Consultation on revision of the Supreme Court Rules: Summary of responses and Supreme Court response

7 August 2024

Contents

Introduction

The Supreme Court of the United Kingdom ('UKSC' or the 'Court') hears appeals on arguable points of law of general public importance, for the whole of the United Kingdom in civil cases, and for England, Wales and Northern Ireland in criminal cases. It also decides devolution and compatibility issues, that is issues about whether the devolved executive and legislative authorities in Scotland, Wales and Northern Ireland have acted or propose to act beyond their powers or have failed to comply with certain other duties imposed on them. The Court has recently acquired a new jurisdiction to consider references from lower courts or by the law officers concerning issues relating to assimilated case law which derives from European Union law.

The Court has embarked on a three-year Change Programme which is intended to improve users' ability to learn about, interact and file cases with the UKSC and Judicial Committee of the Privy Council ('JCPC'). The Programme includes the delivery of a new case management system, new websites, training of staff and updating our processes and ways of working.

As part of the Change Programme, the Court has developed a case management system known as the portal, designed to deliver an end-to-end service to all Court users. The portal has the aim of making the submission and management of a case more intuitive, efficient and modern, enhancing access to justice for users.

The UKSC Rules set out the procedure for proceedings before the Court. The UKSC Rules have remained the same since 2009, despite the Court's ways of working having moved on considerably since then. The UKSC carried out a review of its rules and developed a proposal to introduce new rules that reflect the current ways of working of the Court, the introduction of the portal and new statutory jurisdictions recently conferred on the Court. The Court carried out a consultation on this proposal to gather views from the Court's users, public bodies and the general public. The process of amending the rules was carried out by the Court with support from the Ministry of Justice, as the Lord Chancellor is responsible for laying the statutory instrument making the rules.

This document is a response from the UKSC which summarises the responses received through the consultation. It provides an overview of the main themes raised in the consultation responses. It aims to reflect the views offered but it is not possible to describe all the responses in detail.

We also set out the Supreme Court response and next steps for each area of the consultation.

Executive summary

This consultation started on 2 April 2024 and ended at 4pm on Friday 17 May 2024.

The consultation had 9 questions.

There were 28 responses to the consultation.

The draft rules have been amended and are now in draft form appended to this document. We expect the rules to be laid before Parliament in early September, coming into force in the Autumn with the launch of the portal. There may still be some final tweaks to the wording of the rules, but we expect these to be minor and not substantive.

Summary of consultation responses and Supreme Court response

In this section we analyse the responses to the consultation, broken down by rule and by question.

PART 2 of the new proposed rules: The portal, filing and service

Rule 7 (filing)

Question 1: Do you foresee any practical difficulties with reducing the methods for filing of documents with the Registry as proposed?

There were 7 responses to this question. The majority of consultees did not foresee any practical difficulties with the reduction of methods of filing, provided that users are provided with the resources to familiarise themselves with the operation of the portal.

4 consultees did not foresee any practical difficulties with reducing the methods of filing.

2 consultees recommended that non-portal filing be made available for any legal representative, not just litigants in person.

Question 2: Do you foresee any practical difficulties with removing a deemed date of filing with the Registry for the remaining methods of filing?

There were 3 responses to this question.

The 3 consultees sought clarification of whether the focus of the permitted non-portal methods of filing was on ensuring next day delivery or on requiring a method of filing which provides the sender with a notification that delivery has taken place, whenever that occurs. They pointed out that next day delivery services may be more costly for litigants than a tracked service which delivers a few days after a consignment.

Supreme Court response on Questions 1 and 2

The Court's intention is that, where a filing party uses a delivery service, they must use a service which provides them with proof of delivery, whether that delivery is the day after consignment or some days later. The wording of the rule has been amended to make this clear and to clarify further when filing is treated as having occurred. The removal of deemed dates of service by first class post now places the burden on the party filing the document to establish when the document was filed. A non-portal party who is unable to access any of the non-portal methods of filing should contact the Registry for further guidance and an appropriate direction can be made.

The Court has decided to maintain the requirement that all legal representatives use the portal. It is free to use and has been specifically designed to be accessible. The Registry will assist parties or their representatives who encounter technical difficulties or require assistance navigating the portal. The Court considers that the best way to encourage parties to adopt the new and more efficient way of working via the portal is to make it mandatory. If, in an exceptional case, a legal representative is unable to operate as a portal party, they should contact the Registry to explain why this is not possible and the Registry will provide guidance as to how best to proceed.

In rare cases a party may dispense with legal representation after the commencement of the proceedings and become a litigant in person. Such a party should continue as a portal party if possible. If that is not possible, they should contact the Registry for assistance in accordance with rule 4(4).

Rule 8 (service)

Question 3: Do you foresee any practical difficulties with reducing the methods for service of documents on other parties as proposed?

There were 2 responses to this question. 1 of the consultees did not foresee any practical difficulties.

1 consultee raised the concern that the reduction of non-portal filing methods might have a disproportionate impact on litigants in person who might not be able to afford the prescribed delivery methods. This could impair the accessibility of the Court.

Question 4: Do you foresee any practical difficulties with removing a deemed date of serving documents on other parties for the remaining methods of service?

There were 3 responses to this question. 2 consultees did not foresee any particular difficulties related to this change.

2 consultees reiterated the need for clarification on approved methods of delivery.

Supreme Court response to Questions 3 and 4

As with the new rule regarding filing, the intention is that, where service is carried out using a delivery service, the delivery service must provide proof of delivery, whether that delivery is the day after consignment or some days later. The wording of the rule has been amended to make this clear and to clarify further when service is treated as having occurred. Where the Rules require that service take place by a specified date, a party who is serving by tracked delivery will need to ensure that the document is consigned to the delivery service in good time before the deadline expires. A non-portal party who is unable to access any of the non-portal methods of service should contact the Registry for further guidance and an appropriate direction can be made.

Where a document is served via the portal as described in rule 8(1) there is no need for a deadline to be imposed for service since it occurs automatically once the document is filed by the party or issued by the Court. However, a deadline for service is needed where a document must be served using a non-portal method. The rule has been amended to provide that the deadline, subject to contrary provision in the Rules or in a direction from the Registry, is seven days from the date of filing or issue, as the case may be.

1 consultee queried the requirement that a party may only be served by email with their prior consent. The purpose of this requirement is to ensure that emails serving documents are sent to the correct inbox within the recipient's organisation.

PART 3 Application for permission to appeal

Rule 13 (filing an application)

Question 5: Do you have any view on the proposal that the 28 day time limit for filing an application for permission to appeal should run from the date of refusal of permission by the court below instead of from the date of the decision or order appealed against?

There were 13 responses to this question. All consultees agreed with the proposal. In particular, they considered that the proposal would bring the rules in line with current rules on appeals in Scotland, helping bring consistency across the UK. 1 consultee advocated for dispensing with the requirement to apply for permission to appeal from the court below entirely.

Question 6: Do you foresee any practical difficulties with introducing a time limit for the application to the court below for permission to appeal to the Supreme Court where there is currently no time limit?

There were 11 responses to this question. All consultees agreed with the proposed change. 2 consultees suggested the Court should reserve the power to grant permission

to appeal in circumstances where the lower court's time limit has expired and that court has not made an order refusing permission to appeal to the Court.

Supreme Court response to Questions 5 and 6

The Court notes the positive reaction to the proposed changes, which will be implemented in the new rules.

As explained in the Consultation Document, the amendment to the UKSC Rules necessitates a change to the Civil Procedure Rules applicable in the Court of Appeal in England and Wales and in the Northern Ireland Court of Appeal. The Court expects that an amendment to CPR Part 52 and to the equivalent provision in the Rules of Court of Judicature (Northern Ireland) 1980 will be made to coincide with this change to the UKSC Rules. The amendments will impose a 28 day deadline for applications to be made to those courts for permission to appeal to the Court.

These changes create the possibility that a party which has been unsuccessful before the court below may fail to apply within the deadline and then apply both for an extension of time and for permission to appeal if that extension of time is granted. If the extension of time is granted, and permission is refused by the court below, the 28 day period set by rule 13(1) will start to run from the date that permission is refused. If the extension of time is refused, there will be no refusal of permission by the court below and it will not be possible for the party then to apply to the Court for permission. The Court has considered carefully whether the Rules should provide that in exceptional circumstances an application for permission to appeal could be entertained by the Court where there has been no refusal of permission by the court below. The Court has decided that the interests in encouraging the timely conduct of litigation and of respecting the finality of proceedings militate against any such "exceptional circumstances" provision.

