

The Supreme Court of the United Kingdom

Practice Direction 3

Applications for Permission to Appeal

Form of application for permission to appeal

3.1.1 Applications for permission to appeal are considered by an Appeal Panel, consisting of at least three Justices. Applications are generally decided on paper, without a hearing, and it is essential that the application is in the correct form.

3.1.2 An application for permission to appeal must be produced in Form 1 on A4 paper, securely bound on the left, using both sides of the paper. (See Annex 1 to Practice Direction 7 for Form 1.) The application should set out briefly the facts and points of law and include a brief summary of the reasons why permission should be granted. The information required by section 5 of Form 1 must be provided but the Court favours brevity and clarity.¹ The grounds of appeal should not normally exceed 10 pages of A4 size, bearing in mind that the judgments of the courts below will be available to the Justices. The Registrar will reject any application where the grounds appear without adequate explanation from counsel to be excessive in length or where the application fails to identify the relevant issues¹. Applications which are not legible or which are not produced in the required form will not be accepted.

Parties may consult the Registry at any stage of preparation of the application, and may submit applications in draft for approval. Amendments to applications 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. Any amendments must be served on the respondents (see paragraph 3.1.6).

3.1.3 If an application for permission to appeal

- a. asks the Supreme Court to depart from one of its own decisions or from one made by the House of Lords or the Court of Appeal of England and Wales;²
- b. seeks a declaration of incompatibility under the Human Rights Act 1998; or
- c. seeks a reference to the Court of Justice of the European Union³,

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

(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

¹ Amended Feb 2013; an Appeal Panel directed that irrespective of the outcome of the appeal the costs of preparing a permission application should not be recoverable in a case where it considered that a very long application did not assist the Panel.

² Amended Oct 2016

³ Amended Jan 2012

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.)

3.1.4 An application for permission to appeal must be signed by the appellant or his agent.

3.1.5 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). This can conveniently be done in Section 9 of Form 1.

Service

3.1.6 A copy of the application (and any amendment to it) must be served on the respondents or their solicitors, and on any person who was an intervener in the court below in accordance with rule 6, before it is filed. A certificate of service (giving the full name and address of the respondents or their solicitors) must be included in the original application and signed or a separate certificate of service must be provided. See rule 6(4) and paragraph 2.1.24 of Practice Direction 2. Additional supporting documents other than those set out in paragraphs 3.1.7 and 3.2.1 (additional papers) are not normally accepted.

Supporting documents

3.1.7 **In order to comply with rule 14(1), the original application together with 3 copies** must be filed at the Registry together with the prescribed fee, a copy of the order appealed against and, if separate, a copy of the order of the court below refusing permission to appeal. For the relevant fee see Annex 2 to Practice Direction 7. If the substantive order appealed against is not immediately available, the application should be filed within the required time limit, and the order filed as soon it is available. For the relevant time limits for filing an application for permission to appeal see paragraphs 2.1.12-2.1.16 of Practice Direction 2. Where an appellant is unable to file his permission application within the relevant time limit, an application for an extension of time must be made in Section 7 of Form 1. The respondent’s views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. The application for an extension of time will be referred to the Registrar and, if it is granted, the appellant must then comply with rule 14 and paragraph 3.2.1. When an application for permission to appeal is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

Objections by respondents

3.1.8 Each “respondent who wishes to object to the application must, within 14 days after service, file notice of objection” in Form 3 together with a certificate of service: rule 13(1). (See Annex 1 to Practice Direction 7 for Form 3.) **The original notice together with 3 copies** must be filed at the Registry together with the prescribed fee. For the relevant fee see Annex 2 to Practice Direction 7. When a notice of objection is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

3.1.9 Before filing, a respondent must serve a copy of the notice on the appellant, any other respondent and any person who was an intervener in the court below: rule 13(2). A certificate of service (giving the full name and address of the persons served) must be included in Form 3 and signed or a separate certificate of service must be provided. See rule 6(4) and paragraph 2.1.24 of Practice Direction 2.

