Judicial Committee (Devolution Issues) Rules Order 1999	S.I. 1999/665
The Judicial Committee (Devolution Issues) (Amendment) Rules Order 2003	S.I. 2003/1880
The Judicial Committee (Devolution Issues) (Amendment) Rules Order 2005	S.I. 2005/1138

**Partial revocations**

5. The instruments listed in column 1 of the following table (which have the references listed in column 2) are revoked only and in so far as they relate to the powers of the Judicial Committee of the Privy Council and the procedure to be adopted by it with respect to proceedings before it.

<i>Column 1</i>	<i>Column 2</i>
<i>Title</i>	<i>Reference</i>
The Anguilla (Appeals to Privy Council) Order 1983	S.I.1983/1109
The Bahama Islands (Procedure in Appeals to Privy Council) Order 1964	S.I. 1964/2042
The Bahamas (Procedure in Appeals to Privy Council) (Amendment) Order 1973	S.I. 1973/1081
The British Antarctic Territory Court of Appeal (Appeal to Privy Council) Order 1965	S.I.1965/592
The British Indian Ocean Territory (Appeals to Privy Council) Order 1983	S.I.1983/1888
The Cayman Islands (Appeals to Privy Council) Order 1984	S.I. 1984/1151
The Sovereign Base Areas of Akrotiri and Dhekelia (Appeals to Privy Council) Order in Council 1961	S.I.1961/59
The Falkland Islands (Appeals to Privy Council) Order 1985	S.I. 1985/445
The Gibraltar (Appeals to Privy Council) Order 1985	S.I. 1985/1199
The Jamaica (Procedure in Appeals to Privy Council) Order in Council 1962	S.I. 1962/1650

The Kiribati Appeals to Judicial Committee Order 1979	S.I. 1979/720
The Montserrat (Appeals to Privy Council) Order 1967(6)	S.I. 1967/233
The Pitcairn (Appeals to Privy Council) Order 2000	S.I. 2000/1816
The St. Helena Court of Appeal (Appeal to Privy Council) Order 1964(7)	S.I. 1964/1846
The South Georgia and South Sandwich Islands (Appeals to Privy Council) Order 1985	S.I. 1985/450
The Trinidad and Tobago Appeals to Judicial Committee Order 1976	S.I. 1976/1915
The Turks and Caicos Islands (Appeals to Privy Council) Order 1965	S.I. 1965/1863
The Turks and Caicos Islands (Appeals to Privy Council) (Amendment) Order 1973	S.I. 1973/1084
The Tuvalu (Appeals to Privy Council) Order 1975	S.I. 1975/1507
The Virgin Islands (Appeals to Privy Council) Order 1967(8)	S.I. 1967/234
The West Indies Associated States (Appeals to Privy Council) Order 1967(9)	S.I. 1967/224

*Judith Simpson*  
Clerk of the Privy Council

## THE SCHEDULE

## Article 2

### The Judicial Committee (Appellate Jurisdiction) Rules 2009

#### PART 1

#### Scope and interpretation

#### **Scope**

**1.** (1) The rules in Parts 1 to 6 of this Schedule and the practice directions which supplement them provide the procedure for civil and criminal appeals to the Judicial Committee of the Privy Council under its general appellate jurisdiction.

(2) The rules in Parts 7 and 8 of this Schedule provide the procedure for appeals under two separate enactments:

- (a) the rule in Part 7 of this Schedule applies to appeals to the Judicial Committee under section 17 of the Veterinary Surgeons Act 1966;

- (b) the rule in Part 8 of this Schedule applies to appeals to the Judicial Committee under section 1 of the Brunei (Appeals) Act 1989.

