



ST HELENA

REVISED EDITION OF THE LAWS, 2017

COURTS AND JUSTICE

COURTS (APPEALS AND RULES) ORDINANCE, 2017¹

In force on the date of publication of the Revised Edition of the Laws of St Helena, 2017 (15 January 2018)

This Ordinance is a consolidation under section 6(b) of the Revised Edition of the Laws Ordinance, 1999. It incorporates:

COURT OF APPEAL ORDINANCE, 1960

Ordinance 6 of 1960

In force 28 September 1960

Amended by L.N. 4 /1965, Ordinance 2 of 2005

COURTS (RULES) ORDINANCE, 1968

Ordinance 3 of 1968

In force 24 January 1968

Amended by Ordinance 2 of 1989

Subsidiary legislation:

SUPREME COURT (FEES) RULES, 1984

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Legal Notice 10 of 1984

Amended by L.N. 3/1992, L.N. 5/1992, L.N. 21/2008, L.N. 7/2015, L.N. 6/2019

MAGISTRATES' COURT FEES RULES, 1984

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Legal Notice 11A of 1984

Amended by Rules made 22/11/ 2000

Amended by L.N. 3/2001, L.N. 21/2008, L.N. 7/2015

SOUND RECORDINGS RULES, 1989

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Legal Notice 13 of 1989

SUPREME COURT (MISCELLANEOUS APPLICATIONS) RULES, 1992

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Legal Notice 3 of 1992

Amended by L.N. 29/2009

COURTS (RIGHTS OF AUDIENCE AND ENROLMENT) RULES, 1992

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Legal Notice 4 of 1992

Amended by L.N. 14/1999, L.N. 21/2008, L.N. 7/2015, L.N. 28/2019

¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 29 November 2019.

COURT OF APPEAL RULES, 1998

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*Deemed to be made by the President of the St Helena Court of Appeal under section 89(1) of the Constitution and saved by Article 5(1) of S.I. 2009 No.1751
Legal Notice 3 of 1998
Amended by L.N. 26/2009*

UK Orders made under the Royal Prerogative:

ST HELENA COURT OF APPEAL (APPEAL TO PRIVY COUNCIL) ORDER, 1964 (UK)

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*Statutory Instrument 1964 No. 1846 (UK)
Amended by S.I. 1990 No. 991, S.I. 2009 No. 3204*

See also the following included under the respective Ordinance:

CIVIL PROCEDURE RULES, 1969

*Legal Notice 5 of 1969
Amended by L.N. 25/1973, L.N.2/2001, Rules made 22/11/2000, L.N. 2/2018
Made under section 74 of the Civil Procedure Ordinance, 1968 and included under that Ordinance*

MATRIMONIAL CAUSES RULES, 1973

*Legal Notice 4 of 1973
Amended by L.N. 6/1979 and L.N. 2/2018
Made under section 24 of the Matrimonial Causes Ordinance, 1961 and included under that Ordinance*

COURTS (WELFARE OF CHILDREN)(FORMS) RULES, 2010

*Legal Notice 6 of 2010
Amended by L.N. 4/2012
Included under the Welfare of Children Ordinance, 2008*

COURTS (CHARITIES) RULES, 2015

*Legal Notice 1 of 2015
Made under section 9(2) of the Charities Ordinance, 2005 and included under that Ordinance*

COURTS (MENTAL CAPACITY AND APPOINTMENT OF DEPUTIES) RULES, 2016

*Legal Notice 16 of 2016
Made under section 130 of the Mental Health and Mental Capacity Ordinance, 2016 and included under that Ordinance*

COURTS (PROTECTION ORDERS) RULES, 2018

*Legal Notice 1 of 2018
Made under section 19 of the Domestic Abuse Ordinance, 2018 and included under that Ordinance*

COURTS (APPEALS AND RULES) ORDINANCE, 2017

ARRANGEMENT OF SECTIONS

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AN ORDINANCE to provide for appeals from the Supreme Court of St Helena to the Court of Appeal of St Helena and for the making of rules of court by the Chief Justice.

Preliminary

Short title and commencement

1. (1) This Ordinance may be cited as the Courts (Appeals and Rules) Ordinance, 2017.

(2) This Ordinance comes into force on the date when the Revised Edition of the Laws of St Helena, 2017 comes into force.

(3) This Ordinance applies to St Helena, Ascension and Tristan da Cunha.

Savings

2. (1) This Ordinance consolidates the provisions of the Court of Appeal Ordinance, 1960 and the Courts (Rules) Ordinance 1968 which cease to have effect after the commencement of this Ordinance, but it does not affect anything done under either of those Ordinances before that commencement.