3.1.10 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 3.3.3);
- b. state any conditions which the Respondent proposes should be attached to the grant of permission and whether permission should be limited to any issues, specifying them;
- c. normally not exceed 5 pages of A4 size in section 3 of Form 3 or in any attachment to Form 3.⁴

Anonymity and reporting restrictions

3.1.11 In any application concerning children, the parties, in addition to considering the case title to be used, should also consider whether it would be appropriate for the Court to make an order under section 39 of the Children and Young Persons Act 1933⁵ (reporting restrictions). The parties should always inform the Registry if such an order has been made by a court below. In such cases the Registrar will then make a further order imposing reporting restrictions. Any request for such an order to be made by the Court and any objections to the making of such an order should be made in writing, as soon as possible after the filing of an application for permission.

3.1.12 Paragraph 3.1.11 also applies to a request for an order under section 4 of the Contempt of Court Act 1981 (contemporary reports of proceedings).

Additional papers

3.2.1 **To comply with rule 14(2), the following additional papers** must be filed by the appellant for use by the Appeal Panel within 7 days after the filing of the application:

- a. **four** copies of the application;
- b. **four** copies of the order appealed against;
- c. if separate from the order at (b) above, **four** copies of the order of the court below refusing permission to appeal to the Supreme Court;
- d. **four** copies of the official transcript of the judgment of the court below⁶;
- e. **four** copies of the final order(s) of all other courts below;
- f. **four** copies of the official transcript of the final judgment(s) of all other courts below;
- g. **four** copies of any unreported judgment(s) cited in the application or judgment of a court below;
- h. **four** copies of a document which sets out the history of the proceedings.

⁴ Amended Oct 2016

⁵ Extended to Scotland by the Children and Young Persons (Scotland) Act 1963, s 57(3).

⁶ If the judgment has been published in a report which is ordinarily received in court, copies of the report may be filed instead of transcripts. Transcripts of judgments marked “in draft” are not accepted without certification by the relevant court that the copy is the final version of the judgment.

No other papers are required, and documents other than those listed above will not be accepted unless requested by the Appeal Panel. An appellant who wishes to provide documents other than those listed above must give a detailed explanation as to why they are needed. Documents which are not clearly legible or which are not in the required style or form (see paragraph 3.1.2) will not be accepted.

3.2.2 The additional papers must be presented in the form required by paragraph 5.1.2 of Practice Direction 5 but do not need to be bound.

3.2.3 Where the required papers are not filed within 8 weeks after the filing of the application and no good reason is given for the delay, the Registrar may

- a. refer the application to an Appeal Panel without the required accompanying papers;
- b. dismiss the application, or
- c. give such other directions as appear appropriate under rule 8.

Consideration on paper

3.3.1 The Appeal Panel decides first whether an application for permission to appeal is admissible (that is, whether the Court has jurisdiction to entertain an appeal). The Court's jurisdiction is summarised in section 2 of 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 gives a reason for deciding that the application is inadmissible.

3.3.2 If the Appeal Panel decides that an application is admissible, rule 16 provides that the Panel may then:

- a. refuse permission (see paragraph 3.3.4);
- b. give permission (see paragraph 3.3.5);
- c. invite the parties to file written submissions as to the grant of permission on terms whether as to costs or otherwise (see paragraphs 3.3.6 - 3.3.11);
- d. direct an oral hearing (see paragraphs 3.3.12 – 3.3.16).

3.3.3 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 Supreme 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**⁷.

For applications in which a question of Community law is raised see paragraph 11.1.2 of Practice Direction 11⁸.

⁷ Amended Feb 2013

⁸ Amended Feb 2013

Permission refused

3.3.4 If the Appeal Panel decides that permission should be refused, the parties are notified that the application is refused and they are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Permission given outright

3.3.5 If the Appeal Panel decides that an appeal should be entertained without further proceedings, it grants permission outright and the parties are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Respondents' objections

3.3.6 Respondents may submit written objections giving their reasons why permission to appeal should be refused when they file notice of objection in accordance with rule 13. Exceptionally a respondent could seek to file more fully reasoned objections or might be asked to do so by the Appeal Panel. In such circumstances further objections should be filed

- a. within 14 days of any invitation by the Appeal Panel to do so; or
- b. within 14 days of an application for permission to appeal being referred for an oral hearing.