### **Interpretation**

**2.** (1) In the Rules in this Schedule (“these Rules”) -

“agent” means a solicitor or other person qualified to conduct proceedings before the Judicial Committee;

“appellant” means a person who files an application for permission to appeal or who files a notice of appeal;

“business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971(10), in England and Wales;

“certificate of service” means a certificate given under rule 6;

“counsel” includes any person with the right to be heard as an advocate at a full hearing before the Judicial Committee;

“court below” means the court from which an appeal (or application for permission to appeal) is made to the Judicial Committee;

“electronic means” means CD ROMs, memory sticks, email, fax or other means of electronic communication of the contents of documents;

“filing” means filing in the Registry in accordance with rule 7 and related expressions have corresponding meanings;

“financially assisted person” means an appellant in relation to whom a certificate under rule 38 has effect;

“form” and the “appropriate form” have the meanings given by rule 4;

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

“party” means an appellant, a respondent and an intervener under rule 27;

“the Registrar” means the Registrar of the Judicial Committee;

“the Registry” means the Registry of the Judicial Committee;

“requisite number of copies” means the number of copies which are to be provided under the relevant practice direction or as directed by the Court;

“respondent” means -

- (a) a person other than the appellant who was a party to the proceedings in the court below and who is affected by the appeal; and
- (b) a person who is permitted by the Judicial Committee to be a party to the appeal;

“service” and related expressions have the meanings given by rule 6.

(2) References in these Rules or in any form to a party’s signing, filing or serving any document or taking any other procedural step include the signature, filing or service of that document or the taking of such other procedural step by the party’s agent.

(3) Where any of these Rules or any practice direction requires a document to be signed, that requirement shall be satisfied if the signature is printed by computer or other mechanical means.

### **Practice Directions**

3. Any reference in these Rules to a practice direction means a practice direction issued by the Judicial Committee to supplement these Rules, to provide for the forms to be used in proceedings before the Judicial Committee and to provide general guidance and assistance for counsel, agents and the parties.

### **Forms**

4. (1) In these Rules, a form means a form set out in a practice direction and a reference to the “appropriate form” means the form provided by the relevant practice direction for any particular case.

(2) The forms shall be used in the cases to which they apply, and in the circumstances for which they are provided by the relevant practice direction, but a form may be varied by the Judicial Committee or a party if the variation is required by the circumstances of a particular case.

### **Time limits**

5. (1) The Registrar may extend or shorten any time limit set by these Rules or any relevant practice direction (unless to do so would be contrary to any statutory provision).

(2) The Registrar may exercise these powers either on an application by one or more parties or without an application being made.

(3) The Registrar will notify the parties when a time limit is varied under this rule.

(4) An application for an extension may be granted after the time limit has expired.

(5) Where the appellant has -

- (a) applied for assistance from public funds in the appellant's jurisdiction; and
- (b) informed the Registrar of that application,

the time limits in rules 11 and 18 shall be extended until 28 days after the final determination of the application for assistance from public funds.

(6) When the period specified -

- (a) by these Rules or a practice direction, or
- (b) by any judgment or order,

for doing any act at the Registry ends on a day on which the Registry is closed, that act shall be in time if done on the next day on which the Registry is open.

### **Service**

**6.** (1) A document may be served by any of the following methods -

- (a) personal service;
- (b) first class post (or an alternative service which provides for delivery on the next working day);
- (c) (with the consent of the party to be served) through a document exchange;
- (d) (with the consent of the party to be served or at the direction of the Registrar) by electronic means in accordance with the relevant practice direction.

(2) Where the address of the person on whom a document is to be served is unknown, the Registrar may direct that service is effected by an alternative method of service.

(3) A document served by first-class post or through a document exchange will be taken to have been served on the second day after it was posted or left at



the document exchange, as the case may be (not including days which are not business days).

(4) A certificate of service must give details of the persons served, the method of service used and must state the date on which the document was served personally, posted, delivered to the document exchange or sent electronically, as the case may be.

### **Filing**

7. (1) A document may be filed by any of the following methods -

- (a) personal delivery;
- (b) first class post (or an alternative service which provides for delivery on the next working day);
- (c) through a document exchange;
- (d) (with the consent of the Registrar) by electronic means in accordance with the relevant practice direction.

(2) A document filed by first-class post or through a document exchange will be taken to have been filed on the second day after it was posted or left at the document exchange, as the case may be (not including days which are not business days).

(3) Except with the consent of the Registrar, the contents of documents

- (a) filed in hard copy must also be provided to the Registry by electronic means, and
- (b) filed by electronic means must also be provided to the Registry in hard copy,

in accordance with the relevant practice direction.

