

# The Supreme Court of the United Kingdom

## Practice Direction 4

### Notice of Appeal

#### General note

4.1.1 The practice is that 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: rule 18(1). The appellant must, within 14 days of the grant by the Court of permission to appeal, file notice under rule 18(1)(c) that he wishes to proceed with his appeal. When the notice is filed, the application for permission to appeal will be re-sealed and the appellant must then serve a copy on each respondent, on any recognized intervener (that is, an intervener whose submissions have been taken into account under rule 15) and on any intervener in the court below; and file 7 copies: rule 18(2). In any other case an appellant must file a notice of appeal in Form 1. (See Annex 1 to Practice Direction 7 for Form 1 (Appeal)<sup>1</sup>.

#### Form of notice of appeal

4.2.1 A notice of 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 (Appeal)<sup>2</sup>.) Notices 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 notice, and may submit notices in draft for approval. Amendments to notices are allowed where the Registrar is satisfied that this will assist the Court and will not unfairly prejudice the respondents or cause undue delay. Any amendments must be served on the respondents (see paragraph 4.2.15).

4.2.2 The notice of appeal must be signed by the appellants or their agents. In appeals where permission to appeal is not required (for example, in most Scottish appeals) the notice of appeal must be certified as reasonable by two counsel from the relevant jurisdiction and signed by them<sup>3</sup>.

4.2.3 The notice of 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.

4.2.4 If an appellant

- a. asks the Supreme Court to depart from one of its own decisions or from one made by the House of Lords;

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<sup>1</sup> Amended November 2018

<sup>2</sup> Amended November 2018

<sup>3</sup> September 2015

- 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 Communities,

this should be stated clearly in the notice of appeal 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 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.)

### **Case title**

4.2.5 Notices of appeal to the Supreme Court carry the same title as in the court below, except that the parties are described as appellant(s) and respondent(s). For reference purposes, the names of parties to the original proceedings who are not parties to the appeal should nevertheless be included in the title: their names should be enclosed in square brackets. The names of all parties should be given in the same sequence as in the title used in the court below.

4.2.6 Notices of appeal in which trustees, executors, etc. are parties are titled in the short form, for example *Trustees of John Black's Charity (Respondents) v. White (Appellant)*.

4.2.7 In any notice of appeal concerning children or where in the court below the title used has been such as to conceal the identity of one or more parties to the proceedings, this fact should be clearly drawn to the attention of the Registry at the time the notice of appeal is filed, so that the title adopted in the Supreme Court can take account of the need for anonymity. Notices of appeal involving children are normally given a title in the form *B (Children)* (see also paragraph 4.2.10).

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

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

### **Anonymity and reporting restrictions**

4.2.10 In any appeal 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 1933<sup>4</sup> (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 or a notice of appeal.

4.2.11 Paragraph 4.2.10 also applies to a request for an order under section 4 of the Contempt of Court Act 1981 (contemporary reports of proceedings).

### **Human Rights Act 1998**

4.2.12 Where an appellant or a respondent seeks a declaration of incompatibility or seeks to challenge an act of a public authority under the Human Rights Act 1998, the appropriate section of Form 1 (Appeal)<sup>5</sup> or Form 3 must be completed. Parties should set out briefly in their cases the arguments involved and state whether the point was taken below. The Crown has a right to be joined as a party to the appeal where a question of incompatibility is raised (see rule 40 and Practice Direction 9).

### **References to the European Court**

4.2.13 If an appellant seeks a reference to the Court of Justice of the European Union<sup>6</sup>, this should be stated clearly in the notice of appeal and special provisions apply: see rule 42 and Practice Direction 11. The appellant must also notify the Registrar in writing.

### **London agents**

4.2.14 Solicitors outside London may appoint London agents. Those who decide not to do so should note that any additional costs incurred as a result of that decision may be disallowed on any assessment of costs.

### **Service**

4.2.15 A copy of the notice of appeal must be served on the respondents or their solicitors, on any recognized intervener (under rule 15) 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 agents) must be included in Form 1 (Appeal)<sup>7</sup> and signed or a separate certificate of service must be provided. See rule 6(4) and paragraph 2.1.24 of Practice Direction 2.