PART 4 Commencement and preparation of appeal

Rules 25-29

Question 7: Do you foresee any practical difficulties with the proposed time limits for filing and serving bundles?

There were 5 responses to the question.

2 consultees agreed with the proposed change.

1 consultee asked what would happen with regards to delays caused by events outside a party's control.

2 consultees did not agree with the newly proposed time limit and recommended that the rule should not change. The main comments made were to emphasise that the task

of preparing the electronic bundles in the format required (with bookmarks and hyperlinks) was an onerous one. Further, the consultees stated that the justification set out in the Consultation Document for bringing forward the dates on which the bundles must be provided was not soundly based. Although it is true that the main hearing bundle no longer has to be printed out and delivered in hard copy, the aspect of bundle preparation which takes the great majority of the time and resources needed is the preparation of the electronic version.

Supreme Court response to Question 7

In light of the points made by consultees the Court has decided to revert to some extent to the timescale currently set by Practice Direction 6. The following changes have been made to the new Rules:

Rule 26: Listing of the appeal

To ensure that the parties are clear as to the timing and sequence of the listing process, the rule has been amended so that the first step is taken by the Registry rather than by the parties. The trigger will be either the filing of the notice of intention to proceed in an appeal where the Court has granted permission or the issue of the notice of appeal when the court below has granted permission or the appeal is an appeal as of right. Within 28 days of that date, the Registry will contact the parties to start the process of identifying a date for the hearing.

Rule 27: Documents for appeal hearing

The revised rule no longer provides for the creation of the appendix required by the current practice direction nor the index referred to in the draft rules contained in the consultation. The relevant documents will have been uploaded individually to the portal or sent to the Registry either with the application for permission to appeal under rule 13(4) or with the notice of appeal under rule 20(4). Those documents will also then be combined in a single electronic file when they form part of the key documents bundle. The rule therefore provides for the preparation, filing and service of the statement of facts and issues and then the sequential filing and service of the parties' written cases.

The timing of the statement of facts and issues remains the same as in the current practice direction, namely 112 days after the filing or issue of the notice of appeal.

The timetable for the written cases will be set out in the practice directions and will be the same as currently set in the practice directions, namely that the appellant's written case must be filed no later than 8 weeks before the hearing and the written cases of the

respondents and interveners (regardless of which party the intervener supports) no later than 6 weeks before the hearing.

Rule 28: The key documents bundle

The Court recognises that it may not be practical to provide for the key documents bundle to be prepared and served in advance of the main hearing bundle. That might create difficulties in ensuring that page numbering between the key documents bundle as a separate document and the key documents as they form part of the main hearing bundle was consistent. It would also make it difficult to ensure that the documents in the key documents bundle could be fully cross referenced to the other documents in the main bundle, including the authorities.

In order to addresses these concerns, the rule has been revised to revert to the current practice requiring both bundles to be provided at the same time, 28 days before the hearing. The 28 day period is the period which currently applies in accordance with Practice Direction 6 (the deadline provided for in the 2009 Rules is 14 days before but that deadline has been extended by the Practice Directions).

The revised rule clarifies that non-portal parties must also prepare a single electronic file of the key documents bundle for the use of the Registry and the other parties to the appeal.

Rule 29: The main hearing bundle

In line with the revision of the rule relating to the key documents bundle, the rule providing for the preparation, filing and service of the main hearing bundle (which includes the authorities) has been changed to reflect current practice in accordance with the practice direction. The single electronic file containing the main hearing bundle must be provided no later than 28 days before the hearing.

Part 9 Transitional arrangements

Rule 62 (transitional arrangements)

Question 8: Do you foresee any practical issues in complying with the transitional provisions in Rule 62?

A number of consultees asked whether it will be possible for existing appeals to migrate to the portal once the portal comes into operation.

Supreme Court response to Question 8

Unfortunately, it has not been possible at proportionate cost to configure the software underlying the portal to enable the migration of existing appeals. This rule has been revised to include the express revocation of the 2009 Rules. For the avoidance of doubt, however, the 2009 Rules and current Practice Directions will apply to the cases filed prior to the launch of the portal.

Question 9: Do you wish to add any other comments?

Consultees raised a number of other issues and drafting suggestions. We list below the issues which attracted the most comments, as well as further drafting amendments the Court has made:

Rule 6: Removal of automatic extension for Legal Aid cases

9 consultees expressed concern at the proposed change to remove the automatic extension of time for a party who is seeking public funding. These consultees stressed that, in their experience, delays are often not the fault of the litigant but arise from the response time of the Legal Aid Agency.

The Court has considered these objections carefully and fully recognises the need to ensure equal access to justice for all prospective parties. However, the Court has decided to retain the proposed rule. Where a party can show that they have applied promptly for legal aid and pursued the application, the Registrar will extend time to ensure a legally aided litigant is not disadvantaged by the need to obtain public funding. It is likely to be only in exceptional cases that time will not be extended to accommodate the party. Where the Registrar decides not to extend time, the litigant may apply to have that decision reviewed by a single Justice under rule 11.

Rule 6(3) has been amended to make clear that it applies to all time limits under the Rules, so that a publicly funded respondent is in the same position as a publicly funded appellant.

Rule 6(4) has been amended to clarify when the time limit for doing any act specified by the Rules expires, namely on the next working day if the Registry is closed on the last day and at midnight local time for the person doing the act.

Rule 11: Procedural decisions

Rule 11(5) has been revised to make clear that all decisions on procedural matters taken by the Registrar can be referred to a single Justice for review at the request of a party, not only those decisions listed in rule 11(1).

Rule 13(5) and (6): Filing and issue of applications

Some consultees expressed concern at the power of the Registrar to refuse to issue an application for permission to appeal. The great majority of cases in which this occurs are those where it is clear that the Court has no jurisdiction, in particular where the appellant seeks to challenge the Court of Appeal's refusal of permission to appeal to that court from the High Court or County Court. In those cases, there is no useful purpose in seeking submissions from the appellant. Accordingly, that part of the rule has been maintained. However, the rule has been revised to make clear that where the refusal would be based on the absence of reasonable grounds or on abuse of process, the Registrar must request submissions from the proposed party to the appeal before making a decision whether to issue the application. Any decision of the Registrar to refuse to issue an application for permission can be reviewed by a single Justice under rule 11(5).

Rules 16 and 17: Interventions in applications

These rules have been revised to make clear that a person who makes submissions in respect of an application for permission will be notified of the decision on that application whether permission is granted or refused. Further, any person who intervened in the court below but who did not make submissions in respect of the application for permission must be notified by the appellant of the decision on the application.

Rule 19: Notice of intention to proceed where permission granted by the Court

The draft rules have been revised to remove the obligation on the appellant to serve the notice of intention to proceed on every person who made submissions under rule 16. A person who has made submissions under rule 16 will be able to follow the progress of the appeal themselves on the Court's website and can sign up to be notified of updates on the proceedings. A corresponding change has been made to rule 22(3) regarding service of the respondent's notice of intention to participate in the appeal.

Rule 23: Cross appeals

In accordance with current practice, where both parties succeeded in part before the court below and both are granted permission to appeal by that court, there will be two linked appeals before the court rather than an appeal and cross-appeal. This rule therefore covers those cases where the respondent has not been granted permission by the court below to bring an appeal.

Consultees queried the practicability of requiring parties to file a single written case containing all their submissions on their own grounds of appeal and in response to grounds of any cross-appeal. The Court recognises that there may be situations where this is not the best approach. Practice in these situations in the past has not given rise to problems as the parties have shown good sense in how they present their written submissions in a way most helpful to the Court. The rule has been revised to remove the reference to a single written case.

Rule 24: Intervention

1 consultee noted that there is no deadline set by the Rules for an intervention. The Court does not consider it is appropriate to set a deadline for persons who have a statutory right to intervene and it has not proved necessary to do so for other potential interveners in the past.

Potential intervenors should appreciate that the more promptly they make their application for permission to intervene, the more likely they are to be granted permission. The risk of the intervention adversely affecting the conduct of the proceedings is greatly reduced by a timely application.

Practice Direction 6 currently provides that applications to intervene should be made no later than 10 weeks before the hearing and this will be carried forward in the new practice direction.

Rule 25: Interventions on assimilated case law by law officers

The wording of this rule has been revised to reflect the broader scope of "proceedings" in section 6C of the European Union (Withdrawal) Act 2018. The wording has also been clarified to make it clear that the 21 day period mentioned is not the time within which the hearing must take place but, to the contrary, the hearing cannot take place until 21 days have elapsed from the service of the notice by the Registry on the Law Officer. This is to ensure that the Law Officer has enough time to consider whether they wish to intervene in the proceedings.