(4) A Registry officer must seal the following documents when they are filed -

- (a) an application for permission to appeal,
- (b) a notice of objection or acknowledgement by the respondent,
- (c) a notice of appeal,
- (d) an application form

and may place the seal on the document by hand or by printing a facsimile of the seal on the document whether electronically or otherwise.

(5) A document purporting to bear the Judicial Committee's seal shall be admissible in evidence without further proof.

**Non-compliance with these Rules**

**8.** (1) Any failure by a party to comply with these Rules or any relevant practice direction shall not have the effect of making the proceedings invalid.

(2) Where any provision in these Rules or any relevant practice direction is not complied with, the Registrar may give whatever directions appear appropriate having regard to the seriousness of the non-compliance and generally to the circumstances of the case.

(3) In particular, the Registrar may refuse to accept any document which does not comply with any provision in these Rules or any relevant practice direction and may give whatever directions appear appropriate.

(4) Directions given under this rule may include the summary dismissal of an appeal or debarring a respondent from resisting an appeal.

**Procedural decisions**

**9.** (1) Any procedural question arising in the course of a hearing before the Judicial Committee will be determined by the Judicial Committee.

(2) Any procedural question arising at any other time will be considered by the Registrar who may either determine the question or refer it to the Judicial Committee for determination.

(3) The Registrar will normally consider the question on paper but may direct an oral hearing and the Registrar will normally direct an oral hearing when assessing costs.

(4) A party may apply for a decision of the Registrar to be reviewed by the Judicial Committee and any application under this rule must be made in the appropriate form and be filed within 14 days of the Registrar's decision.

(5) Any question referred to the Judicial Committee will normally be considered on paper but the Judicial Committee may direct an oral hearing.

(6) Any allegation of contempt of court will be considered and determined at an oral hearing before the Judicial Committee.

PART 2

Application for permission to appeal

**Permission to appeal**

**10.** In cases where permission to appeal is required, no appeal will be heard by the Judicial Committee unless permission to appeal has been granted either by the court below or by the Judicial Committee.

**Filing of application for permission to appeal**

**11.** (1) Every application to the Judicial Committee for permission to appeal shall be made in the appropriate form.

(2) An application for permission to appeal must be filed within 56 days from the date of the order or decision of the court below or the date of the court below refusing permission to appeal (if later).

(3) The Registrar may refuse to accept an application that contains no reasonable ground of appeal or is an abuse of process.

**Service of application**

**12.** Before the application is filed, a copy must be served on every respondent and, when the application is filed, the appellant must file a certificate of service.

**Notice of objection by respondent**

**13.** (1) Each respondent who wishes to object to the application must, within 14 days after service, file notice of objection in the appropriate form together with a certificate of service.

(2) Before the notice is filed, a copy must be served on the appellant and any other respondent.

(3) A respondent who does not give notice under this rule will not be permitted to participate in the application and will not be given notice of its progress.

**Documents in support of application**

**14.** (1) The requisite number of copies of the application must be filed together with

- (a) a copy of the order appealed from and
- (b) (if separate) a copy of any order refusing permission to appeal and

if the order appealed from is not immediately available, the application should be filed without delay and the order filed as soon as it is available.

(2) The appellant must file the further documents required for the use of the Judicial Committee within 21 days after filing the application.

**Consideration of application for permission to appeal on paper**

**15.** (1) Every admissible application for permission to appeal (and any respondent's notice of objection) shall be considered on paper without a hearing by the Judicial Committee.

(2) The Judicial Committee may -

- (a) grant or refuse permission to advance all or any of the grounds of appeal;
- (b) invite the parties to file written submissions within 14 days as to the grant of permission on terms (whether as to costs or otherwise); or
- (c) direct an oral hearing.

(3) Where the Judicial Committee has invited the parties' submissions as to terms, the application will be reconsidered on paper without a hearing by the Judicial Committee and the Committee may refuse permission or grant permission (either unconditionally or on terms) to advance all or any of the grounds of appeal.

(4) Where the Judicial Committee grants permission to advance limited grounds of appeal it shall (unless it directs otherwise) be taken to have refused permission to advance the other grounds.

(5) An order shall be prepared and sealed by the Registrar to record any decision made under this rule.