(2) This Ordinance is in addition to Part 6 of the Constitution as regards the jurisdiction, practice and procedure of the Court of Appeal (sections 87 and 88) and the making of rules of court (section 89). If there is any inconsistency between this Ordinance and the Constitution in respect of any of those matters, the provisions of the Constitution prevail.

Appeals to the Court of Appeal

Appeals from original judgments of Supreme Court in criminal cases

3. (1) Any person convicted by the Supreme Court and sentenced to a term of imprisonment exceeding 12 months or to a fine exceeding £100 may, subject to the provisions of this Ordinance, appeal to the Court of Appeal—

- (a) as of right, against the conviction on a matter of law or of fact or of mixed law and fact;
- (b) with the leave of the Court of Appeal, against the sentence passed on conviction, unless the sentence is one fixed by law.

(2) Any person convicted by the Supreme Court and sentenced—

- (a) to a term of imprisonment or to a fine exceeding £10; or
- (b) to a fine not exceeding £10 if, in the opinion of the Supreme Court or the Court of Appeal, the case involves a question of law of great general or public importance;

may, subject to this Ordinance, with the leave of the Court of Appeal or upon the certificate of the Supreme Court that it is a fit case for appeal, appeal against the conviction on any ground which appears to the Court of Appeal or the Supreme Court, as the case may be, to be a sufficient ground of appeal, or against the sentence passed on conviction unless the sentence is one fixed by law.

(3) No appeal shall be allowed in the case of any person who has pleaded guilty and has been convicted on such plea by the Supreme Court, except as to the extent or legality of the sentence.

Second appeals

4. Any party to criminal proceedings held before the Supreme Court in its appellate jurisdiction who is dissatisfied with any part of its judgement may appeal to the Court of Appeal on a matter of law (not including severity of sentence) but not on a matter of fact or of mixed law and fact.

Bail

5. The Supreme Court may in its discretion in any case in which under this Ordinance an appeal to the Court of Appeal is filed, grant bail pending the hearing and determination of the appeal.

Power of Court of Appeal in determining an appeal under this Part

6. (1) The Court of Appeal, in determining an appeal against conviction may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the conviction;
- (c) set aside the conviction and convict the appellant of any offence of which the appellant might be convicted by the Supreme Court on the evidence which has been adduced and sentence the appellant accordingly;
- (d) order a new trial before the court which passed sentence or before any court having jurisdiction in the matter;
- (e) remit the case together with its judgment or order on it to the Supreme Court or to a

court subordinate to the Supreme Court with such directions as the Court of Appeal considers necessary:

(1A) The Court of Appeal, even if of opinion that the point raised on the appeal might be decided in favour of the appellant, must dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

(2) In determining an appeal the Court of Appeal may increase, reduce or modify the sentence.

Appeals in civil cases

7. **(1)** An appeal lies in civil cases from the Supreme Court to the Court of Appeal—

- (a)* as of right, from any final judgment of the Supreme Court if the appeal involves directly or indirectly some claim or question respecting property of the value of £300 or more;
- (b)* with the leave of the Supreme Court, from any other judgment of the Supreme Court, whether final or interlocutory, if in the opinion of the Supreme Court the question involved in the appeal is one of great general or public importance or involves some substantial civil right;
- (c)* with the leave of the Court of Appeal, if the Court of Appeal considers that leave to appeal ought to be granted:

(2) No appeal lies from a judgment or order of the Supreme Court entered with the consent of the parties.

Rules of court

Power to make rules of court

8. **(1)** The Chief Justice may make rules for the purpose of regulating the practice, procedure and administration of the Supreme Court and of all courts subordinate to it..

(2) In particular, and without limiting the power conferred by subsection (1), rules made under this Ordinance may provide for—

- (a)* the powers and duties of officers of the courts;
- (b)* the hours, dates and places of sittings of the courts;
- (c)* the dates of vacations of the courts;
- (d)* the forms to be used by and in courts, and the manner of keeping, and the custody and destruction of court records, archives and exhibits;
- (e)* the issue, signature, service and enforcement of notices, summonses, warrants and other orders and documents of the courts;
- (f)* the appointment and duties of court brokers and other agents of the courts, and their remuneration;
- (g)* the scales of fees and charges payable to the courts in respect of proceedings;
- (h)* the scales of fees or allowances payable to parties, witnesses, jurors, assessors, interpreters and other persons engaged in proceedings before the courts;
- (i)* the payment, receipt, accounting and custody of fines, fees and deposits received by the courts.

9. (1) The power to make rules conferred by this Ordinance is in addition to and does not derogate from any power to make rules of court conferred by any other Ordinance or the Constitution.