Rule 27(5): Interveners

4 consultees disagreed with rule 27(5) which stipulates that an intervener may not include in its written case any submissions on an issue which is not an issue raised by the parties to the proceedings. They asked for further clarity on the reasons for introducing such a rule.

The Court considers rule 27(5) is an important safeguard for the orderly conduct of the proceedings and for the appellants and respondents who are entitled to set the

parameters of their dispute. The interveners will have received both the notice of appeal and any cross-appeal and the respondent's acknowledgment in which the respondent will have made clear if they wish to argue a point which did not form part of the reasoning of the judgment of the court below: see rule 22(2). Further, the Registrar will have made directions under rule 24(5) or rule 25(6) at an early stage to ensure that the intervener is fully apprised of the issues in the appeal.

Rule 32: Orders

The wording of rule 32(5) has been expanded in response to a suggestion from a consultee. It now provides that every order must state the date on which it is made and comes into effect.

Rule 36: Change of interest

A paragraph has been added to this rule to make clear that where an event has occurred which renders it unnecessary to hear or determine the appeal, the Court has a discretion to dispense with a hearing and bring the appeal to a close by making a final order without a reasoned judgment.

Rule 41: Change of solicitor and London agents

The use of London agents is no longer common practice so the reference to them in this rule has been removed.

Rule 42: Publication and disposal of documents

A number of consultees sought clarification about the stage at which documents will be placed on the Court's website and the procedure for decisions about withholding documents or making redactions to their contents.

The revised text of this rule now makes clear:

- It is only the statement of facts and issues and the parties' written cases that will be published on the website, not the key documents bundle or main hearing bundle. The equivalent documents in a reference will also be placed on the website.

- The parties may object to the publication on the website of all or part of their own or another party's documents and the Registrar will determine what material should be held back or redacted.

- The parties are expected to alert the Registry to any issues with publication in good time – this should in most cases be at the time that they file or receive the document. When the document is filed on the portal, the portal will provide the party with the opportunity to indicate whether the document contains confidential information which should be withheld or redacted.

- Subject to any objections, the statement of facts and issues and the written cases will be published at least 7 days before the hearing. In the Court's view, this strikes a fair balance between the desirability of providing timely information to members of the public or the media who are interested in the subject matter of the appeal and the interests of the parties.

- Any decision under this rule by the Registrar is subject to review by a single Justice: see Rule 11(1)(h).

- In addition to these new provisions about the publication of documents on the website, the rule formerly in rule 39(3) of the 2009 Rules providing that, subject to certain exceptions, the media and members of the public can apply to inspect any document held by the Court has been brought forward into rule 42(1).

Rule 43: Human Rights issues

Some consultees noted the omission of the provision formerly in rule 40(3) of the 2009 Rules that if a compatibility issue arises for the first time during the course of an appeal hearing, the Court will, if necessary, adjourn the proceedings to enable the Registrar to give notice to the Crown. The omission of this provision, as explained in the Consultation Document, reflects the greater emphasis placed in proceedings on early notice being given by the parties as to the issues to be considered in an appeal. The Court does not expect that this will have a chilling effect on raising compatibility issues. If there is a satisfactory explanation why the issue is being raised late, the Court has power to adjourn the proceedings without this express provision.

Rule 44: Devolution jurisdiction and compatibility issues and questions

This rule has been revised to take account of the coming into force in July 2024 of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024.

The rule has also been revised to clarify the different kinds of references that may be made. The reference to section 99 of the Government of Wales Act 2006 has been omitted from rule 44(1)(a) as that provision has been repealed.

Rules 46 to 48: EU assimilated case law

The wording of these rules has been revised slightly to reflect drafting points raised by consultees. The making of a reference under these provisions will be published on the Court's website.

Rule 56: Assessment of costs

This rule has been revised to bring into line with the practice in the JCPC.

Next steps

The revised Supreme Court Rules 2024 are expected to be laid in Parliament in September 2024 and come into force in October 2024. New practice directions will also be introduced to supplement the rules.

Annex I

The Consultation documents were sent to the following list of consultees:

Statutory consultees:

The Lord Chancellor;

The General Council of the Bar of England & Wales;

The Law Society of England & Wales;

The Faculty of Advocates;

The Law Society of Scotland;

The General Council of the Bar of Northern Ireland; and

The Law Society of Northern Ireland.

Additional consultees:

The Law Officers of England & Wales, Northern Ireland, Wales and Scotland;

The Scottish Government;

The Welsh Government;

The Northern Ireland Executive;

The Lady Chief Justice of England & Wales;

The Lady Chief Justice of Northern Ireland;

The Lord President of the Court of Session;

Treasury Solicitor, Government Legal Department;

General Counsel and Solicitor for HM Revenue & Customs;

Comptroller-General of the Intellectual Property Office;

Senior Costs Judge of England & Wales; and

UKSC Court User Group (which includes solicitors and barristers who regularly act in cases before the Court).

Please note that the consultation was not limited to the statutory consultees and responses were received from a range of stakeholders with an interest in or views on the subject covered by the consultation. The consultation was published on the Court's website and all members of the public could respond.

Annex II – Current version of draft rules

The following page contains the current version of the draft rules, however there may be small amendments made to the final version.

STATUTORY INSTRUMENTS

2024 No. XXXX (L)

SUPREME COURT OF THE UNITED KINGDOM

The Supreme Court Rules 2024

Made - - - -

Laid before Parliament

Coming into force - - *1st October 2024*

The President of the Supreme Court makes these Rules in exercise of the powers conferred by section 45 of the Constitutional Reform Act 2005(**a**).

In accordance with section 45(4) and (5) of that Act the President of the Supreme Court has consulted 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 such other bodies representing persons likely to be affected by the Rules as the President of the Supreme Court considered appropriate.

PART 1

Interpretation and scope

Citation and commencement

1. These Rules may be cited as the Supreme Court Rules 2024 and come into force on DATE 2024.

Scope and objective

2.—(1) These Rules apply to—

(a) civil and criminal appeals to the Court;

(b) appeals and references under statutory provisions conferring powers on courts, tribunals and law officers to bring appeals or make references to the Court.

(2) The overriding objective of these Rules is to secure that the Court is accessible, fair and efficient.

(3) The Court must interpret and apply these Rules with a view to securing that the Court is accessible, fair and efficient and that unnecessary disputes over procedural matters are discouraged.

(**a**) 2005 c. 4.

Interpretation

3.—(1) In these Rules—

"the Act" means the Constitutional Reform Act 2005;

"the Court" means the Supreme Court of the United Kingdom;

"Justice" means a judge of the Court and includes its President and Deputy President;

"the Registrar" means the Registrar of the Court;

"the Registry" means the Registry of the Court.

(2) In these Rules, except where the context otherwise requires—

"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(**a**), in England and Wales;

"certificate of service" means a certificate as described in rule 8;

"counsel" includes any person with the right to be heard as an advocate at a full hearing before the Court;

"court below" means the court from which an appeal (or application for permission to appeal) is made to the Court;

"court officer" means the Registrar or a member of the court staff;

"devolution jurisdiction" means the jurisdiction transferred to the Court by section 40 of, and Schedule 9 to, the Act and conferred on the Court under the provisions referred to in rule 44;

"electronic means" means email 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;

"form" and the "appropriate form" have the meanings given by rule 5;

"key documents bundle" has the meaning given by rule 28;

"law officer" means, as appropriate to the proceedings—

(a) the Attorney General for England and Wales;

(b) the Counsel General for Wales;

(c) the Advocate General for Scotland and the Lord Advocate; and

(d) the Advocate General for Northern Ireland and the Attorney General for Northern Ireland;

"panel of Justices" means a panel of at least three Justices;

"party" means an appellant, a respondent, a person participating in a reference and a person who has been given permission to intervene under rule 24 or rule 25;

"portal", "portal party" and "non-portal party" have the meanings given by rule 4;

"respondent" includes a respondent to an application for permission to appeal;

(**a**) 1971 c. 80.

"service" and related expressions have the meanings given by rule 8;

"solicitor" includes any person authorised to provide legal services other than as counsel in connection with proceedings before the Court;

"statement of facts and issues" has the meaning given by rule 27(1).

(3) References in these Rules to a practice direction mean a practice direction issued by the President of the Court.

(4) 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 solicitor.