**Oral hearing of application for permission to appeal**

**16.** (1) Where the Judicial Committee has directed an oral hearing, the Registrar will fix a date for the hearing of the application for permission to appeal and will notify the date to the appellant and every respondent who has given notice under rule 13.

(2) A party may be heard by one counsel or in person and, where there are several respondents, they should appear by the same counsel unless their different interests justify separate representation.

(3) An order shall be prepared and sealed by the Registrar to record any decision made under this rule.

### PART 3

#### Commencement and preparation of appeal

#### **Form and filing of notice where permission granted by Judicial Committee**

**17.** (1) Where the Judicial Committee grants permission to appeal, rule 18 shall not apply and

- (a) the application for permission to appeal shall stand as the notice of appeal,
- (b) the grounds of appeal shall be limited to those on which permission has been granted;
- (c) the appellant must, within 14 days of the grant by the Judicial Committee of permission to appeal, file notice under this rule of an intention to proceed with the appeal.

(2) When notice is filed under rule 17(1)(c), the application for permission to appeal will be re-sealed and the appellant must then

- (a) serve a copy on each respondent; and
- (b) file the requisite number of copies.

(3) In any other case an appellant must file a notice of appeal under rule 18.

#### **Form and filing of notice where permission not required**

**18.** (1) Every notice of appeal shall be made in the appropriate form.

(2) The notice of appeal together with the requisite number of copies must be filed within 56 days of the date of the order or decision of the court below or of the date of the order or decision of that court granting permission to appeal (if later).

(3) The grounds of appeal may not (without the permission of the Registrar or the Judicial Committee) differ materially from those for which permission to appeal has been granted.

(4) The appellant must -

- (a) serve a copy of the notice of appeal on each respondent before it is filed; and
  - (b) at the same time as the notice of appeal is filed, file a certificate of service.
- (5) The appellant must also file
- (a) a copy of the order appealed from and
  - (b) (if separate) a copy of the order granting permission to appeal and

if the order appealed from is not immediately available, the notice of appeal should be filed without delay and the order filed as soon as it is available.

#### **Acknowledgement by respondent**

**19.** (1) Each respondent who intends to participate in the appeal must, within 21 days after service under rule 17(2)(a) or rule 18(4)(a), give notice in the appropriate form to the Registrar and file a certificate of service.

(2) Before the notice is filed, a copy must be served on the appellant and any other respondent.

(3) A respondent who does not give notice under this rule will not be permitted to participate in the appeal and will not be given notice of its progress.

#### **The record**

**20.** (1) As soon as permission to appeal has been granted or a notice of appeal has been filed, the appellant must without delay arrange for the record to be -

- (a) certified by the proper officer of the court below;
- (b) transmitted to the Registrar and
- (c) reproduced.

(2) The form and contents of the reproduced record must comply with the relevant practice direction.

(3) The parties must endeavour to agree the contents of the reproduced record and in the event of a disagreement the Registrar may give whatever directions appear appropriate.

(4) In this rule, “the record” means all such documents (including originating process, pleadings, transcripts of evidence, exhibits, judgments and orders) relating to the proceedings in the court below as are necessary for the hearing of the appeal by the Judicial Committee.

**The statement of facts and issues**

**21.** (1) Within 42 days after the filing of the notice under rule 17(1)(c) or of the filing of the notice of appeal the appellant must prepare and file a statement of the relevant facts and issues.

(2) The form and contents of the statement of facts and issues must comply with the relevant practice direction.

(3) The parties must endeavour to agree the contents of the statement of facts and issues and in the event of a disagreement the Registrar may give whatever directions appear appropriate.

**Hearing date**

**22.** (1) Within 14 days after the filing of the statement of facts and issues, and in order to enable the Registrar to fix the date for the hearing of the appeal, the parties must in compliance with the relevant practice direction notify the Registrar that the appeal is ready to list, specify the number of hours that their respective counsel estimate to be necessary for their oral submissions and file the other required listing particulars.

(2) The Registrar will inform the parties of the date fixed for the hearing.

**Filing of case**

**23.** (1) At least 5 weeks before the hearing date the appellant must file a written case and serve it on the respondent.

(2) At least 3 weeks before the hearing date the respondent must file a written case and serve it on the other parties.

