

# The Supreme Court of the United Kingdom

## Practice Direction 8

### Miscellaneous Matters

#### Bankruptcy or winding up

8.1.1 If a party to an appeal is adjudicated bankrupt or a corporate body is ordered to be wound up, their solicitor must give immediate notice in writing to the other parties and to the Registrar, who must also be provided with a certified copy of the bankruptcy or winding up order. The bankrupt party (or his trustee in bankruptcy) or the liquidator must file an application to pursue the appeal and the appeal cannot proceed until the application has been approved.

8.1.2 An application to pursue the appeal must be filed within 42 days of the date of the notice.

8.1.3 The form of application and the procedure for any supplemental case follows that for death of a party (see paragraph 8.4 below).

#### Grouping or linking of appeals

8.2.1 The Registrar may direct that appeals raising the same or similar issues are heard either together or consecutively by the court constituted by the same Justices and may give any consequential directions that appear appropriate.

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

#### Cross-appeals

8.3.1 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 his written case but need not cross-appeal: rule 25(1). A respondent who wishes to argue that the order appealed from should be varied must obtain permission to cross-appeal except in cases where “*leave is required from the Court of Session for an appeal from that court or... an appeal lies... as of right*”: rule 25(2). Except in those cases, applications for permission to cross-appeal should be made by the respondents directly to the Supreme Court.

8.3.2 Where permission to cross-appeal is required, an application for permission may only be filed after permission to appeal has been granted to the original applicant for permission to appeal. **The original and 3 copies** of the application for permission to cross-appeal must be filed within 42 days of the grant by the Court of permission to appeal. Where permission to cross-appeal is granted by the Supreme Court, the application for permission to cross-appeal will stand as the notice of appeal and the appellant must then comply with rule 18 and paragraph 3.4.1 of Practice Direction 3.

8.3.3 If permission to cross-appeal is not required, the notice of cross-appeal must be filed with the prescribed fee within 42 days of the grant by the Court of permission to appeal or the filing of the notice of appeal. **The original and 3 copies** of the notice of cross-appeal must be filed. In a notice of cross-appeal, the original appellant is designated as original-appellant/cross-respondent and the original respondent is designated as original-respondent/cross-appellant.

8.3.4 A cross-appeal may be presented out of time in accordance with paragraph 4.4.1 of Practice Direction 4. For the fees payable for cross-appeals see Annex 2 to Practice Direction 7.

8.3.5 Argument in respect of a cross-appeal must be included by each party in their case in the original appeal. Such an inclusive case must clearly state that it is filed in respect of both the original and cross-appeals.

8.3.6 In a cross-appeal, the cases on the original appeal must be filed 6<sup>1</sup> weeks before the hearing. The cross-appellants' case for the cross-appeal must be filed 4<sup>2</sup> weeks before the hearing as part of their reply to the original appellants' case. The original appellants/cross-respondents may reply to the case for the cross-appeal in their case filed in the core volumes.

8.3.7 There is only one Appendix for the original appeal and cross-appeal, and documents in respect of the appeal and cross-appeal must be included in the same Appendix. The original-appellants/cross-respondents are responsible for filing the Statement and Appendix and for notifying the Registrar that the appeal and cross-appeal are ready for listing (including payment of the fee).

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

## **Death of a party**

8.4.1 If a party to an appeal dies before the hearing, immediate notice of the death must be given in writing to the Registrar and to the other parties. The appeal cannot proceed until a new party has been appointed to represent the deceased person's interest.

8.4.2 The application to substitute the new party must be filed with the prescribed fee within 42 days of the date of notice of death. It should explain the circumstances in which it is being filed. It must be endorsed with a certificate of service on all other parties.

8.4.3 If the death takes place after the case for the deceased person has been filed but before the appeal has been heard, the appellants must file a supplemental case setting out the information about the newly-added parties.

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

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<sup>1</sup> Amended Feb 2013

<sup>2</sup> Amended Feb 2013

## Dispute between parties settled

8.5.1 It is the duty of counsel and solicitors in any pending appeal, if an event occurs which arguably disposes of the dispute between the parties, either to ensure that the appeal is withdrawn by consent or, if there is no agreement on that course, to bring the facts promptly to the attention of the Registrar and to seek directions. See further paragraph 8.16 below.

## Exhibits

8.6.1 Parties who require exhibits to be available for inspection at the hearing must apply to the Registrar for permission for the exhibits to be brought to the Court before the hearing.