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

(6) Where these Rules require or permit the Court to perform an act of a formal or administrative character, that act may be performed by a court officer.

PART 2

The portal, filing and service of documents

The portal and portal parties

4.—(1) In these Rules—

(a) the "portal" means the portal for filing and managing cases at the Court electronically;

(b) a "portal party" is a party who (or whose representative) has been granted access to the relevant case file on the portal for the purpose of taking part in the appeal;

(c) a "non-portal party" is a party who (or whose representative) has not been granted access to the relevant case file on the portal.

(2) A person who wishes to participate in an appeal as a party and who is legally represented by a solicitor or counsel must be a portal party in respect of that appeal.

(3) A party who is not legally represented may be a portal party or a non-portal party.

(4) A party who is or becomes a portal party at any stage of an appeal must remain a portal party until that appeal is finally disposed of, unless permitted to become a non-portal party by the Registrar.

(5) A party who is a non-portal party at the start of an appeal but who becomes a portal party during the course of the appeal must notify the other parties to the appeal of that fact via the portal.

(6) Orders issued in the portal are sealed with an electronic seal.

Forms

5.—(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 must 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 Court or a party if the variation is required by the circumstances of a particular case.

Time limits

6.—(1) Unless to do so would be contrary to any enactment, the Court may extend or shorten any time limit set by these Rules or any relevant practice direction—

(a) of its own motion; or

(b) on the application of one or more parties,

and may do so after the time limit has expired.

(2) Where appropriate, the Registrar shall notify the parties when a time limit is varied under this rule.

(3) Where a party to a proposed appeal has applied for public funding and the Registrar is informed of the application, the Registrar may extend the time limits provided for in these rules until after the final determination of the application for public funding, having regard in particular to the promptness with which the party has made and the manner in which the party has pursued that application.

(4) Where a period for the doing of any act is specified by these Rules, by a practice direction or by a judgment or order—

(a) an act done at the Registry shall be in time if done on the next day on which the Registry is open, if the period ends on a day on which the Registry is closed; and

(b) that period expires at midnight on the last day according to the local time of the place where the person does the act.

Filing

7.—(1) Documents shall be filed in the Registry by portal and non-portal parties in accordance with this rule.

(2) Save where otherwise expressly provided for by these rules, a portal party must file all documents via the portal in accordance with the relevant practice direction.

(3) A non-portal party may file a document by any of the following methods—

(a) personal delivery;

(b) a service which provides for tracked delivery and which notifies the sender of the date on which the document is delivered to the addressee;

(c) electronic means.

(4) A document filed by personal delivery or by electronic means is treated as filed on the day it is delivered or sent electronically. A document filed by a tracked delivery service is treated as filed on the day on which it is delivered to the addressee, according to the notification provided by the service to the sender.

Service

8.—(1) "Portal service" means the service of a document which has been filed by a portal party by—

(a) a notification appearing in the portal containing a statement to the effect that that document has been filed; and

(b) the sending of an email alert from the portal to—

(i) the email address for service of the party to be served; and

(ii) the email address for service of the party who would, apart from this rule, be required to serve the document.

(2) If an email alert relating to a document is sent to a party in accordance with paragraph (1)(b)(i), the document is taken to be served on the party—

(a) on the day the email alert was sent if the email alert was sent during the office hours of the Registry; or

(b) on the next business day after the email alert was sent if the email alert was sent outside those hours.

(3) "Non-portal service" means service by any of the following methods—

(a) personal service;

(b) a service which provides for tracked delivery and which notifies the sender of the date on which the document is delivered to the addressee;

(c) (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.

(4) Where the postal address of a non-portal party on whom a document is to be served is unknown, the Registrar may direct that service is effected by an alternative method of service.

(5) A certificate of service by a non-portal party is a certificate giving details of the persons served, and the method of service used, and must state the date on which the document was served personally, delivered to the addressee by the tracked delivery service or sent electronically, as the case may be.

(6) In these Rules, unless expressly otherwise provided, where a party is required to serve a document on another party—

(a) a portal party must serve other portal parties by way of portal service and must serve non-portal parties by way of non-portal service;

(b) a non-portal party must serve all parties by way of non-portal service.

(7) A document served by personal delivery or by electronic means is treated as served on the day it is delivered or sent electronically. A document served by a tracked delivery service is treated as served on the day on which it is delivered to the addressee, according to the notification provided by the service to the sender.

(8) Non-portal service must take place within 7 days of filing the document or of the document being issued by the Court, whichever is the later, subject to any direction to the contrary by the Registrar.

Communications with the Court

9.—(1) This rule applies to a person who is a portal party and—

(a) who has filed—

(i) an application for permission to appeal under rule 13;

(ii) a notice of objection under rule 15;

(iii) written submissions under rule 16;

(iv) a notice of appeal under rule 20;

(v) a notice of intention to participate under rule 22;

(vi) an application for permission to intervene under rule 24,

(vii) a notice of intention to join the appeal under rule 25; or

(b) who is a party to a reference or appeal under rule 44, 46 or 48.

(2) Save as provided for in paragraph (3), after the person has taken the step referred to in paragraph (1), all communications between that party and the Court must be made via the portal

using the public channel which enables all other portal parties participating in the application or appeal to view the communication via the portal.

(3) Communications from persons who have taken the step referred to in paragraph (1)—

(a) relating to confidential matters including payment of fees, anonymisation of the party, or proposed withholding of or redactions from material placed on the Court's website under 42(4);

(b) relating to matters which are purely routine, uncontentious and administrative;

(c) which are authorised by a rule or practice direction to be sent to the Court without at the same time being provided to the other party or parties or their representatives,

must be made via the portal either using the public channel or by using the confidential channel to which the other portal parties do not have access.

(4) Any communication made via the portal using the confidential channel must state clearly why it is being sent via that channel.

(5) Where a non-portal party is a party to the proceedings, all parties must communicate with the Court and with the other parties in accordance with the relevant practice direction.

Non-compliance with these Rules

10.—(1) Any failure by a party to comply with these Rules or any relevant practice direction does 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 Court may give whatever directions appear appropriate, having regard to the seriousness of the nom-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

11.—(1) Subject to paragraph (2), the powers under the following rules may be exercised by a single Justice or the Registrar without an oral hearing—

(a) rule 6 (time limits);

(b) rule 10 (non-compliance with Rules);

(c) rule 36 (change of interest);

(d) rule 37 (withdrawal of appeal);

(e) rule 38 (advocate to the Court and assessors);

(f) rule 39 (security for costs);

(g) rule 40 (stay of execution);

(h) rule 42(4) (redaction of material from published documents); and

(i) rule 44 (devolution jurisdiction and compatibility issues and questions).

(2) Any contested application—

(a) alleging contempt of the Court;

(b) in respect of a direction made under rule 10 dismissing an appeal or debarring a respondent from resisting an appeal; or

(c) for security for costs,

shall be referred to a panel of Justices who shall, in a case of alleged contempt, and may, in any other case, hold an oral hearing.

(3) Where under these Rules any matter falls to be decided by a single Justice, that Justice may, where it appears appropriate, direct an oral hearing or may refer the matter to a panel of Justices to be decided with or without an oral hearing.

(4) Where under these Rules any matter falls to be decided by the Registrar, the Registrar may—

(a) direct an oral hearing;

(b) refer the matter to a single Justice (and paragraphs (1) and (3) shall then apply in relation to the Justice);

(c) refer the matter to a panel of Justices to be decided with or without an oral hearing.

(5) A party may apply for any decision of the Registrar under these Rules to be reviewed by a single Justice (in which case paragraphs (1) and (3) apply in relation to the Justice) and any application under this rule must be filed within 14 days of the Registrar's decision.

(6) Subject to rule 30, oral hearings on procedural matters must be heard in open court or in a place to which the public are admitted.

(7) If any procedural question arises which is not dealt with by these Rules, the Court or the Registrar may adopt any procedure that is consistent with the overriding objective, the Act and these Rules.

PART 3

Application for permission to appeal

Making an application

12.—(1) An application for permission to appeal must be made first to the court below, and an application may be made to the Court only after the court below has refused to grant permission to appeal.

(2) Every application to the Court for permission to appeal must be made—

(a) by a portal party by completing the relevant pages in the portal;

(b) by a non-portal party in the appropriate form.

Filing and issue of application

13.—(1) Subject to any enactment which makes special provision with regard to any particular category of appeal, an application for permission to appeal must be filed within 28 days from the date of the order of the court below refusing permission to appeal.

(2) Where an application for permission to appeal is filed by a portal party in accordance with rule 7(2), that party must upload to the portal the documents listed in paragraph (4).