(3) The form and contents of a case and the number of copies to be filed and served must comply with the relevant practice direction.

**Authorities**

**24.** At least 14 days before the hearing date each party must file (if possible in a single agreed volume or series of volumes) the requisite number of copies of any authorities to be cited at the hearing.

### **Cross-appeals**

**25.** (1) A respondent who wishes to argue that the order appealed from should be upheld on grounds different from those relied on by the court below, must state that clearly in the respondent's written case (but need not cross-appeal).

(2) A respondent who wishes to argue that the order appealed from should be varied must obtain permission to cross-appeal either from the court below or from the Judicial Committee.

(3) Part 2 of these Rules will apply (with appropriate modifications) to an application to the Judicial Committee for permission to cross-appeal and (if practicable) applications for permission to appeal and cross-appeal shall be considered together.

(4) Where there is a cross-appeal, this Part of these Rules shall apply (with appropriate modifications) and in particular -

- (a) either the application to the Judicial Committee for permission to cross-appeal shall stand as a notice of cross-appeal or such a notice (in the appropriate form) shall be filed and served within 42 days of the grant by the Judicial Committee of permission to appeal or of the filing of the notice of appeal;
- (b) there will be only one record and statement of facts and issues and a single case on each side;
- (c) the appellant is primarily responsible for the preparation of all the papers for the appeal and for notifying the Registrar under rule 22(1).

### **Multiple respondents**

**26.** Where there is more than one respondent any respondent claiming to have a separate interest may (at that respondent's own risk as to costs) file and serve a separate case.

### **Intervention**

**27.** (1) After permission to appeal has been granted by the Judicial Committee or a notice of appeal has been filed, a person claiming to have an interest in an appeal may apply in the appropriate form for permission to intervene in the appeal.

(2) The Judicial Committee will consider the application on paper without a hearing and may refuse permission to intervene or may permit intervention -



- (a) by written submissions only; or
- (b) by written submissions and oral submissions.

Oral submissions may be limited to a specified duration.

#### **PART 4**

##### **Hearing and decision of Judicial Committee**

###### **Hearing in open court**

**28.** (1) Except where it is necessary in the interests of justice or in the public interest to sit in private for part of an appeal hearing, every contested appeal shall be heard in open court.

(2) Where the Judicial Committee decides it is necessary to sit in private, it shall announce its reasons for so doing publicly in advance.

(3) Hearings shall be conducted in accordance with -

- (a) the relevant practice direction, and
- (b) any directions given by the Judicial Committee

and directions given by the Committee may limit oral submissions to a specified duration.

###### **Judgment in open court**

**29.** Every judgment shall be delivered in open court.

###### **Form and effect of Order**

**30.** (1) Every final order shall be prepared and sealed by the Registrar who may invite written submissions as to the form of the order.

(2) An interlocutory or procedural order made by the Judicial Committee shall take effect from the day when it is given or made or such later date as may be specified.

#### **PART 5**

##### **Miscellaneous**

###### **Incidental applications**

**31.** (1) A copy of any incidental application must be served on every other party before it is filed and, when the application is filed, the applicant must file a certificate of service.

(2) An application must be made in the appropriate form and must -

- (a) set out the reasons for making the application and
- (b) where necessary, be supported by written evidence.

(3) A party who wishes to oppose an application must, within 14 days after service, file notice of objection in the appropriate form and must (before filing) serve a copy on the applicant and any other parties.

(4) A party who does not give notice under this rule will not be permitted to participate in the application and will not be given notice of its progress.

#### **Amendment of documents**

**32.** An application for permission to appeal, a notice of appeal or any other document filed under these Rules may be amended with the permission of the Registrar on such terms as appear appropriate and the Registrar may invite the parties' written submissions on any application to amend.

#### **Withdrawal etc of application or appeal**

**33.** (1) An application for permission to appeal or a notice of appeal may be withdrawn with the written consent of all parties or with the permission of the Registrar on such terms as appear appropriate.

(2) The Judicial Committee may set aside or vary the order under appeal by consent and without an oral hearing if satisfied that it is appropriate so to do.

