

THE SUPREME COURT OF THE UNITED KINGDOM

PRACTICE DIRECTION 1

Section 1 The Supreme Court - General Note

1.1.1 The Supreme Court of the United Kingdom was established by Part 3 of the Constitutional Reform Act 2005 (“the Act”), coming into force on 1st October 2009. Its jurisdiction corresponds to that of the House of Lords in its judicial capacity under the Appellate Jurisdiction Acts 1876 and 1888 (which are repealed) together with devolution matters under the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006, which are transferred to the Supreme Court from the Judicial Committee of the Privy Council. The jurisdiction of the Supreme Court is defined by section 40 of, and Schedule 9 to, the Act.

1.1.2 Under section 45 of the Act, the senior Lord of Appeal in Ordinary has, after consulting the Lord Chancellor, the General Council of the Bar of England and Wales, the Law Society of England and Wales, the Faculty of Advocates of Scotland, the Law Society of Scotland, the General Council of the Bar of Northern Ireland, the Law Society of Northern Ireland and other bodies likely to be affected by the Rules, made the Supreme Court Rules, which are published as S.I. 2009/1603. The Rules, which come into force on 1st October 2009, apply to civil and criminal appeals to the Court and to appeals and references under the Court’s devolution jurisdiction.

1.1.3 The overriding objective of the Supreme Court Rules is to secure that the Court is accessible, fair and efficient and the senior Lord of Appeal in Ordinary, the President of the Supreme Court, has issued these Practice Directions to supplement the Supreme Court Rules, to provide for the forms to be used in the Supreme Court and to provide general guidance and assistance to parties and their legal representatives.

1.1.4 *Transitional arrangements* Rule 55 of the Supreme Court Rules makes transitional arrangements for appeals and applications which were filed before 1st October 2009. Unless the Court or the Registrar directs otherwise, the Rules apply, with any necessary modifications, to any appeals and applications which were lodged in the House of Lords before 1st October 2009 and the Court or the Registrar may give special directions in these circumstances.

1.1.5 *Forms* The Practice Directions provide for a number of forms and a reference in the Supreme Court Rules or in these Practice Directions to a form by number means the form so numbered in the relevant practice direction. The forms are to be used in the cases to which they apply or in the particular circumstances for which they are provided but a form may be varied by the Court or a party if the variation is required by the circumstances of a particular case. The forms are set out in Annex 1 to Practice Direction 7.

1.1.6 *Jurisdiction* The jurisdiction of the Supreme Court corresponds to that of the House of Lords in its judicial capacity together with devolution matters and its jurisdiction is summarised in Section 2 of this Practice Direction.

Section 2 The Jurisdiction of the Supreme Court

Civil Appeals

1.2.1 The key provisions in relation to civil appeals are subsections (2) and (3) of section 40 of the 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.
- (3) An appeal lies to the Court from any order or judgment of a court in Scotland if an appeal lay from that court to the House of Lords at or immediately before the commencement of this section.

1.2.2 The principal provisions relating to civil appeals from Scotland are in section 40 of the Court of Session Act 1988 as amended by the Act. (But see also sections 24, 27 (5), 32(5), 41, 42, 43 and 52(3) as amended for further matters of detail.)

1.2.3 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 Act. See also sections 43 (preserving leapfrog appeals), 44 (contempt) and 45 (habeas corpus), as amended.

1.2.4 Schedule 9 to the Act also amends a large number of statutes which gave rights of appeal (often limited to issues of law) to the House of Lords; these are replaced by corresponding rights of appeal to the Supreme Court.

1.2.5 Section 40(6) of the 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.

The most important general restriction on rights of appeal is section 54(4) of the Access to Justice Act 1999¹. The effect of this provision is that the Supreme 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.

¹ 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 10) applies to Northern Ireland.

1.26 Where the Supreme Court does not have jurisdiction, the Registrar will inform the appellant in writing that the Supreme Court does not have jurisdiction. The European Court of Human Rights accepts this letter as setting out the jurisdiction of the Supreme Court in the litigation, for the purpose of determining whether the appellant has satisfied the requirement, laid down by Article 35 of the European Convention on Human Rights, that all domestic remedies must be exhausted before an appeal can be made to the Strasbourg Court.