(2) If a power is conferred by this Ordinance and by some other Ordinance or the Constitution to make rules relating to the same matter –

- (a) rules relating to such matter may purport to be made under either or both of such Ordinances or the Constitution; and
- (b) any rules so made are deemed to be properly made and their validity must not be questioned in any court on the ground only that they were not made in exercise of a particular power or particular powers.

(Section 8)

1. These rules may be cited as the Supreme Court (Fees) Rules, 1984.

2. The fees payable in respect of civil causes and matters in the Supreme Court must be those set out in the Schedules to these Rules.

3. (1) In civil proceedings, the Registrar must, unless the court otherwise orders, and subject to sub-rule (1A), allow a party to include in the party's costs, in addition to reasonable travelling expenses, an allowance for each necessary witness and interpreter attending at the trial—

- (1A)** In the case of an expert witness, the allowance must be a sum that, in the opinion of the

Registrar, is appropriate having regard to the qualifications and experience of the expert.

- (2) The expression “**necessary witness**” in sub-rule (1) –
- (a) may include a party to an action and a person who attended court as a witness but who was not called;
 - (b) does not include any person whose attendance the Registrar considers to have been unnecessary.

SCHEDULE 1²

(Rule 2)

GENERAL FEES

Actions and Originating Summonses

For entering particulars of a plaint in the Action Book—

(a) if the claim is solely for a liquidated sum not exceeding £5,000	£26.00
(b) in any other case	£31.25
For issue of a writ of summons	£10.25
On entering defence	£10.25
On entering reply	£10.25
On application for execution	£20.75
On taking out an originating summons	£20.75

Matrimonial Causes

On presenting a petition	£20.75
On filing an answer	£15.50
On applying for a decree absolute	£10.25

Probate Matters

On application for a grant, where the value of the personal property is sworn to be—

(a) under £500	£10.00
(b) £500 or over but under £750	£15.00
(c) £750 ” ” ” ” £1,000	£20.00
(d) £1,000 ” ” ” ” £5,000	£30.00
(e) £5,000 or over:	£30.00
plus for every £1,000 or part thereof over £5,000 but under £10,000	£6.50
and for every £1,000 over £10,000	£7.00

Service of Process

For serving a writ—

(a) within Jamestown	£5.00
(b) outside Jamestown	£7.50

For serving a summons on a witness—

(a) within Jamestown	£1.50
(b) outside Jamestown	£3.00

Taxation of Costs

² Schedule 1 substituted by L.N. 6 of 2019

On taxing costs for every £1 or fraction of £1 allowed, subject to a minimum of 50p	£0.50
<u>Appeals from the Magistrates' Court</u>	
On presenting a memorandum of appeal	£30.00
<u>Copies</u>	
For making a copy of any document or part of a document—	
(a) if xerographic, for each sheet	£0.30
(b) if typewritten, for each page or part of a page as typed	£5.00
For certifying a copy to be a true copy of the original—	
(a) if the copy is xerographic	£6.50
(b) if the copy is typewritten for each page or part of a page as typed	£6.50

SCHEDULE 2³
(Rule 2)

FEES FOR FILING AN APPLICATION

<u>On filing an application—</u>	
- for leave to apply	£20.75
- for an Order for the release of a person under restraint	£10.25
- for an Order to bring up a prisoner to give evidence	Nil
- for an Order for judicial review	£20.75
- for an Order for an injunction under rule 25	£20.75
- for an Order for the detention, custody, preservation or inspection of any property	£20.75
- for committal	£20.75

COURTS (APPEALS AND RULES) ORDINANCE, 2017

MAGISTRATES' COURT (FEES) RULES, 1984
(Section 8)

Citation

1. These Rules may be cited as the Magistrates' Court (Fees) Rules, 1984.

Fees payable in civil proceedings

2. The fees payable in respect of actions and other matters within the civil jurisdiction of the Magistrates' Court are as in items 1 and 2 of the Schedule to these Rules.

Fees for copies, etc

3. (1) Subject to sub-rule (2), the fees payable for copies and the certification of copies of the proceedings, or any part of the proceedings, in civil and criminal matters or of other

³ Schedule 2 substituted by L.N. 6 of 2019

documents in the custody of the Magistrates' Court are as in items 3 and 4 of the Schedule:

(2) No fees are payable for copies of proceedings provided under section 249(1) of the Criminal Procedure Ordinance, 1975 to appellants and respondents.