(3) In this rule "a notice of appeal" includes an application for permission to appeal or cross-appeal which (under rule 17 or rule 25) stands as a notice of appeal or cross-appeal.

#### **Grouping appeals**

**34.** The Registrar may direct that appeals raising the same or similar issues shall be heard either together or consecutively by the Judicial Committee and may give any consequential directions that appear appropriate.

#### **Change of interest**

**35.** The Registrar must be informed promptly of -

- (a) the death or bankruptcy of any individual party;
- (b) the winding up or dissolution of any corporate party;
- (c) any compromise of the subject matter of an appeal; or

- (d) any event which does or may deprive an appeal of practical significance to the parties,

and the Registrar may give any consequential directions that appear appropriate.

**Advocates to the Judicial Committee and Assessors**

**36.** (1) The Judicial Committee may request the Attorney General of the jurisdiction from which an appeal is pending to appoint, or may itself appoint, an advocate to assist the Judicial Committee with legal submissions.

(2) The Judicial Committee may appoint nautical assessors or other specialist advisers to assist the Judicial Committee in Admiralty appeals or on other technical questions.

(3) The fees and expenses of any advocate or assessor appointed under this rule shall be costs in the appeal.

**Security for costs**

**37.** (1) Where the Judicial Committee grants permission to appeal an order for security for costs may be made by the Judicial Committee or by the Registrar.

(2) Where permission to appeal has been granted by the court below, security for costs of the appeal shall be a matter for that court.

**Financially assisted persons**

**38.** (1) An appellant

- (a) who has been granted, or has applied for, assistance from public funds under arrangements in force in the appellant's jurisdiction, or
- (b) whose circumstances are such that payment of a fee prescribed by the Appendix to these Rules would involve undue financial hardship,

may file an application to be treated as a financially assisted person by the Judicial Committee.

(2) The Registrar will certify, if the application is approved, that the appellant is to be treated as a financially assisted person.

(3) Where a certificate under paragraph (2) has effect in relation to an appellant, the appellant will be entitled to remission or reduction of any liability

for fees and costs in accordance with Part 6 of these Rules and will not be required to give security for costs.

(4) A certificate under paragraph (2) has effect in relation to an appellant until it is withdrawn by the Registrar; and the Registrar may withdraw a certificate in relation to an appellant if -

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

#### **Stay of execution or conservatory order**

**39.** (1) Any appellant who wishes to obtain a stay of execution of the order appealed from or some conservatory order pending an appeal must seek it from the court below in the first instance.

(2) In exceptional circumstances the Judicial Committee may grant a stay of execution or a conservatory order.

#### **Change of agent**

**40.** (1) If a party for whom an agent is acting wishes to change that agent, the party or the new agent must give the Registrar and the former agent written notice of the change.

(2) Until such notices are given the former agent will continue to be treated as the party's agent.

#### **Disposal of documents**

**41.** (1) All documents filed become the property of the Judicial Committee.

(2) Original documents will be retained in the records of the Registry.

(3) Other documents shall be destroyed unless the Registrar (on a written application made within 21 days of the end of the proceedings) directs otherwise.

#### **Fees to be taken**

**42.** Unless and except in so far as the fees are remitted or reduced because of the party's status as a financially assisted person, every party must pay fees in the

amounts set out in column 2 of the table in the Appendix to these Rules on the occasions described in column 1 and the Registrar may refuse to accept a document or refuse to allow a party to take any step unless the relevant fee is paid.

## **PART 6**

### **Costs**

#### **Order for costs**

**43.** (1) The Judicial Committee 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 Judicial Committee.

(2) The power to make orders for costs may be exercised either at the final determination of an appeal or application for permission to appeal or in the course of the proceedings.

(3) Orders for costs will not normally be made either in favour of or against interveners but such orders may be made if the Judicial Committee considers it just to do so (in particular if an intervener has in substance acted as the sole or principal appellant or respondent).

#### **Submissions as to costs**

**44.** (1) If a party wishes to defer making submissions as to costs until after judgment, the Judicial Committee must be informed of this not later than at the close of the oral argument.

(2) If the Judicial Committee accedes to the request it will give such directions as appear appropriate and it may, in particular, give directions -

- (a) for the hearing of oral submissions as to costs immediately after judgment;
- (b) for the simultaneous or sequential filing of written submissions as to costs within a specified period after judgment;
- (c) for the hearing of oral submissions after the filing of written submissions.