(3) Where an application for permission to appeal is filed by a non-portal party in accordance with rule 7(3), it must be accompanied by the documents listed in paragraph (4).

(4) The documents listed in this paragraph are—

(a) the order of the court below against which the appellant seeks permission to appeal;

(b) the judgment of the court below to which the order gives effect;

(c) the order of the court below refusing permission to appeal to the Court;

(d) the grounds of appeal for which the appellant seeks permission to appeal;

(e) a precis of the factual background of the case and a chronology of proceedings;

(f) the order of the first instance court (if different) which was challenged in the court below;

(g) the judgment of the first instance court (if different).

(5) The Registrar may refuse to issue any application on the ground that—

(a) the Court does not have jurisdiction under section 40 of the Act to issue it;

(b) it contains no reasonable grounds; or

(c) it is an abuse of process,

and may give whatever directions appear appropriate.

(6) Before refusing to issue an application—

(a) where the proposed ground for such a refusal is that the application contains no reasonable grounds or is an abuse of process, the Registrar must request submissions from the appellant, and may request submissions from any other proposed party;

(b) where the proposed ground is that the Court does not have jurisdiction, the Registrar may request submissions from a proposed party.

(7) The Registrar must notify the appellant of any request made for submissions to another proposed party and must provide the appellant with a copy of any submissions received.

(8) Subject to paragraph (5), the Court shall issue the application for permission and shall direct the appellant to serve the application.

Service of application

14.—(1) Once an application for permission to appeal has been issued by the Court and the Registrar has directed the appellant to serve the application, it must be served in accordance with this rule.

(2) All portal and non-portal parties must serve the application (but not the documents listed in rule 13(4)) by way of non-portal service (regardless of whether the person to be served is a portal party or a non-portal party) in accordance with rule 8(3) and (4).

(3) The persons to be served are—

(a) every respondent; and

(b) any person who was an intervener in the court below.

(4) After the application for permission has been served—

(a) a portal party must give a declaration of service via the portal giving the details required by the portal;

(b) a non-portal party must file a certificate of service in accordance with rule 8(5).

Notice of objection by respondent

15.—(1) Each respondent who wishes to object to the application for permission to appeal must, within 14 days after being served with the application, file notice of objection setting out any submissions the respondent wishes to make including any submissions as to the jurisdiction of the Court to grant permission.

(2) The notice of objection shall be issued by the Court either in the portal or by being approved by the Court as the case may be.

(3) Within 7 days of notice of objection being issued or approved under paragraph (2), each respondent who has filed such a notice must serve that notice on—

(a) the appellant;

(b) any other respondent; and

(c) any person who was an intervener in the court below.

(4) A respondent who does not file and serve a notice of objection under this rule will not be permitted to participate in the application and will not be given notice of its progress.

Interventions in applications

16.—(1) Any person and in particular—

(a) any official body or non-governmental organization seeking to make submissions in the public interest; or

(b) any person with an interest in proceedings by way of judicial review,

may file submissions asking the Court to grant or dismiss an application for permission to appeal which has been issued by the Court (including for lack of jurisdiction) and request that the Court takes them into account.

(2) Once the submissions are filed, they must be served by the person on—

(a) the appellant;

(b) every respondent; and

(c) any person who was an intervener in the court below.

(3) Any submissions which are filed and served shall be referred to the panel of Justices which considers the application for permission to appeal.

Consideration of the application

17.—(1) Every issued application for permission to appeal (together with any submissions made under rule 16 and any respondent's notice of objection) shall be considered without a hearing by a panel of Justices.

(2) The panel of Justices may—

(a) refuse permission on the ground that the Court lacks jurisdiction to hear the appeal;

(b) grant or refuse permission to advance all or any of the grounds of appeal;

(c) 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

(d) direct an oral hearing.

(3) Where the panel of Justices has invited the parties' submissions as to terms, it shall reconsider the application without a hearing and may refuse permission or grant permission (either unconditionally or on terms) to advance all or any of the grounds of appeal.

(4) Where the panel of Justices 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 of the Court shall be prepared and sealed by the Registrar to record any decision made under this rule.

(6) The order must be notified—

(a) by the Registrar—

(i) to portal parties via the portal;

(ii) to non-portal parties by appropriate means;

(iii) to any person who made submissions under rule 16 by appropriate means;

(b) by the appellant to any person who was an intervener in the court below, if that person did not make submissions under rule 16.

(7) Any person who is notified under paragraph (6)(a)(iii) or (b) or under rule 18(2) of an order granting permission and who wishes to intervene in the appeal must make an application under rule 24.

Oral hearing of application

18.—(1) Where the panel of Justices has directed an oral hearing, the appellant and every respondent who has given notice under rule 15 shall be informed of the date of the oral hearing.

(2) An order of the Court shall be prepared by the Registrar to record any decision made under this rule. The order must be notified in accordance with rule 17(6).

PART 4

Commencement and preparation of appeal

Notice of intention to proceed where permission granted by the Court

19.—(1) Where the Court grants permission to appeal, rules 20 and 21 do 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 for which permission has been granted;

(c) the appellant must, within 14 days of the grant by the Court of permission to appeal, file notice under this rule of an intention to proceed with the appeal.

(2) An appellant who files a notice to proceed under paragraph (1)(c) must serve that notice on each respondent and on any person who was an intervener in the court below.

(3) An appellant who is a non-portal party must file a certificate of service in accordance with rule 8(5).

Filing and issue of notice where permission not required

20.—(1) This rule and rule 21 apply to appeals where permission to appeal has been granted by the court below or where there is an appeal as of right to the Court.

(2) The notice of appeal must be filed by the appellant within 42 days of the later of—

(a) the order or decision of the court below against which the appellant appeals; or

(b) the order or decision of the court below granting permission to appeal, where such an order or decision has been made.

(3) At the same time as filing the notice of appeal—

(a) a portal party must upload the documents listed in paragraph (4);

(b) a non-portal party must send the Registrar by email (and not by sending hard copies) the documents listed in paragraph (4).

(4) The documents to be uploaded or sent by email to the Registry in accordance with paragraph (3) are—

(a) the order of the court below against which the appellant is appealing;

(b) the judgment of the court below to which the order gives effect;

(c) (where applicable) the order of the court below granting permission to appeal to the Court;

(d) the grounds of appeal;

(e) a precis of the factual background of the case and a chronology of proceedings;

(f) the order of the first instance court (if different) which was challenged in the court below;

(g) the judgment of the first instance court (if different).

(5) The Court shall issue the notice of appeal and direct the appellant to serve the notice.

Service of notice of appeal

21.—(1) Once a notice of appeal has been issued by the Court and the Registry has directed the appellant to serve the notice, the notice of appeal must be served by the appellant in accordance with this rule.

(2) All portal and non-portal parties must serve the notice (but not the documents listed in rule 20(4)) by way of non-portal service, regardless of whether the person to be served is a portal party or a non-portal party, in accordance with rule 8(3) and (4).

(3) The persons to be served are—

(a) every respondent; and

(b) any person who was an intervener in the court below.

(4) After the notice of appeal has been served—

(a) a portal party must give a declaration of service via the portal giving the details required by the portal;

(b) a non-portal party must file a certificate of service in accordance with rule 8(5).

Acknowledgment by respondent

22.—(1) Each respondent who intends to participate in the appeal must file notice of intention to participate.

(2) The notice of intention to participate in the appeal must be filed within 14 days after—

(a) service of the notice of intention to proceed under rule 19(2); or

(b) service of the notice of appeal under rule 21(2).

(3) 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 notice of acknowledgment (but need not cross-appeal).

(4) Each respondent must within 7 days of filing the notice under paragraph (1) serve that notice on the appellant and any other respondent.

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

Cross appeals

23.—(1) Subject to paragraph (2) below, a respondent who wishes to argue that the order appealed from should be varied must obtain permission to cross-appeal from the Court and must pay the appropriate fee.

(2) Paragraph (1) does not apply where—

(a) leave is required from the Court of Session for an appeal from that court, or

(b) an appeal lies to the Court as of right.

(3) An application to the Court for permission to cross appeal must be filed by the respondent within 14 days of the respondent filing a notice of acknowledgment under rule 22(1).

(4) Part 3 of these Rules applies (with appropriate modifications) to an application to the Court for permission to cross-appeal and (if practicable) applications for permission to appeal and to cross-appeal shall be considered together by the same panel of Justices.