3.3.7 Respondents' objections should set out briefly the reasons why the application should be refused or make submissions as to the terms upon which permission should be granted (for example, on costs). **One original and 4 copies** of the respondents' written objections must be filed in the Registry. The objections must be produced on A4 paper, securely fastened, using both sides of the paper.

3.3.8 A copy of the respondents' objections should be sent to the solicitors for the other parties. In certain circumstances the Appeal Panel may invite further submissions from the appellant in the light of the respondents' objections, but appellants are not encouraged to comment on respondents' objections. Where the Appeal Panel does not require further submissions to make its decision, the parties are sent a copy of the order sealed by the Registrar which records the Panel's decision. Where the Appeal Panel proposes terms for granting permission, paragraph 3.3.11 applies.

3.3.9 For the costs of respondents' objections, see paragraph 3.5.

3.3.10 Respondents who are unable to meet the deadlines set out in paragraph 3.3.6 must write to the Registrar requesting an extension of time for filing their written objections.

Permission given on terms

3.3.11 If the Appeal Panel is considering granting permission to appeal on terms:

- a. the Panel proposes 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;
- b. the Panel will then decide whether to grant permission (unconditionally or on terms);
- c. prospective appellants who are granted permission to appeal subject to terms that they are unwilling to accept may decline to pursue the appeal;
- d. in an application for permission to appeal under the "leapfrog" procedure (see paragraph 3.6.1), 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 way⁹.

Application referred for oral hearing

3.3.12 In all cases where further argument is required, an application for permission to appeal is referred for an oral hearing.

3.3.13 Respondents may seek to file more fully reasoned objections within 14 days of being informed that the application has been referred for a hearing (see paragraph 3.3.6(b)).

3.3.14 When an application is referred for an oral hearing, the appellant and all respondents who have filed notice of objection under rule 13 are notified of the date of the hearing before the Appeal Panel. Parties may be heard before the Appeal 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 paragraph 3.4.8).

3.3.15 Oral permission hearings usually last for 30 minutes. The panel will normally give its decision orally at the end of the hearing.

3.3.16 All the parties are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Interventions in applications for permission to appeal

3.3.17 Any person (and in particular (i) any official body or non-governmental organization 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 to the Court in support of an application for permission to appeal. See rule 15. Before the submissions are filed, a copy must be served on

- a. the appellant,
- b. every respondent and
- c. any person who was an intervener in the court below.

Four copies of the submissions must be filed together with a certificate of service.

3.3.18 Any submissions which are made are referred to the panel of Justices which considers the application for permission to appeal. 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 26 if the intervener wishes to intervene in the appeal. See Practice Direction 7 - Applications.

⁹ *Ceredigion County Council v Jones and others* [2007] UKHL 24.

Sealed Orders

3.3.19 The appellant, any recognised intervener and all respondents who have filed notice of objection under rule 13 are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Filing notice to proceed

3.4.1 Where permission to appeal is granted by the Supreme 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. The appellant must, within 14 days of the grant by the Court of permission to appeal, file notice under rule 18 that he wishes to proceed with his appeal. When the notice is filed, the application for permission to appeal will re-sealed and, **in order to comply with rule 18(2)**, the appellant must then serve a copy on each respondent, on any recognised intervener (that is, an intervener whose submissions have been taken into account under rule 15) and on any person who was an intervener in the court below and file **7 Copies** together with a certificate of service. See rule 6(4) and paragraph 2.1.24 of Practice Direction 2.