Other statutory restrictions

1.2.7 There are other statutory restrictions on the Court's jurisdiction. 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 Supreme Court Act 1981, section 58 (as amended by Access to Justice Act 1999, section 60);
- (b) applications brought by a person in respect of whom the High Court has made an order under section 42 of the Supreme Court Act 1981 (restriction of vexatious legal proceedings)²;
- (c) applications for permission to appeal from a decision of the Court of Appeal on any appeal from a county court in any probate proceedings³;
- (d) 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)⁴;
- (e) applications for permission to appeal against the refusal by the Court of Appeal to reopen⁵ a previously concluded appeal or application for permission to appeal⁶.

² 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.

³ County Courts Act 1984 s 82.

⁴ Representation of the People Act 1983 s 157(1).

⁵ Under the rule in *Taylor v Lawrence* [2002] EWCA Civ 90 the Court of Appeal can in exceptional circumstances re-open an appeal or application for permission to appeal after it has given a final judgment.

⁶ Civil Procedure Rules, r 52.17.

Civil contempt of court cases

1.2.8 In cases involving civil contempt of court, an appeal may be brought under section 13 of the Administration of Justice Act 1960⁷. 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 Supreme Court. Where the decision of the court below is a decision on appeal under the same section of the same Act, permission to appeal to the Supreme Court is only granted if the court below certifies that a point of law of general public importance is involved in that decision and if it appears to that court or to the Supreme Court, as the case may be, that the point is one that ought to be considered by the Supreme Court. Where the court below refuses to grant the certificate required, an application for permission to appeal is not accepted for filing in the Supreme Court.

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

1.2.9 The time limit for applying for permission to appeal in civil cases (other than civil contempt of court or habeas corpus) is 28 days from the date of the order appealed from. The Supreme Court may extend this time limit.

Criminal Appeals

1.2.10 Appeals to the Supreme Court in criminal proceedings in England and Wales or Northern Ireland are subject to special restrictions limiting such appeals to cases of general public importance. As before, there is no appeal in criminal proceedings from the High Court of Justiciary or any other court in Scotland, but issues relating to criminal proceedings in Scotland may come before the Supreme Court as devolution issues under the Scotland Act 1998.

England and Wales (except courts-martial).

1.2.11 Appeals to the Supreme Court in criminal proceedings in England and Wales are 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 (in each case) by section 88 of the Courts Act 2003 and section 40 of, and Schedule 9 to, the Act. 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.

1.2.12 Any appeal under these provisions requires the permission of the court below or the Supreme Court, which may be granted (except for a first appeal in a contempt of court matter) only if (i) the court below certifies that a point of general public

⁷ Or, in Northern Ireland, under Judicature (Northern Ireland) Act 1978 s 44.

importance is involved and (ii) it appears to the court below or to the Supreme Court that the point is one which ought to be considered by the Supreme Court.

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

Northern Ireland

1.2.14 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 (in each case) by section 105 of the Courts Act 2003 and section 40 of, and Schedule 9 to, the Act.

Courts-Martial

1.2.15 Similar provisions apply to appeals from the Courts-Martial Appeal Court: see sections 39 and 40 of the Courts-Martial (Appeals) Act 1968 as amended by section 91 of the Courts Act 2003 and section 40 of, and Schedule 9 to, the Act.

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

1.2.16 As a result of amendments made by the Courts Act 2003 the time limit for applying for permission to appeal is 28 days from the date of the decision to be appealed from, or (if later) the date when reasons for the decision are given. The Supreme Court may extend time except in appeals under the Extradition Act 2003 (see sections 32 and 33 of that Act).

Leapfrog Appeals

1.2.17 Under sections 12 to 16 of the Administration of Justice Act 1969 as amended, appeals in civil matters may exceptionally be permitted to be made direct to the Supreme Court from (i) the High Court in England and Wales (ii) a Divisional Court in England and Wales and (iii) the High Court of Northern Ireland. These appeals are generally called leapfrog appeals.

1.2.18 Such appeals are permitted only if (i) the judge certifies (immediately after judgment or on an application within 14 days) that the “relevant conditions” are satisfied, that a sufficient case has been made out to justify an application for permission to appeal to the Supreme Court, and that all parties consent; (ii) the Supreme Court (on an application made within one month, a time limit which may be extended by the Supreme Court) gives permission for the appeal and (iii) it is not a case of contempt of court or one in which an appeal to the Court of Appeal (or the Court of Appeal of Northern Ireland) (a) would not have lain even with permission or (b) would not have had leave granted for it.