SCHEDULE⁴
(Rules 2 and 3)

1.	On instituting an action—	£
(a)	claim for small debt up to £200	5.00
(b)	claim up to £1,000	10.50
(c)	claim over £1,000	21.00
2.	On applying for execution	15.50
3.	For making copies (per page)	1.00
4.	For providing certified copies (per page)	5.00

COURTS (APPEALS AND RULES) ORDINANCE, 2017

SOUND RECORDINGS RULES, 1989
(Section 8)

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Citation

1. These Rules may be cited as the Sound Recordings Rules, 1989.

Summary to be kept

2. When in a criminal trial or inquiry in the Magistrates' Court a sound recording is being made of the oral evidence, in accordance with section 140(4)(b) of the Criminal Procedure Ordinance, 1975 (in these Rules referred to as "the Ordinance"), the presiding magistrate must ensure that, in addition, there is kept a record of the names of the witnesses, with a summary, in narrative form, of the evidence given by each.

⁴ Schedule substituted by L.N. 6 of 2019

Procedure in case of power failure, etc.

3. (1) If, during any such trial or inquiry, the sound recording is interrupted by a power failure, mechanical breakdown or other cause, the person making the summary referred to in rule 2 must desist from making such summary and must instead begin recording the evidence in accordance with section 140(4)(a) of the Ordinance.

(2) If it appears that some part of the evidence has not been recorded because such failure, breakdown or other cause was not immediately detected, the witness or witnesses whose evidence has been lost must be recalled.

Transcripts for the purpose of appeal

4. (1) If, following a trial at which sound recording was used, a petition of appeal is filed with the Registrar under section 245(1) of the Ordinance, the Registrar must cause a transcript to be made of the recording and if satisfied that it is correct, must certify it.

(2) A transcript so made and certified is deemed to be a copy of the proceedings for the purposes of section 249(1) of the Ordinance.

Other transcripts

5. Any person may require a transcript of any proceedings held in open court on payment of the prescribed charges.

Audition of sound recordings

6. (1) Any person who has the right to appeal against the decision of the Magistrates' Court in any criminal trial or inquiry, or the person's advocate or lay advocate, may require the sound recording of the evidence given in such proceeding, or any part of it, to be played over in the person's hearing.

(2) Any person on whom a transcript of the sound recording made during a trial or inquiry has been served under section 249(1) of the Ordinance, or who has required such transcript under rule 5, may require the recording to be played over in the person's hearing.

(3) An application for a sound recording to be played over must be in writing, addressed to the Clerk to the Court, and the applicant must deposit a sum towards the prescribed fee as the clerk decides.

(4) The balance of the fee becomes payable when the playing of the recording has been completed:

Provided that if, on the playing over of a recording in response to a requirement made under subsection (2), it appears that the transcript was incorrect in some material particular, no fee is payable and any deposit made must be refunded.

COURTS (APPEALS AND RULES) ORDINANCE, 2017

SUPREME COURT (MISCELLANEOUS APPLICATIONS) RULES, 1992

(Section 8, section 268 of the Criminal Procedure Ordinance, 1975 and section 74 of the Civil Procedure Ordinance, 1968)

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PART I
GENERAL

Citation

1. These Rules may be cited as the Supreme Court (Miscellaneous Applications) Rules, 1992.

Requirement of leave to apply

2. No application may be brought for—
(a) an order for the release of a person under restraint;
(b) an order of judicial review; or
(c) an order of committal,
unless the leave of the Chief Justice has first been obtained.

Filing and service of applications

3. (1) An application under these Rules must be filed with the Registrar, accompanied by the supporting affidavit or affidavits and the prescribed fee.

(2) Except in the case of an application made *ex parte* under rule 8, a copy of an application filed under sub-rule (1) and of the affidavit or affidavits accompanying it must, within 48 hours after it has been filed, be served on every person directly concerned.

Facsimile transmission

4. An application under these Rules may in appropriate circumstances be filed and a copy of an application or of an affidavit be served by facsimile transmission.

Place of hearing

5. *Omitted*

Forms

6. The forms set out in Schedule 1 must be used for the purposes to which they are expressed to relate, with any modifications the circumstances require.

Fees

7. The fees set out in Schedule 2 to the Supreme Court (Fees) Rules, 1984 are payable in respect of the matters to which they are expressed to relate.

PART II APPLICATIONS FOR ORDERS FOR THE RELEASE OF PERSONS UNDER RESTRAINT

Mode of application for leave

8. (1) An application for leave to apply for an order for the release of a person under restraint must be in the prescribed form and may be made to the Chief Justice in court or in chambers, except that if an application is made on behalf of a minor, it must be made otherwise than in court.

(2) An application for leave may be made *ex parte* and, subject to sub-rule (3), must be supported by an affidavit by the person restrained showing that it is made at his or her instance and setting out the nature of the restraint.