3.4.2 Where an appellant is unable to file notice under rule 18 within the time limit of 14 days, a formal application for an extension of time must be made in Form 2: see paragraph 7.1 of Practice Direction 7 for applications. The respondent's views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. The application will be referred to the Registrar and, if it is granted, the appellant must then comply with rule 18(2) and paragraph 3.4.1.

Expedition

3.4.3 Once the required papers are filed at the Registry (under paragraph 3.2.1), the procedure described above is normally completed within eight sitting weeks (excluding any oral hearing). In cases involving liberty of the subject, urgent medical intervention or the well-being of children (see paragraph 3.4.4), a request for expedition may be made in writing to the Registrar. See rule 31.

Expedited hearing of proceedings under the Hague Convention etc

3.4.4 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. The Revised Brussels II Regulation also deals with these matters¹⁰. In the Supreme Court an expedited timetable applies. The parties must therefore inform the Registrar that the proceedings fall under the Convention or Regulation. The Court normally gives judgment within six weeks of the commencement of proceedings but this can only be achieved with the fullest cooperation of the parties.

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

¹⁰ Council Regulation (EC) No 2201/2003.

- 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.

3.4.6 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.

3.4.7 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 core volumes (if required) and the volumes of authorities 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).

Counsel

3.4.8 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.

Costs

3.5.1 Where an unsuccessful application for permission to appeal is determined without an oral hearing, costs may be awarded as follows:

- a. to a publicly funded or legally aided appellant, reasonable costs incurred in preparing papers for the Appeal Panel;
- b. to a publicly funded or legally aided respondent, only those costs necessarily incurred in attending the client, attending the appellant's solicitors, considering the application for permission to appeal, filing notice of objection under rule 13 and, where applicable, preparing respondent's objections to the application;
- c. to an unassisted respondent where the appellant is publicly funded or legally aided, payment out of the Community Legal Service Fund (pursuant to section 11 of the Access to Justice Act 1999¹¹) of costs as specified at (b) above;

¹¹ September 2015

- d. to a respondent where neither party is publicly funded or legally aided, costs as specified at (b) above.

3.5.2 Where costs are sought under (c) or (d) above, the application may be made by letter addressed to the Registrar or may be included in a bill of costs filed in the Registry conditional upon the application being granted.

3.5.3 Where an application for permission to appeal is referred for an oral hearing and is dismissed, application for costs must be made by the respondent at the end of the hearing. No order for costs will be made unless a request is made at that time.

3.5.4 Where permission to appeal is granted, costs of the application for permission become costs in the appeal.

3.5.5 The reasonable costs of objecting to an unsuccessful application for permission to appeal will normally be awarded to the respondent, subject to any order for costs made by the Appeal Panel. If permission to appeal is granted, the costs of respondent's objections become costs in the appeal. Any claim for the costs of responding to an application will be expected to be in the range of £1000 to £2500 (see paragraphs 6 and 15 of Practice Direction 13).¹²

3.5.6 Bills of costs must be filed within three months from the date of the decision of the Appeal Panel or from the date on which an application for permission to appeal is withdrawn in accordance with rule 34. For the withdrawal of an application see paragraph 8.16.2 of Practice Direction 8. If an extension of the three month period is desired, application must be made in writing to the Registrar and copies of all such correspondence sent to all interested parties. In deciding whether to grant an application for an extension of time made after the expiry of the three-month period, the Registrar takes into account the circumstances set out in paragraph 8.2¹³ of Practice Direction 13.

3.5.7 For the fees payable on the assessment of a bill of costs, see Annex 2 to Practice Direction 7. For the assessment of costs, see rules 48 – 53 and Practice Direction 13. For security for costs see paragraph 4.7.1 of Practice Direction 4.

Withdrawal of application for permission to appeal

3.5.8 This is dealt with in paragraph 8.16.2 of Practice Direction 8.

Leapfrog appeals ¹⁴

3.6.1 In certain cases an appeal lies direct to the Supreme Court see paragraph 1.2.17 of Practice Direction 1. A certificate must first be obtained and the permission of the Supreme Court then given before the appeal may proceed¹⁵. Such appeals are known as “leapfrog” appeals.