#### **Claim for costs**

**45.** (1) Where the Judicial Committee has made an order for costs, the claim for costs must be submitted to the Registrar within three months beginning with the date on which the costs order was made.

(2) The form and contents of a claim for costs must comply with the relevant practice direction and the receiving party must supply such further particulars, information and documents as the Registrar may direct.

(3) The receiving party must serve a copy of a claim for costs on the paying party.

(4) Within 21 days beginning with the day on which a claim for costs is served, the paying party may (or, in the circumstances specified in the relevant practice direction, must) file points of dispute and if so must serve a copy on the receiving party.

(5) Within 14 days beginning with the day on which points of dispute are served, the receiving party may file a response and if so must serve a copy on the paying party.

#### **Assessment of Costs**

**46.** (1) The Registrar will assess costs in accordance with these Rules and may do so with a costs judge as an assessor.

(2) The Registrar will give the receiving party and the paying party written notice of the date of the assessment.

#### **Basis of assessment**

**47.** (1) Subject to rule 49, where the costs are to be assessed they will be assessed -

- (a) on the standard basis, or
- (b) on the indemnity basis,

in the manner specified by rule 48.

(2) Where -

- (a) an order is made without indicating the basis on which the costs are to be assessed; or
- (b) an order is made for costs to be assessed on a basis other than the standard basis or the indemnity basis,

the costs will be assessed on the standard basis.

(3) This rule applies subject to any order or direction to the contrary.

**The standard basis and the indemnity basis**

**48.** (1) Costs assessed on the standard basis are allowed only if they are proportionate to the matters in issue and are reasonably incurred and reasonable in amount.

(2) Any doubt as to whether costs assessed on the standard basis are reasonably incurred and are reasonable and proportionate in amount will be resolved in favour of the paying party.

(3) Costs assessed on the indemnity basis are allowed only if they are reasonably incurred and reasonable in amount.

(4) Any doubt as to whether costs assessed on the indemnity basis are reasonably incurred and are reasonable in amount will be resolved in favour of the receiving party.

**Assessment of costs of financially assisted person**

**49.** Where the costs payable by a financially assisted person are to be assessed -

- (a) no counsel's fees will be allowed;
- (b) an agent will be allowed only out of pocket expenses and a reasonable allowance in respect of office expenses; and
- (c) in any event costs will be allowed only if reasonable and proportionate.

**Amount of assessed costs to be specified**

**50.** The amount of any assessed costs will be inserted in the order made under rule 30 but, if that order is drawn up before the assessment has been completed, the amount assessed will be certified by the Registrar.

**Appeal from Assessment**

**51.** A party who is dissatisfied with an assessment of costs may appeal to the Judicial Committee by filing an incidental application within 14 days in accordance with rule 31.

**Payment out of security for costs**

**52.** Any security for costs lodged by an appellant will be dealt with by the Registrar in accordance with the directions of the Judicial Committee.

PART 7

Appeals under section 17 of the Veterinary Surgeons Act 1966

**Appeals under section 17 of the Veterinary Surgeons Act 1966**

**53.** The rules in Parts 1 to 6 of this Schedule shall apply (subject to the following and any other necessary modifications) to appeals to the Judicial Committee under section 17 of the Veterinary Surgeons Act 1966 and in relation to any such appeal -

- (a) Part 2 (Application for permission to appeal) shall not apply;
- (b) the Council of the Royal College of Veterinary Surgeons (“the Council”) shall be the respondent to the appeal;
- (c) the time for filing a notice of appeal under rule 18(2) shall be 28 days from the date of service on the appellant of a direction under section 16 of the Veterinary Surgeons Act 1966;
- (d) the appellant must arrange for the record to be prepared and certified by the Council in accordance with rule 20.