## Fees and security for costs

8.7.1 Payments of fees and deposits of security money may be made by banker's draft or cheque. Drafts and cheques for fees must be made payable to 'The Supreme Court of the United Kingdom'. Drafts and cheques for security money must be made payable to 'UK Supreme Court Security Fund Account'.

## Interveners

8.8.1 A person who is not a party to an application for permission to appeal may apply for permission to intervene in accordance with rule 15. See paragraph 3.3.17 of Practice Direction 3. A person who is not a party to an appeal may apply for permission to intervene in accordance with rule 26. See paragraph 6.9 of Practice Direction 6.

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

"2. It may however be of some assistance in future cases if I comment on the intervention by the Northern Ireland Human Rights Commission. In recent years the House has frequently been assisted by the submissions of statutory bodies and non-governmental organisations on questions of general public importance. Leave is given to such bodies to intervene and make submissions, usually in writing but sometimes orally from the bar, in the expectation that their fund of knowledge or particular point of view will enable them to provide the House with a more rounded picture than it would otherwise obtain. The House is grateful to such bodies for their help.

3. An intervention is however of no assistance if it merely repeats points which the appellant or respondent has already made. An intervener will have had sight of their printed cases and, if it has nothing to add, should not add anything. It is not the role of an intervener to be an additional counsel for one of the parties. This is particularly important in the case of an oral intervention. I am bound to say that in this appeal the oral submissions on behalf of the NIHRC only repeated in rather more emphatic terms the points which had already been quite adequately argued by counsel for the appellant. In future, I hope that interveners will avoid unnecessarily taking up the time of the House in this way."

## **New submissions**

8.9.1 If, after the conclusion of the argument on an appeal, a party wishes to bring to the notice of the Court new circumstances which have arisen and which might affect the decision or order of the Court, application must be made without delay by letter to the Registrar for permission to make new submissions. The application should indicate the circumstances and the submissions it is desired to make, and a copy must be sent to the solicitors for the other parties to the appeal.

## **Opposed procedural applications**

8.10.1 See paragraph 7.1 of Practice Direction 7 for applications.

## **Patents**

8.11.1 This direction applies to any appeal direct from the High Court under sections 12 and 13 of the Administration of Justice Act 1969, from an order for the revocation of a patent made under section 32 or section 61 of the Patents Act 1949 or under section 72 of the Patents Act 1977.

8.11.2 Notice of intention to file an appeal, with a copy of the notice of appeal, must be served on the Comptroller-General of Patents, Designs and Trade Marks, as well as on the respondents.

8.11.3 If at any time before the hearing of the appeal the respondents decide not to file an acknowledgement to oppose the appeal, they must without delay serve notice of their decision on the Comptroller and on the appeal. Any such notice served on the Comptroller must be accompanied by a copy of the petition under section 32 of the 1949 Act or of the statements of case in the claim and the affidavits filed therein.

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

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

- a. in any case where he has given notice of his intention to appear, and
- b. in any other case (including in particular a case where the respondents withdraw opposition to the appeal during the hearing) if the Court so directs or allows.

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

## **Public funding and legal aid**

8.12.1 The Court does not provide public funding or legal aid. Application for public funding must be made in England and Wales to the Legal Aid Agency<sup>3</sup>, in Scotland to the Scottish Legal Aid Board, and in Northern Ireland to the Legal Aid Committee.

8.12.2 A party to whom a public funding or legal aid certificate has been issued must as soon as possible thereafter file a copy at the Registry. Any emergency certificate and subsequent amendments and the authority for leading counsel must also be filed.

### **Effect of application by appellant for public funding/legal aid**

8.12.3 Provided the Registrar and the other parties have been notified in writing, an application by an appellant for public funding or legal aid suspends the commencement of proceedings and the time limits in rules 11 and 19 are extended until 28 days after the determination of the application for public funding or legal aid (including any appeals against a refusal of funding). Proof that an application has been made for legal aid must be provided to the Registrar.<sup>4</sup>

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

### **Effect of application by respondent for public funding/legal aid**

8.12.5 Where a respondent to an appeal has applied for public funding or legal aid, they should inform the Registrar as soon as possible and in any event within the original time limit for filing the statement and appendix, particularly if they anticipate any possible difficulty in complying with a relevant time limit<sup>5</sup>.

### **Issuing of public funding/legal aid certificate**

8.12.6 Where a public funding or legal aid certificate is granted, the relevant date for the purpose of calculation of time limits under paragraphs 8.12.3 and 8.12.4<sup>6</sup> is the date of issue of the certificate.