(3) If the person restrained is unable for any reason to make the affidavit required by sub-rule (2), the affidavit may be made by some other person on his or her behalf and that affidavit must state that the person restrained is unable to make the affidavit himself or herself and for what reason.

Powers where application *ex parte*

9. (1) If an application under rule 8 is made *ex parte*, the Chief Justice may grant leave immediately, or may direct that notice of the application be given and adjourn the proceedings so that such notice may be given.

(2) If proceedings have been so adjourned, a copy of the application must be served on the person against whom the order is sought and on any other persons the Chief Justice directs and, unless the Chief Justice otherwise directs, there must be at least 8 clear days between the service of the copy and the date named in it for the hearing of the application.

Copies of affidavits to be supplied

10. Every person who is a party to an application under rule 8 must supply to every other party, on demand and on payment of the proper charges, copies of the affidavits which the person proposes to use at the hearing of the application.

Power to order release

11. Without affecting rule 9(1), the Chief Justice hearing an application for leave to apply may in his or her discretion order that the person restrained be released, and such order is sufficient warrant to the person in charge of the prison or any other person for the release of the person under restraint.

Service of order granting leave

12. (1) Subject to sub-rules (2) and (3), an order granting leave to apply must be served personally on the person against whom an order of release is sought.

(2) If it is not possible to serve the order personally, or if it is directed to the superintendent of the prison or other public official, it may be served by leaving it with a servant or agent of the person to whom it is directed at the place where the person restrained is confined or restrained.

(3) If the order is directed to more than one person, it must be served in the manner provided in this rule on the person first named in the order, and copies must be served on each of the other persons in the same manner.

(4) There must be served with the order a notice stating the date when the person restrained is to be brought before the Chief Justice and that in default of obedience, proceedings for committal of the party disobeying will be taken.

Acknowledgment of service

13. (1) The person on whom an order granting leave to apply is served must endorse on it or attach to it an acknowledgment of service, stating all the causes of the detention of the person restrained.

(2) The acknowledgment may be amended, or another acknowledgment substituted for it, by leave of the Chief Justice.

Procedure at hearing

14. (1) An application for an order for the release of a person must be heard in open court, unless the Chief Justice otherwise directs.

(2) When the application is heard, the representative of that person must be heard first, then the Attorney General or his or her representative, and then the representative of the person restrained in reply.

Bringing up prisoner to give evidence, etc.

15. An application for an order to bring up a prisoner to give evidence in any cause or matter, civil or criminal, before any court or to answer a charge must be made on affidavit to the Chief Justice, or other person by and before whom the Supreme Court is held, in chambers.

PART III APPLICATIONS FOR JUDICIAL REVIEW

Cases appropriate for judicial review

16. (1) An application for—
 (a) an order of *mandamus*, prohibition or *certiorari*; or
 (b) an injunction restraining a person from acting in any office in which the person is not entitled to act,
 must be made by way of an application for judicial review in accordance with the provisions of this Part.

(2) An application for a declaration or an injunction (not being an injunction mentioned in sub-rule (1)(b)) may be made by way of an application for judicial review, and on such an application the Chief Justice may grant the declaration or injunction claimed if he or she considers that, having regard to—

(a) the nature of the matters in respect of which relief may be granted by way of an order of *mandamus*, prohibition or *certiorari*;
 (b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and
 (c) all the circumstances of the case,
 it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

Mode of application for leave

17. (1) An application for leave to apply for an order of judicial review must be in the prescribed form, must be made *ex parte* to the Chief Justice, and must be supported by—
 (a) a statement, setting out the name and description of the applicant, the relief sought and the grounds on which it is sought; and
 (b) an affidavit, to be filed with the application, verifying the facts relied on.

(2) The applicant must give notice of the application to the Attorney General not later than the day before the application is made and must at the same time file with the Attorney General copies of the statement and of every affidavit in support.

(3) The Chief Justice may allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as he or she may think fit.

(4) The Chief Justice must not grant leave unless he or she considers that the applicant has a sufficient interest in the matter to which the application relates.

(5) If leave is sought to apply for an order of *certiorari* to remove, for the purpose of its being quashed, any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Chief Justice may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(6) If the Chief Justice grants leave, he or she may impose such terms as to costs and as to giving security as he or she thinks fit.

(7) If leave to apply for judicial review is granted, then—

- (a) if the relief sought is an order of prohibition or *certiorari* and the Chief Justice so directs, the grant operates as a stay of the proceedings to which the application relates until the determination of the application or until the Chief Justice otherwise orders;
- (b) if any other relief is sought, the Chief Justice may at any time grant in the proceedings such interim relief as could be granted in an action begun by plaintiff.