1.2.19 The “relevant conditions” (set out in section 12(3) of the Administration of Justice Act 1969) are that a point of general public importance is involved and that it either:

- “(a) relates wholly or mainly to the construction of an enactment or of a statutory instrument, and has been fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings, or
- (b) is one in respect of which the judge is bound by a decision of the Court of Appeal or of the Supreme Court in previous proceedings, and was fully considered in the judgments given by the Court of Appeal or the Supreme Court (as the case may be) in those previous proceedings.”

(In the case of leapfrog appeals from Northern Ireland the above references to the Court of Appeal must be read as references to the Court of Appeal of Northern Ireland.)

Judicial review in England and Wales: civil matters

1.2.20 An application for permission to apply for judicial review is made to the Administrative Court (which is part of the Queen’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. 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. Such an appeal must be filed in the Court of Appeal within 7 days. For such an appeal to be successful, the applicant needs to be granted both i) permission to appeal against the Administrative Court’s determination; and ii) permission to apply for judicial review.

1.2.21 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 Supreme 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 10. 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 Supreme Court does have jurisdiction to hear an appeal against that refusal: *R v Hammersmith and Fulham LBC, ex parte Burkett* [2002] 1WLR 1593.

1.2.22 Similar provisions apply in Scotland and Northern Ireland.

Human Rights

1.2.23 The Human Rights Act 1998 applies to the Supreme Court and issues under that statute will often arise on appeals to the Supreme 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 40 and Practice Direction 9 (Human Rights Act issues).

Devolution Matters

1.2.24 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 the Welsh Assembly under the Government of Wales Act 2006. Under these Acts, as amended by Part 2 of Schedule 9 to the Act, the Supreme 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 or Ministers. The principal provisions are in sections 33 and 98 of, and paras 10, 11, 12, 13, 22, 23, 30, 31, 33 and 34 of Schedule 6 to, the Scotland Act 1998 (as amended by Part 2 of Schedule 9 to the Act); sections 11 and 79 of, and paras 9, 10, 19, 20, 28, 29, 30, 31, 33 and 34 of Schedule 10 to, the Northern Ireland Act 1998 (as amended by Part 2 of Schedule 9 to the Act), and section 96 of, and paras 10, 11, 18, 19, 20, 21, 27, 28, 29 and 30 of Schedule 9 to, the Government of Wales Act 2006. See rule 41 and Practice Direction 10 (Devolution Issues).

References under Art. 234

1.2.25 Community law requires that the Supreme Court (as the domestic court of last resort) should refer to the Court of Justice of the European Communities any doubtful questions of Community law necessary to its decision. See rule 42 and Practice Direction 11 (Court of Justice of the European Communities).

Section 3 The exercise of the Supreme Court's Jurisdiction

1.3.1 Some of the powers of the Court may be exercised by a single Justice and by the Registrar. Rule 9 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, the Act and the Rules: rule 9(7).

1.3.2 *Procedural Decisions* Except where rule 9(2) (see paragraph 1.3.4) applies, the powers of the Court under the following rules may be exercised by a single Justice or the Registrar without an oral hearing –

- rule 5 (time limits),
- rule 8 (non-compliance with Rules),
- rule 11 (rejection of applications)
- rule 33 (change of interest),
- rule 34 (withdrawal of appeal),

rule 35 (advocate to the Court and assessors),
rule 36 (security for costs),
rule 37 (stay of execution) and
rule 41 (devolution jurisdiction).

1.3.3 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 9(3).

1.3.4 A contested application

- (a) alleging contempt of the Court; or
- (b) for a direction under rule 8 dismissing an appeal or debarring a respondent from resisting an appeal; or
- (c) for security for costs,

has to be referred to a panel of three Justices: rule 9(2). In a case of an alleged contempt, an oral hearing must be held; in any other case the Justices may hold an oral hearing.

1.3.5 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 paragraphs 1.3.2 and 1.3.3 then apply) or to a panel of three Justices for decision.

1.3.6 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 made in Form 2 and must be filed within 14 days of the Registrar's decision: rule 9(5). A fee is payable and the procedure in paragraphs 1.3.2 and 1.3.3 applies. See paragraph 7.1 of Practice Direction 7 for applications and for the relevant fee see Annex 2 to Practice Direction 7.

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