## **Specialist advisers and advocates to the Court**

8.13.1 Any party to an appeal may apply in writing to the Registrar for specialist advisers to attend the hearing: rule 35<sup>7</sup>. Such advisers provide assistance to the Court and are strictly independent of the parties to the appeal.

8.13.2 A request for an advocate to the Court to be appointed in an appeal should be made in writing to the Registrar. Any request should indicate whether the other parties to the appeal support the request.

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<sup>3</sup> Amended Nov 2013

<sup>4</sup> Amended May 2013

<sup>5</sup> Amended 2015

<sup>6</sup> Amended May 2013

<sup>7</sup> For Nautical Assessors, see also Supreme Court of Judicature Act 1891 s 3.

## Stay of execution

8.14.1 Filing a notice of appeal or an application for permission to appeal does not in itself place a stay of execution on any order appealed from. A party seeking such a stay must apply to the court appealed from, not to the Supreme Court. The Supreme Court cannot stay an interlocutor of the Court of Session<sup>8</sup>.

## Transcription

8.15.1 See paragraph 6.6.6 of Practice Direction 6 for requests for stenographers and transcripts.

## Withdrawal of appeals and applications

8.16.1 Attention is drawn to the provisions of rule 34.

## Applications for permission to appeal

8.16.2 An application for permission to appeal may be withdrawn by writing to the Registrar, stating that the parties have agreed how the costs should be settled. The respondents should notify the Registrar of their agreement.

## Appeals

8.16.3 An appeal that has not been listed for hearing may be withdrawn by writing to the Registrar, stating that the parties to the appeal have agreed the costs of the appeal. The nature of the agreement should be indicated. Where appropriate, the letter should also indicate how any security money should be disposed of. Written notification must also be given to the respondents who must notify the Registrar of their agreement to the withdrawal of the appeal and who must confirm that the costs have been agreed.

8.16.4 An appeal that has been listed for hearing may only be withdrawn by order of the Court on application. (See paragraph 7.1 of Practice Direction 7 for applications.) An application for such an order should include submissions on costs and, where appropriate, indicate how any security money should be disposed of. The application must be submitted for their consent to those respondents who have filed an acknowledgement. The application should be filed with the prescribed fee.

## Broadcasting

8.17.1 The President and the Justices of the Supreme Court have given permission for video footage of proceedings before the Court to be broadcast where this does not affect the administration of justice and the recording and broadcasting<sup>9</sup> is conducted in accordance with the protocol<sup>10</sup> which has been agreed with representatives of several UK broadcasters.<sup>11</sup> Permission

<sup>8</sup> Court of Session Act 1988 s 41(2).

<sup>9</sup> Amended Dec 2015

<sup>10</sup> The protocol ensures that certain types of proceedings and some aspects of proceedings such as private discussions between parties and their advisers are not recorded, televised or filmed. It also regulates the use of extracts of proceedings and prevents their use in certain types of programmes (such as party political broadcasts) and in any form of advertising or publicity.

to broadcast proceedings must be sought from the President or the presiding Justice on each occasion and requires his or her express approval. Where the President or the presiding Justice grants permission, he or she may impose such conditions as he or she considers to be appropriate including the obtaining of consent from all the parties involved in the proceedings.

## **Enforcement of orders made by the Supreme Court**

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

8.18.2 The Part 23 application must be supported by the following:

1. details of the order which was the subject of the appeal to the Supreme Court or the House of Lords;
2. details of the order of the Supreme Court or the House of Lords, with a copy annexed, and
3. a copy of the certificate of the Registrar of the Supreme Court or of the Clerk of Parliaments of the assessment of the costs of the appeal to the Supreme Court or the House of Lords.

8.18.3 The order to make an order of the Supreme Court or the House of Lords an order of the High Court should be in form no PF68.

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

## **Application for order that a solicitor has ceased to act**

8.19.1 A solicitor may apply for an order declaring that he has ceased to be the solicitor acting for a party.

### **Application for order that a solicitor has cease to act.<sup>12</sup>**

8.19.2 Where such an application is made

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

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<sup>11</sup> Amended 2015

<sup>12</sup> Amended Jan 2013

b. the application must be supported by evidence.

8.19.3 Where the Registrar makes an order that a solicitor has ceased to act, a copy of the order must be served on every party to the proceedings and the order takes effect when it is served.