Mode of and time for applying

18. (1) Subject to sub-rule (2), when leave has been granted to make application for judicial review, an application in the prescribed form must be filed with the Registrar.

(2) Copies of the application must be served on all persons directly affected and if it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made in them, the notice must also be served on the clerk or registrar of the court.

(3) An application must be heard in open court, unless the Chief Justice otherwise directs.

(4) Unless the Chief Justice when granting leave has otherwise directed, there must be at least 10 days between the service of the copies of the application and the day named in it for the hearing.

(5) An application must normally be entered for hearing within 14 days after the grant of leave; but if the Chief Justice has given leave while sitting in the United Kingdom, the period of 14 days runs, not from the date when the leave was granted, but from the first arrival after that date of the Chief Justice in St Helena.

(6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with copies of the application must be filed before the application is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit must be before the Chief Justice on the hearing of the application.

(7) If on the hearing of the application the Chief Justice is of opinion that any person who has not been served ought, whether under this rule or otherwise, to have been served, the Chief Justice may adjourn the hearing on any terms he or she directs in order that the notice can be served on that person.

Effect of delay in applying for relief

19. (1) Subject to this rule, if in any case the Chief Justice considers that there has been undue delay in making an application for judicial review or, in a case to which sub-rule (2) applies, the application for leave under rule 17 is made after the relevant period has expired, and if the condition in sub-rule (1A) is met, the Chief Justice may refuse to grant—

- (a) leave for the making of the application; or
- (b) any relief sought on the application.

(1A) The condition is that in the opinion of the Chief Justice, the grant of the relief sought would be likely to cause substantial hardship to, or substantially to prejudice the rights of

any person, or would be detrimental to good administration.

(2) In the case of an application for an order of *certiorari* to remove any judgment, order, conviction or other proceeding for the purpose of quashing it, the relevant period for the purpose of sub-rule (1) is 3 months after the date of the proceeding.

(3) Sub-rule (1) does not affect any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

Joinder of claims for relief

20. On an application for judicial review any relief mentioned in rule 16(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

Statements and affidavits

21. (1) Copies of the statement in support of the application for leave under rule 17 must be served with the copies of the application and, subject to sub-rule (2), no grounds may be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.

- (2) The Chief Justice may on the hearing of the application –
- (a) allow the applicant to amend the applicant's statement, whether by specifying different or additional grounds or relief or otherwise, upon any terms the Chief Justice thinks fit; and
 - (b) allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) An applicant who intends to ask to be allowed to amend the applicant's statement or to use further affidavits must give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application must supply to every other party on demand and on payment of the proper charges, copies of every affidavit which the party proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave.

Discovery, interrogatories, etc.

22. (1) Unless the Chief Justice otherwise directs, any interlocutory application in proceedings on an application for judicial review may be heard by any person by and before whom the Supreme Court may be held, notwithstanding that the application for judicial review is to be heard by the Chief Justice.

(2) This rule does not affect any statutory provision or rule of law restricting the making of an order against the Crown.

Hearing of application

23. (1) On the hearing of any application under rule 18, any person who desires to be heard in opposition to the application and appears to the Chief Justice to be a proper person to be heard, must be heard, whether or not the person has ~~not~~ been served with a copy of the application.

(2) If the relief sought is or includes an order of *certiorari* to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion the applicant –

- (a)** files with the Attorney General a copy of the order or other matter questioned, verified by affidavit; or
- (b)** accounts for the failure to do so to the satisfaction of the Chief Justice.

(3) If an order of *certiorari* is made in any such case as is referred to in sub-rule (2), the order must, subject to sub-rule (4), direct that the proceedings be quashed immediately on their removal into the Supreme Court.

(4) If the relief sought is an order of *certiorari* and the Chief Justice is satisfied that there are grounds for quashing the decision to which the application relates, the Chief Justice may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Chief Justice.

Claims for damages

24. On the application for judicial review the Chief Justice may award damages to the applicant if—

- (a)** the applicant has included in the statement in support of the application for leave under rule 17 a claim for damages arising from any matter to which the application relates; and
- (b)** the Chief Justice is satisfied that if the claim had been made in any action begun by the applicant at the time of making his application, the applicant could have been awarded damages.

PART IV APPLICATIONS FOR INJUNCTIONS

Applications for injunctions

25. (1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause of the matter, whether or not a claim for an injunction was included in that party's pleadings, originating summons, counterclaim or third party notice, as the case may be.