(5) Where there is a cross-appeal, this Part of these Rules applies with appropriate modifications and in particular—

(a) either the application for permission to cross-appeal to the Court shall stand as a notice of cross-appeal, or such a notice (in the appropriate form) must be filed and served within 42 days of the grant by the Court of permission to appeal or of the filing of the notice of appeal;

(b) there must be a single statement of facts and issues and a single key documents bundle (divided if necessary into parts) in respect of the appeal and the cross-appeal; and

(c) the appellant must remain primarily responsible for the preparation of all the documents for the appeal and for providing information to the Registrar under rule 26.

Intervention

24.—(1) After permission to appeal has been granted by the Court or a notice of appeal has been issued, any person and in particular—

(a) any official body or non-governmental organization seeking to make submissions in the public interest;

(b) any person with an interest in proceedings by way of judicial review;

(c) any person who was an intervener in the court below or who made submissions under rule 16,

may apply to the Court for permission to intervene in the appeal.

(2) An application under this rule must be filed via the portal.

(3) An application to intervene shall be considered without a hearing by a panel of Justices who may refuse permission to intervene or may permit intervention—

(a) by written case only; or

(b) by written case and oral submissions,

and any written case may be limited to a specified number of pages and oral submissions may be limited to a specified duration.

(4) No permission is required—

(a) for an intervention by the Crown under section 5 of the Human Rights Act 1998(**a**) (as to which see rule 43), or

(b) for an intervention by a person who has a right to intervene conferred by the legislation referred to in rule 44 (devolution jurisdiction and compatibility issues and questions).

(5) Every person who is granted permission to intervene under paragraph (3) or who wishes to intervene under paragraph (4) must seek directions from the Registrar as soon as reasonably practicable to enable that person to participate in the appeal.

(**a**) 1998 c. 42.

Intervention on assimilated case law by law officers

25.—(1) This rule applies where the Court is considering proceedings in which a party is arguing that the Court should depart from assimilated case law.

(2) In proceedings to which this rule applies, the Registry must—

(a) give notice of the proceedings to each of the law officers listed in section 6C(2) of the European Union (Withdrawal) Act 2018(**a**);

(b) serve that notice on all other parties; and

(c) ensure that the hearing of the proceedings does not take place until at least 21 days have elapsed following the service of the notice.

(3) The notice in paragraph (2) must—

(a) state that the Court is considering an argument made by a party to the proceedings that the Court should depart from assimilated case law;

(b) summarise the proceedings and the issue to which the assimilated case law relates;

(c) identify the assimilated case law from which the Court is being invited to depart.

(4) The following persons shall be joined as a party to the proceedings on giving notice to the Court that they wish to be joined—

(a) each of the UK law officers;

(b) the Lord Advocate if the argument relates to the meaning or effect of relevant Scotland legislation;

(c) the Counsel General for Wales if the argument relates to the meaning or effect of relevant Wales legislation;

(d) the Attorney General for Northern Ireland if the argument relates to the meaning or effect of relevant Northern Ireland legislation.

(5) Notice under paragraph (4) may be given at any time during the proceedings.

(6) Where the Court receives notice under paragraph (4), the Registrar shall serve that notice on the parties and give directions as to the intervention.

(7) Expressions used in this rule have the same meaning as in section 6C of the European Union (Withdrawal) Act 2018, and references to "assimilated case law" include references to "retained case law" so far as necessary.

Listing of the appeal

26.—(1) Within 28 days of either the filing of the notice of intention to proceed under rule 19(1)(c) or the issue of the notice of appeal under rule 20(5), the Registry will contact the parties seeking the information listed in paragraph (2) and such further information as the Registrar considers appropriate.

(2) The information listed in this paragraph is—

(a) an estimate of the number of hours that the parties' respective counsel consider will be necessary for their oral submissions;

(b) whether anyone attending the hearing for the parties requires reasonable adjustments to be made.

(3) Following receipt of the information in paragraph (2), the Registrar shall inform the parties of the period within which the hearing will take place and the number of Justices who will be

(**a**) 2018 c. 16. Sections 6A to 6C were inserted by section 6 of the Retained EU Law (Revocation and Reform) Act 2023 (c. 28).

sitting on the panel to hear the case. The parties must then provide the Registrar with an agreed list of dates which are convenient for the parties.

Documents for appeal hearing

27.—(1) Within 112 days after the filing of the notice of intention to proceed under rule 19(1)(c) or the issue of the notice of appeal under rule 20(5), the appellant must file a statement of the relevant facts and issues, the contents of which have been agreed with every respondent.

(2) The statement of facts and issues must be served by the appellant on every intervener after being filed.

(3) The appellant and every respondent (and any intervener and advocate to the Court) must then file their respective written cases and serve them on the other parties, in accordance with the practice direction.

(4) 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.

(5) An intervener may not include in its written case any submissions on an issue which is not an issue raised in the notice of appeal or cross-appeal for which permission has been granted, or in the respondent's notice of acknowledgement.

The key documents bundle

28.—(1) As soon as the parties' cases have been exchanged the appellant must prepare, in accordance with the practice direction, a key documents bundle, including an index for use at the hearing, taking into account any grouping of appeals pursuant to rule 35.

(2) The key documents bundle must contain at least the following documents—

(a) the agreed statement of facts and issues;

(b) the parties' written cases;

(c) the orders of the court below and the first instance court; and

(d) the judgments of the court below and the first instance court.

(3) Not later than 28 days before the date of the hearing—

(a) the appellant must send enough hard copies of the key documents bundle to the Registry to provide one to each Justice sitting and an additional copy for the Registry;

(b) an appellant who is a portal party must upload to the portal a single electronic file containing the key documents bundle; and

(c) an appellant who is a non-portal party must file and serve a single electronic file containing the key documents bundle on every other party to the appeal.

The main hearing bundle

29.—(1) The appellant must prepare, in accordance with the relevant practice direction, a single electronic file (known as the "main hearing bundle") containing—

(a) the documents included in the key documents bundle;

(b) all other documents which any party participating in the appeal wishes to place before the panel of Justices hearing the appeal;

(c) the authorities that may be referred to during the hearing including an index of those authorities;

(d) an index.

(2) Not later than 28 days before the date of the hearing—

(a) an appellant who is a portal party must upload the main hearing bundle to the portal;

(b) an appellant who is a non-portal party must file and serve the main hearing bundle on every other party to the appeal.

PART 5

Hearing and decision of appeal

Hearing in open court

30.—(1) Every contested appeal shall be heard in open court except where it is necessary in the interests of justice or in the public interest to sit in private for all or part of an appeal hearing.

(2) Where the Court considers it necessary for a party and that party's representative to be excluded from a hearing or part of a hearing in order to secure that information is not disclosed contrary to the public interest, the Court must conduct the hearing, or that part of it from which the party and the representative are excluded, in private but the Court may exclude a party and any representative only if a person who has been appointed as a special advocate to represent the interests of that party is present when the party and the representative are excluded.

(3) Where the Court decides it is necessary for the Court to sit in private, it shall announce its reasons for so doing publicly before the hearing begins.

(4) Hearings shall be conducted in accordance with—

(a) the relevant practice direction; and

(b) any directions given by the Court and directions given by the Court may limit oral submissions to a specified duration.

Judgment

31. A judgment may be—

(a) delivered in open court; or

(b) if the Court so directs, promulgated.

Orders

32.—(1) In relation to an appeal or a reference, the Court has all the powers of the court below and may—

(a) affirm, set aside or vary any order or judgment made or given by that court;

(b) remit any issue for determination by that court;

(c) order a new trial or hearing;

(d) make orders for the payment of interest;

(e) make a costs order.

(2) An order of the Court may be enforced in the same manner as an order of the court below or of the appropriate superior court.

(3) For the purposes of paragraph (2) "the appropriate superior court" means—

(a) in the case of an appeal or reference from a court in England and Wales, the High Court;

(b) in the case of an appeal or reference from a court in Scotland—

(i) where the appeal or reference is in civil proceedings, the Court of Session; and

(ii) where the appeal or reference is in criminal proceedings, the High Court of Justiciary;

(c) in the case of an appeal or reference from a court in Northern Ireland, the High Court in Northern Ireland.

(4) In the case of references other than those mentioned in paragraph (3) "the appropriate superior court" in paragraph (2) means—

(a) where the reference is under the Scotland Act 1998(**a**), the Court of Session;

(b) where the reference is under the Northern Ireland Act 1998(**b**), the High Court in Northern Ireland; and

(c) where the reference is under the Government of Wales Act 2006(**c**), the High Court.