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<sup>4</sup> Extended to Scotland by the Children and Young Persons (Scotland) Act 1963, s 57(3).

<sup>5</sup> Amended November 2018

<sup>6</sup> Amended Feb 2013

<sup>7</sup> Amended November 2018

## Filing a notice of appeal

4.3.1 A notice of appeal must be filed in the Registry within 42 days of the date of the order or decision of the court below (see rule 19). However, this time limit may be varied by the Court under rule 5. For other relevant time limits see paragraphs 2.1.12 - 2.1.16 of Practice Direction 2. When a notice of appeal is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

4.3.2 **In order to comply with rule 19(2), the original notice of appeal together with 3 copies** must be filed at the Registry with the prescribed fee. For the relevant fee see Annex 2 to Practice Direction 7. If permission to appeal was granted by the court below, a copy of the order appealed from must also be filed and, if separate, a copy of the order granting permission to appeal to the Supreme Court: rule 19(3). 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”*: rule 19(3).

## Filing notice to proceed under rule 18

4.3.3 Where under rule 18(1)(a) an application for permission to appeal stands as a notice of appeal, the appellant must, within 14 days of the grant by the Court of permission to appeal, file notice that he wishes to proceed with his appeal. See paragraph 3.4.1 of Practice Direction 3 for filing notice to proceed and paragraph 3.4.2 where an appellant is unable to file notice within the prescribed time limit.

## Out of time appeals

4.4.1 Where an appellant is unable to file a notice of appeal within the relevant time limit, an application for an extension of time must be made in Section 7 of Form 1 (Appeal)<sup>8</sup>. 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 comply with rule 19 and paragraph 4.3.2.

## Fees

4.5.1 For the fees payable on filing a notice of appeal and on filing notice to proceed under rule 18 see Annex 2 to Practice Direction 7.

## Acknowledgement by respondent

4.6.1 Each *“respondent who intends to participate in the appeal must, within 14 days after service under rule 18(2)(a) or rule 20, file notice”* in Form 3: rule 21(1). (See Annex 1 to Practice Direction 7 for Form 3.) (Where under rule 18(1)(a) an application for permission to appeal stands as a notice of appeal, the time limit for a respondent to give notice under rule 21 runs from the date on which he is served with a resealed copy of the application.) Form 3 must be produced on A4 paper, securely fastened, using both sides of the paper.

4.6.2 Before filing, a respondent must serve a copy of Form 3 on the appellant, any other respondent and any person who was an intervener in the court below or whose submissions were

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<sup>8</sup> Amended November 2018

taken into account under rule 15: see rule 21(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.

4.6.3 **The original notice together with 3 copies** must be filed at the Registry with the prescribed fee. For the relevant fee see Annex 2 to Practice Direction 7. When Form 3 is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

4.6.4 A respondent who does not give notice under rule 21 will not be permitted to participate in the appeal and will not be given notice of its progress: rule 21(3). An order for costs will not be made in favour of a respondent who has not given notice.

### **Security for costs**

4.7.1 Orders for security for costs under rule 36 will be sparingly made but the Court may, on the application of a respondent, order an appellant to give security for the costs of the appeal and any order for security will determine

- a. the amount of that security, and
- b. the manner in which, and the time within which, security must be given.

An application for security should be made in the general form of application, Form 2 (see paragraph 7.1 of, and Annex 1 to, Practice Direction 7). An order made under rule 36 may require payment of the judgment debt (and costs) in the court below instead of, or in addition to, the amount ordered by way of security for costs.

4.7.2 For payment of security see paragraph 8.7.1 of Practice Direction 8.

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

- a. an appellant who has been granted a certificate of public funding/legal aid;
- b. an appellant in an appeal under the Child Abduction and Custody Act 1985;
- c. a Minister or Government department.

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

4.7.5 Failure to provide security as required will result in the appeal being struck out by the Registrar although the appellant may apply to reinstate the appeal. See paragraph 7.1 of Practice Direction 7.

### **Expedition**

4.8.1 In cases involving liberty of the subject, urgent medical intervention or the wellbeing of children (see paragraph 3.4.4 of Practice Direction 3), a request for expedition may be made in writing to the Registrar. See rule 31. Wherever possible the views of all parties should be obtained before a request for an expedited hearing is made.