(2) If the applicant is the plaintiff and the case is one of urgency, the application may be made *ex parte* on affidavit but otherwise the application must be made in the prescribed form.

(3) The plaintiff may not make such an application before the issue of the plaint or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the plaint or summons and such other terms, if any, as the Court thinks fit.

PART V

APPLICATIONS ABOUT THE SUBJECT-MATTER OF A CAUSE OR MATTER

Detention, custody, preservation or inspection of subject-matter

26. (1) On the application of any party to a cause or matter, the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise in the matter, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) An application under sub-rule (1) may be made in the prescribed form or may be made informally during the course of the hearing of the cause or matter.

(3) For the purpose of enabling any order made under sub-rule (1) to be carried out, the Court may by the order authorise any person to enter upon any land or building in the possession of any party to the cause or matter.

(4) If the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(5) Any order under this rule may be made on any terms the Court thinks just.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before the defendant acknowledges service of the plaint or originating summons by which the cause or matter was begun.

PART VI

APPLICATIONS FOR COMMITTAL

Exercise of power to punish for contempt

27. The power of the Supreme Court to punish for contempt of court may be exercised by an order of committal made by the Chief Justice.

Mode of application for leave

28. (1) An application for leave to apply for an order of committal must be in the prescribed form and must be made *ex parte* to the Chief Justice and must be supported by –

- (a) a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his or her committal is sought; and
- (b) an affidavit, to be filed before the application is made, verifying the facts relied on.

(2) If the application is made by a person other than the Attorney General, the

applicant must give notice of the application not later than the preceding day to the Attorney General and must at the same time serve on the Attorney General copies of the statement and affidavit.

Application

29. (1) When leave has been granted to make application for an order of committal, an application in the prescribed form must be filed with the Registrar and a copy of it must be served on the person sought to be committed.

(2) Unless within 14 days after such leave was granted the application is entered for hearing, or subsection (2A) applies, the leave lapses.

(2A) If the Chief Justice has given leave while sitting in the United Kingdom, the period of 14 days runs, not from the date when the leave was granted, but from the date of the first arrival after that date of the Chief Justice in St Helena.

(3) Unless the Chief Justice has otherwise directed, there must be at least 8 clear days between the service of the copy of the application and the day named in it for the hearing.

Provisions as to hearing

30. (1) Subject to sub-rule (2), the Chief Justice hearing an application for an order of committal may sit in private if—

- (a)* the application arises out of proceedings relating to the wardship or adoption of a minor or wholly or mainly to the guardianship, custody, maintenance or upbringing of a minor, or rights of access to a minor;
- (b)* the application arises out of proceedings relating to a person suffering or appearing to be suffering from mental disorder within the meaning of the Mental Health and Mental Capacity Ordinance, 2015;
- (c)* the application arises out of proceedings in which a secret process, discovery or invention was in issue; or
- (d)* it appears to the Chief Justice that in the interests of the administration of justice or for reasons of national security, the application should be heard in private,

but otherwise the application must be heard in open court.

(2) If the Chief Justice hearing an application in private by virtue of sub-rule (1) decides to make an order of committal against the person sought to be committed, the Chief Justice must in open court state:

- (a)* the name of that person;
- (b)* in general terms the nature of the contempt of court in respect of which the order of committal is being made; and
- (c)* the period for which that person is being committed.

(3) Except with the leave of the Chief Justice, no grounds may be relied upon at the hearing except the grounds set out in the statement under rule 28, but the Chief Justice may at any stage and, either on his or her own initiative or on the application of any party, order that the statement be amended on any terms as to costs or otherwise that are just and in any manner the Chief Justice directs.

(4) If, on the hearing of the application, the person sought to be committed expresses a wish to give oral evidence on his or her own behalf, the person must be entitled to do so.

Power to suspend execution

31. (1) The Chief Justice, when making an order of committal, may by order direct that the execution of the order of committal is to be suspended for a period and on terms or conditions the Chief Justice specifies.

(2) If execution of an order of committal is suspended by an order under sub-rule (1), the applicant for the order of committal must, unless the Chief Justice otherwise directs, serve on the person against whom it was made a notice informing the person of the making and terms of the order under that sub-rule.

Discharge of person committed

32. The Chief Justice may, on the application of any person committed to prison for any contempt of court, discharge the person.