(5) Every order of the Court must be prepared and sealed by the Registrar and must state the date on which it is made and comes into effect. The Registrar may invite written submissions as to the form of the order.

PART 6

Further general provisions

Procedural applications

33.—(1) Every procedural application must be filed via the portal by a portal party or in the appropriate form for general procedural applications by a non-portal party unless a particular form is provided for a specific application.

(2) An application must—

(a) set out the reasons for making the application, and

(b) where necessary, be supported by written evidence.

(3) Once an application has been filed, it must be served on every other party.

(4) A party who wishes to oppose an application must, within 7 days after service, file a notice of objection and must serve a copy of that notice on the applicant and any other parties.

(5) An application for permission to appeal, a notice of appeal or any other document filed under these Rules may be amended on application under this rule or 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.

Requests for expedition

34.—(1) Any request for urgent consideration of an application for permission to appeal or for an expedited hearing must be made to the Registrar.

(2) Wherever possible the views of all parties should be obtained before such a request is made.

Grouping appeals

35. The Registrar may direct that appeals raising the same or similar issues will be heard either together or consecutively by the Court constituted by the same Justices and may give any consequential directions that appear appropriate.

(**a**) 1998 c. 46.
(**b**) 1998 c. 47.
(**c**) 2006 c. 32.

Change of interest

36.—(1) The Court 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;

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

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

(2) Where, following a notification from a party under paragraph (1), the Court considers that there is no longer any ground of appeal that should be determined, the Court may invite submissions from the parties as to—

(a) whether an oral hearing should be held;

(b) whether a judgment should be delivered or promulgated and, if so, which issues should be determined by a judgment.

(3) The Court will consider any submissions received from the parties and may—

(a) dispense with an oral hearing;

(b) make a final order without delivering or promulgating a judgment.

Withdrawal etc of application for permission to appeal or of appeal

37.—(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 Court on such terms as appear appropriate.

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

(3) In this rule an "application for permission to appeal" includes an application to cross-appeal under rule 23 and a "notice of appeal" includes a notice of cross-appeal.

Advocate to the Court and assessors

38.—(1) The Court may request a law officer to appoint, or may itself appoint, an advocate to the Court to assist the Court with legal submissions.

(2) In accordance with section 44 of the Act the Court may, at the request of the parties or of its own initiative, appoint one or more independent specially qualified advisers to assist the Court as assessors on any technical matter.

(3) The fees and expenses of any advocate to the Court or assessor will be costs in the appeal.

Security for costs

39.—(1) 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 must determine—

(a) the amount of that security, and

(b) the manner in which, and the time within which, security must be given.

(2) An order made under this rule 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.

Stay of execution

40. Any appellant who wishes to obtain a stay of execution of the order appealed from must seek it from the court below and only in wholly exceptional circumstances will the Court grant a stay.

Change of solicitor

41.—(1) If a party for whom a solicitor is acting wishes to change solicitors, that party or the new solicitor must notify the Registrar and the former solicitor of the change.

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

Publication and disposal of documents

42.—(1) All documents filed become the property of the Court and may be inspected by the media or members of the public on application to the Registrar but the Registrar may refuse an application for reasons of commercial confidentiality, national security or in the public interest.

(2) In each appeal or reference to the Court, the published documents will be made available to the public via the Court's website.

(3) A party who objects to the publication on the website of all or part of any published document must apply to the Registrar as soon as possible and, in any event, not later than 42 days before the hearing for a direction that the document should not be published or that it should be published subject to redactions proposed in a copy of the relevant document attached to the application.

(4) The Registrar will decide whether the proposed withholding or redactions are necessary for reasons of commercial confidentiality, national security or otherwise in the public interest.

(5) Subject to the determination of any application made under paragraph (3) the published documents will be placed on the Court's website not later than 7 days before the hearing.

(6) In this rule, "the published documents" are—

(a) in relation to an appeal, the statement of facts and issues and the parties' written cases exchanged under rule 27(3);

(b) in relation to a reference under rules 44, 46 and 48, the documents corresponding to those in paragraph (a).

(7) Any hard copy documents provided to the Court may be destroyed following the disposal of the appeal unless the Registrar (on a written application made within 21 days of the end of the proceedings) directs otherwise.

PART 7

Particular appeals and references

Human Rights Act issues

43.—(1) Where an appeal raises a question of incompatibility under section 4 of the Human Rights Act 1998 and the Crown is not already a party to the appeal, the Registrar must give 21 days' notice of the question to the Crown.

(2) If notice is given that the Crown wishes to be joined, the appropriate Minister or other person shall be joined accordingly.

Devolution jurisdiction and compatibility issues and questions

44.—(1) Appeals or references under the Court's devolution jurisdiction and its jurisdiction to determine compatibility issues and questions shall in general be dealt with in accordance with these Rules but the Court shall give special directions as and when necessary (including as to any intimations required by any enactment), and in particular as to—

(a) any question referred under sections 32A or 33 of the Scotland Act 1998(**a**), section 11 of the Northern Ireland Act 1998(**b**) or sections 111B or 112 of the Government of Wales Act 2006(**c**);

(b) any reference of—

(i) a devolution issue, within the meaning of the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006;

(ii) a compatibility issue within the meaning of section 288ZA(2) of the Criminal Procedure (Scotland) Act 1995(**d**) (as to compatibility with the Human Rights Act 1998);

(iii) a UNCRC compatibility issue within the meaning of section 288AB(1) of the Criminal Procedure (Scotland) Act 1995(**e**) (as to compatibility with the UNCRC Incorporation Act);

(iv) a compatibility question within the meaning of section 31 of the UNCRC Incorporation Act;

(c) any direct references under paragraph 33 or 34 of Schedule 6 to the Scotland Act 1998, paragraph 33 or 34 of Schedule 10 to the Northern Ireland Act 1998 or paragraph 29 or 30 of Schedule 9 to the Government of Wales Act 2006.

(2) A reference made by the law officer in accordance with the provisions referred to in paragraph (1) is made by sending the reference and by serving— .

(a) any other law officer who is not already a party and who has a potential interest in the proceedings; and

(b) any other party who is required to be served according to the enactment under which the reference is made.

(3) A reference must state the question or issue to be decided by the Court.

(4) The Registrar must give notice of the question or issue—

(a) to any appropriate law officer;

(b) where the proceedings relate to a compatibility question within the meaning of section 31 of the UNCRC Incorporation Act, to the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights,

where that person is not already a party to any proceedings.

(5) In this rule, the "UNCRC Incorporation Act" means the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024(**f**).

(**a**) 1998 c. 46. Section 32A was inserted by the Scotland Act 2016 (c. 11), ss. 11(10), 72(4)(a).
(**b**) 1998 c. 47.
(**c**) 2006 c. 32. Section 111B was inserted by the Wales Act 2017 (c. 4), ss. 9, 71(2)(c) and Schedule 7 paragraphs 1, 6.
(**d**) 1995 c. 46. S.288ZA was inserted by the Scotland Act 2012 (c. 11), ss.34(3), 44(5).
(**e**) S.288AB was inserted by the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (2024 asp 1), s.32(3).
(**f**) 2024 asp 1.

Court of Justice of the European Union

45.—(1) Where it is contended on an application for permission to appeal that it raises a question of European Union law which should be the subject of a reference to the Court of Justice of the European Union under—

(a) articles 158 or 160 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community; or

(b) article 12 of the Protocol on Ireland/Northern Ireland,

and permission to appeal is refused, the panel of Justices shall give brief reasons for its decision.

(2) Where on an application for permission to appeal, a panel of Justices decides to make a reference to the Court of Justice of the European Union before determining the application, it shall give consequential directions as to the form of the reference and the staying of the application (but it may if it thinks fit dispose of other parts of the application at once).

(3) Where at or before the hearing of an appeal the Court decides to make a reference to the Court of Justice of the European Union it shall give consequential directions as to the form of the reference and the staying of the appeal (but it may if it thinks fit dispose of other parts of the appeal at once).

(4) An order of the Court must be prepared and sealed by the Registrar to record any decision made under this rule.

References on assimilated case law by courts and tribunals

46.—(1) A reference under section 6A of the European Union (Withdrawal) Act 2018(**a**) is made when a court or tribunal (other than a higher court) sends the reference to the Court.

(2) A reference sent under paragraph (1) must—

(a) state the question to be determined on one or more points of law which arise on the assimilated case law of the Court;

(b) set out the referring court's or tribunal's reasons for considering the points of law to be of general public importance; and

(c) describe the relevance of the points of law to the proceedings before the referring court or tribunal.