PART 8

Appeals under section 1 of the Brunei (Appeals) Act 1989

**Appeals under section 1 of the Brunei (Appeals) Act 1989**

**54.** The rules in Parts 1 to 6 of this Schedule shall apply (subject to the following and any other necessary modifications) to appeals to the Judicial Committee under section 1 of the Brunei (Appeals) Act 1989 and in relation to any such appeal -

- (a) references to orders and decisions in rules 15(5), 16(3) and 30(1) shall be construed as references to recommendations to His Majesty the Sultan and Yang Di-Pertuan;
- (b) for Rule 50 there shall be substituted the following -

“**50.** The amount of any assessed costs will be inserted in the recommendation made under rule 30 but, if that recommendation is made before the assessment has been completed, the amount assessed will be certified by the Registrar [for the Judicial Committee] to recommend to His Majesty the Sultan and Yang Di-Pertuan.”.



APPENDIX

Rule 42

Fees to be taken

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

EXPLANATORY NOTE

*(This note is not part of the Order)*

The Schedule to this Order contains rules to govern the practice and procedure to be followed in relation to appeals to the Judicial Committee of the Privy Council. It replaces the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 (S.I. 1982/1676) and certain other statutory instruments which are revoked by article 4. Article 4(2) revokes the rules which regulated the exercise of the Judicial Committee's devolution jurisdiction since that jurisdiction is transferred to the United Kingdom Supreme Court by the Constitutional Reform Act 2005

(c.4). Article 5 revokes a number of other Orders but only so far as they relate to the powers of the Judicial Committee and the procedure to be adopted by it with respect to proceedings before it. The procedure which these Orders provide for proceedings in the various courts from which appeals lie to the Judicial Committee is not affected.

Part 1 of the Schedule

- (1) contains interpretation provisions (rules 2, 3);
- (2) makes provision for forms (rule 4);
- (3) contains rules about the service and filing of documents (rules 6, 7);
- (4) sets out what the Registrar may do in the event that the rules are not complied with (rule 8);
- (5) sets out how and by whom procedural decisions will be made (rule 9).

Part 2 of the Schedule contains the rules governing applications for permission to appeal and provides for the documents that are to be filed and the relevant time limits. Part 3 of the Schedule contains the rules about commencement of, and preparation for, an appeal, providing for the documents that are to be filed and the relevant time limits.

Part 4 of the Schedule contains rules about the hearing of appeals by the Judicial Committee. Part 5 contains miscellaneous rules such as for the making of incidental applications (rule 31); for security for costs (rule 37); for making an application to be treated as a financially assisted person (rule 38). Rule 42 and the appendix to the Rules set the fees for proceedings before the Judicial Committee. The current fee levels (which were set in 2003) are increased by the rate of inflation since 2003 and rule 38 provides a procedure for appellants to claim exemption from the fees where this is justified by their circumstances or means.

Part 6 contains provisions in relation to costs.

Parts 7 and 8 provide the procedure for appeals under two separate enactments.

This Order comes into force on 21st April 2009 except for article 4(2) which comes into force on 1<sup>st</sup> October 2009. On that date the transfer (provided for by section 40 of the Constitutional Reform Act 2005 (2005 c.4)) of the devolution jurisdiction from the Judicial Committee to the Supreme Court of the United Kingdom will take effect.

- (1) 1833 c.41.
- (2) 1844 c.69.
- (3) 1966 c.36.
- (4) 1989 c.36.

- (5) This Order was amended by the Brunei (Appeals) (Amendment) Order 1998, S.I. 1998/255.
- (6) This Order was amended by the Anguilla, Montserrat and Virgin Islands (Supreme Court) Order 1983, S.I. 1983/1108.
- (7) This Order was amended by the St. Helena Court of Appeal (Appeal to Privy Council) (Amendment) Order 1990, S.I. 1990/991.
- (8) This Order was amended by the Anguilla, Montserrat and Virgin Islands (Supreme Court) Order 1983, S.I. 1983/1108.
- (9) This Order was modified and retitled by the Dominica Modification of Enactments Order 1978, S.I. 1978/1030, the St. Lucia Modification of Enactments Order 1978, S.I. 1978/1899, the St. Vincent Modification of Enactments Order 1979, S.I. 1979 No. 917, the Antigua and Barbuda Modification of Enactments Order 1981, S.I. 1981/1105, the St. Christopher and Nevis Modification of Enactments Order 1983, S.I. 1983/ 882.
- (10) 1971 c. 80.