¹² Amended Oct 2016

¹³ September 2015

¹⁴ April 2015

¹⁵ Sections 12 – 16 of the Administration of Justice Act 1969 (as amended by the Criminal Justice and Courts Act 2015) provide circumstances in which decisions of the High Court or the Divisional Court may be “leapfrogged” to the Supreme Court. Sections 14A – 14C of the Tribunals, Courts and Enforcement Act 2007 and sections 37A – 37C of the Employment Tribunals Act 1996 (inserted by the Criminal Justice and Courts Act 2015) provide circumstances in which decisions of certain tribunals which have High Court equivalent jurisdiction may be “leapfrogged” to the Supreme Court and sections 7B – 7D of the Special Immigration Appeals Commission Act 1997 (inserted by the Criminal Justice and Courts Act 2015) provide circumstances in which SIAC decisions may be “leapfrogged” to the Supreme Court.

Judge's certificate

3.6.2 An application for a certificate may be made by any of the parties and the application should be made immediately after the judge gives judgment in the proceedings or, if no such application is made, within 14 days from the date on which judgment was given.

3.6.3 A certificate will be granted only if the relevant statutory conditions are fulfilled.

3.6.4 The relevant 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 Commission Act 1997.

3.6.5 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).

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

3.6.7 No appeal lies against the grant or refusal of a certificate, but if a certificate is refused the applicant may appeal the decision in the normal way, once the time for applying for a certificate has expired.

Application for permission to appeal direct to the Supreme Court

3.6.8 At any time within one month from the date on which the judge grants the 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. Application is made in accordance with paragraph 3.1 of this Practice Direction. If any party to the proceedings is not a party to the application, the application must be endorsed with a certificate of service on that party.

3.6.9 One copy of the judge's certificate must be filed with the application. The application should indicate the statutory provision under which the certificate is granted.

3.6.10 The following additional papers for use by the Appeal Panel must be filed within seven days of the filing of the application:

- a. four additional copies of the application;
- b. four copies of the order appealed against;
- c. four additional copies of the certificate, if not contained in the order; and
- d. four copies of the transcript of judgment.

These additional papers must be presented in the form required by paragraph 5.1.2 of Practice Direction 5.

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

3.6.11 Applications for permission to appeal are normally determined by an Appeal Panel without a hearing.

3.6.12 Even where a certificate has been granted, the Appeal Panel will only grant permission to appeal where the case is one in which permission to appeal to the Supreme Court would have been granted in accordance with the usual criteria it applies.

3.6.13 The appellant and all respondents who have filed notice of objection under rule 13 are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Extensions of time

3.6.14 Where an appellant is unable to file his application within the time limit, an application for an extension of time must be made in Section 7 of Form 1. The respondent's views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. The application for an extension of time will be referred to the Registrar and, if it is granted, the appellant must then comply with rule 14 and paragraph 3.2.1.

Proceedings after permission to appeal is granted or refused

3.6.15 If the Appeal Panel grants permission to appeal without terms, no appeal from the decision of the judge lies to the Court of Appeal but only to the Supreme Court. 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 (i) where no application is made to the Supreme Court within the one month period after the judge has granted the certificate; or (ii) where permission to appeal direct to the Supreme Court has been refused by the Appeal Panel.

3.6.16 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.

Habeas corpus

3.6.17 Proceedings for a writ of habeas corpus in England and Wales are subject to the procedures governing criminal appeals to the Supreme Court. These are set out in Practice Direction 12. In proceedings for a writ of habeas corpus, an appeal lies from the Queen's Bench Divisional Court to the Supreme Court at the instance of the defendant or prosecutor with the permission either of the Divisional Court or the Supreme Court. No certificate stating a point of law of general public importance is required.

3.6.18 Such an application is normally determined by an Appeal Panel without an oral hearing. The appellant and all respondents who have filed notice of objection under rule 13 are sent a copy of the order sealed by the Registrar which records the Panel's decision.