(3) Once the reference is sent to the Court, a court or tribunal making a reference under paragraph (1) must send the reference to—

(a) all parties to the proceedings before the referring court or tribunal; and

(b) each of the persons listed in section 6C(2) of the European Union (Withdrawal) Act 2018.

(4) Any person referred to in paragraph (3) may make written submissions to the Court as to whether the Court should accept the reference.

(5) Any submissions made under paragraph (4) must be—

(a) filed with the Court within 21 days of receipt of the reference under paragraph (3); and

(b) served on every person referred to in paragraph (3).

(6) Every reference made under paragraph (1), together with any submissions made under paragraph (4) or under rule 47, shall be considered without a hearing by a panel of Justices.

(**a**) 2018 c. 16. Sections 6A to 6C were inserted by section 6 of the Retained EU Law (Revocation and Reform) Act 2023 (c. 28).

(7) The panel of Justices may—

(a) where the reference is of a single point of law, accept or refuse the reference;

(b) where two or more points of law are referred, accept or refuse the whole reference or accept the reference in respect of one or more points of law and refuse the remainder;

(c) invite the referring court or tribunal or any of the persons referred to in paragraph (3) to make further written submissions (including as to costs); or

(d) direct an oral hearing.

(8) The Registrar must prepare and seal an order of the Court to record any decision accepting or refusing a reference made under this rule.

(9) Expressions used in this rule have the same meaning as in the European Union (Withdrawal) Act 2018 and references to "assimilated case law" include references to "retained case law" so far as necessary.

Interventions concerning the acceptance or rejection of a reference under Rule 46

47.—(1) Any person, and in particular any official body or non-governmental organisation seeking to make submissions in the public interest, may make written submissions to the Court as to whether the Court should accept a reference under section 6A of the European Union (Withdrawal) Act 2018 and request that the Court takes them into account.

(2) Any submissions made under paragraph (1) must be filed with the Court and served on the referring court or tribunal and each of the persons referred to in rule 46(3).

(3) Any submissions made under this rule shall be referred to the panel of Justices which considers the reference.

(4) If the Court accepts the reference, the Registrar must notify—

(a) each of the persons who made submissions under this rule; and

(b) any person intervening in the proceedings before the referring court or tribunal.

References on assimilated case law by law officers

48.—(1) A reference under section 6B of the European Union (Withdrawal) Act 2018 is made when a law officer files the reference with the Court.

(2) A reference filed under paragraph (1) must—

(a) state the question to be determined on the point of law which arose on assimilated case law in proceedings before a court or tribunal (other than a higher court) which have concluded;

(b) confirm that—

(i) the conditions in section 6B(1) of the European Union (Withdrawal) Act 2018 are met; and

(ii) the reference is made within the period specified in section 6B(3) of that Act;

(c) describe the relevance of the point of law to the concluded proceedings; and

(d) if the reference is made by the Lord Advocate, the Counsel General for Wales or the Attorney General for Northern Ireland, confirm that the point of law relates to the meaning or effect of relevant Scotland legislation, relevant Wales legislation or relevant Northern Ireland legislation, as the case may be.

(3) Once the law officer has filed the reference with the Court, he or she must serve the reference on each of the other law officers.

(4) In this rule—

(a) "law officer" means a person listed in section 6B(2) of the European Union (Withdrawal) Act 2018; and

(b) expressions otherwise have the same meaning as in the European Union (Withdrawal) Act 2018 and references to "assimilated case law" include references to "retained case law" so far as necessary.

Hearing of references made under Rules 46 and 48

49. A reference accepted by the Court under rule 46(7) or made to the Court under rule 48 shall in general be dealt with in accordance with these Rules but the Registrar or the Court shall give special directions as and when necessary, and in particular as to—

(a) arrangements for any person, and in particular any official body or non-governmental organisation seeking to make submissions in the public interest, to make such submissions, whether or not that person made submissions under rule 47;

(b) who will be parties to the reference;

(c) the preparation, filing and service of documents including (where appropriate) a precis of the factual background of the case, a chronology of proceedings and written cases;

(d) the preparation, filing and service of bundles for the hearing;

(e) the conduct of the hearing.

Revocation of patents

50.—(1) On any appeal under sections 12 and 13 of the Administration of Justice Act 1969(**a**) from an order for revocation of a patent, the appellant must serve notice of the appeal on the Comptroller-General, Intellectual Property Office ("the Comptroller") as well as on every respondent.

(2) A respondent who decides not to oppose the appeal must serve notice of that decision on the Comptroller together with the relevant statements of case.

(3) The Comptroller must within 14 days serve on the appellant and file a notice stating whether or not the Comptroller intends to appear on the appeal.

(4) Where notice is given under paragraph (3), the Comptroller may appear on the appeal.

Criminal appeals

51. The Court must apply in accordance with the relevant practice direction the code of practice for victims issued under section 32 of the Domestic Violence, Crime and Victims Act 2004(**b**).

PART 8

Fees and costs

Fees

52. Where a fee is prescribed by any order made under section 52 of the Act, the Registrar may refuse to treat a document as filed or refuse to allow a party to take any step unless the relevant fee is paid.

(**a**) 1969 c. 58, amended in particular by the Constitutional Reform Act 2005 (c. 4), ss. 40(4), 118(1), Schedule 9 paragraph 20.

(**b**) 2004 c. 28.

Order for costs

53.—(1) The Court 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 Court.

(2) The Court's powers 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 Court 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

54.—(1) A party who wishes to make submissions as to costs should notify the Court of this either before or after judgment.

(2) Following such a notification, the Court shall give such directions as appear appropriate and it may, in particular, give directions—

(a) for the simultaneous or sequential filing of written submissions as to costs within a specified period after judgment;

(b) for the hearing of oral submissions as to costs after judgment;

(c) for the hearing of oral submissions after the filing of written submissions.

Claim for costs

55.—(1) Where the Court 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 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 the 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 them 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 it on the paying party.

Assessment of costs

56.—(1) Every detailed assessment of costs shall be carried out by one or more costs assessors.

(2) The receiving party and the paying party will, where appropriate, be notified by the costs assessor of the date of the assessment.

(3) Where one of the parties so requests or in the circumstances specified in the relevant practice direction, the costs assessor may make a provisional assessment of costs without the attendance of the parties.

(4) The costs assessor must notify the parties of the outcome of a provisional assessment and, if a party is dissatisfied with the outcome and points of disagreement cannot be resolved in correspondence, the costs officer must appoint a date for an oral hearing.

(5) Any request for an oral hearing following a provisional assessment of costs must be made within 14 days of the receipt of the decision on the assessment.

(6) In this rule a "costs assessor" means a costs officer, a Costs Judge (a Taxing Master of the Senior Courts) who has been appointed as a costs officer and the Registrar.

Basis of assessment

57.—(1) Where the Court assesses the amount of costs, it shall assess those costs—

(a) on the standard basis, or

(b) on the indemnity basis,

in the manner specified by rule 58 or (where appropriate) on the relevant bases that apply in Scotland or Northern Ireland.

(2) Where the Court makes an order about costs without indicating the basis on which the costs are to be assessed, the costs shall 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

58.—(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 shall 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 shall be resolved in favour of the receiving party.

Amount of assessed costs to be specified

59. The amount of any assessed costs must be inserted in the order made under rule 32 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

60.—(1) A party who is dissatisfied with the assessment of costs made at an oral hearing may apply for that decision to be reviewed by a single Justice and any application under this rule must be made in the appropriate form and be filed within 14 days of the decision.

(2) The single Justice may (without an oral hearing) affirm the decision made on the assessment or may, where it appears appropriate, refer the matter to a panel of Justices to be decided with or without an oral hearing.

(3) An application may be made under this rule only on a question of principle and not in respect of the amount allowed on any item in the claim for costs.

Payment out of security for costs

61. Any security for costs lodged by an appellant shall be dealt with by the Registrar in accordance with the directions of the Court.

PART 9

Transitional and revocation provision

Transitional and revocation provision

62.—(1) Unless the Court or the Registrar directs otherwise, the Supreme Court Rules 2009 (the "2009 Rules") shall continue to apply to—

(a) appeals which were proceeding before the Court before these Rules came into effect;

(b) applications for permission to appeal and notices of appeal filed under rules 11 and 19 of the 2009 Rules before these Rules came into effect.

(2) Subject to paragraph (1), the 2009 Rules are revoked.

Name
Date President of the Supreme Court

I direct that these Rules shall come into force on DATE

Name
Ministerial title
DATE Ministry of Justice