Saving

33. Nothing in the foregoing provisions of these Rules affects the power of the Chief Justice or of the Supreme Court—

- (a) to make, on the initiative of the Chief Justice or of the Supreme Court, an order of committal against a person guilty of contempt of court;
- (b) to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment as if the person had been guilty of contempt of the Supreme Court, to pay a fine or to give security for good behaviour, and those provisions, so far as applicable and with the necessary modifications, apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

SCHEDULE 1

(Rule 6)

FORMS

FORM MA/1

SUPREME COURT (MISCELLANEOUS APPLICATIONS) RULES, 1992

APPLICATION FOR LEAVE TO APPLY

(Rules 8(1), 17(1), and 28(1))

In the St Helena Supreme Court
To the Honourable the Chief Justice

In the matter of an intended application by (Name) of
(Address)
LEAVE is hereby sought to bring an application for

*
 ATTACHED are—

- (a) the intended application in respect of which leave is sought;
- (b) the affidavit of

Dated this day of, 20.....

.....
 (Signature of Applicant)

* *Insert whichever of the following is appropriate—*

- “an order for the release of at present under restraint in the Prison at Jamestown (or as the case may be)”
- “an order of judicial review”
- “an order of committal”

FORM MA/2

SUPREME COURT (MISCELLANEOUS APPLICATIONS) RULES, 1992

**APPLICATION FOR AN ORDER FOR THE RELEASE
 OF A PERSON UNDER RESTRAINT
 (Rule 8)**

In the St Helena Supreme Court
 To the Honourable the Chief Justice

I (Name) of (Address).....
 APPLY for an order for the release of at present
 detained in the Prison at Jamestown on the grounds set out in the accompanying affidavit(s).
 A copy of the application is being served on the Superintendent of Prisons.

Dated this, 20.....
 (Signature)
 Applicant

FORM MA/3

SUPREME COURT (MISCELLANEOUS APPLICATIONS) RULES, 1992

**APPLICATION FOR AN ORDER TO BRING UP
 A PRISONER TO GIVE EVIDENCE
 (Rule 15)**

In the St Helena Supreme Court
 To the Honourable the Chief Justice

I (Name) of (Address).....

APPLY for an order directed to the Superintendent of the Common Gaol at Jamestown to bring up (Name)..... a prisoner detained therein to give evidence before the (Specify court)..... Court on the day of, 20..... in the matter of

Dated this, 20.....
(Signature)
Applicant

FORM MA/4

SUPREME COURT (MISCELLANEOUS APPLICATIONS) RULES, 1992

APPLICATION FOR JUDICIAL REVIEW

(Rule 16)

In the St Helena Supreme Court
To the Honourable the Chief Justice

I (Name)
of (Address).....
APPLY for an order

*

directed to of(the Respondent). on the grounds set out in the accompanying affidavit(s) made by and

Dated this 20.....
(Signature)
Applicant.

**Insert whichever of the following is or are appropriate, or as the case may be—*

- of mandamus
- of prohibition
- of certiorari
 - restraining the Respondent from acting in the office of in which he or she is not entitled to act.

FORM MA/5

SUPREME COURT (MISCELLANEOUS APPLICATIONS) RULES, 1992

APPLICATION FOR AN INJUNCTION

(Rule 25)

In the St Helena Supreme Court
To the Honourable the Chief Justice

I (Name) of (Address).....
 APPLY for the issue of an INJUNCTION to restrain
 (Name)..... of
 (Address)..... from (Specify conduct complained
 of).....
 on the grounds set out in the accompanying affidavit(s) made
 by of
 and

Dated this, 20.....
 (Signature)
 Applicant.

FORM MA/6

SUPREME COURT (MISCELLANEOUS APPLICATIONS) RULES, 1992

**APPLICATION FOR THE DETENTION, CUSTODY,
 PRESERVATION OR INSPECTION OF PROPERTY**
 (Rule 26)

In the St Helena Supreme Court
 To the Honourable the Chief Justice

I (Name) of (Address).....
 APPLY for an Order for the detention/custody/preservation/inspection of the property
 specified in the Schedule on the grounds set out in the *affidavit(s)
 of and

SCHEDULE

(Description of property)

Dated this day of, 20.....
 (Signature)
 Applicant.
 * Delete as appropriate

FORM MA/7

SUPREME COURT (MISCELLANEOUS APPLICATIONS) RULES, 1992

APPLICATION FOR COMMITTAL
 (Rule 28)

In the St Helena Supreme Court

To the Honourable the Chief Justice

I (Name) of (Address).....
 APPLY for an order for the committal of (Name) to the
 Common Gaol for contempt of court.

The conduct complained of consists of (Give
 details)
 Attached is an affidavit made by
 me/ of
 verifying the facts alleged.

Dated this day of, 20.....
 (Signature)
 Applicant.

COURTS (APPEALS AND RULES) ORDINANCE, 2017

COURTS (RIGHTS OF AUDIENCE AND ENROLMENT) RULES, 1992
(Section 8)

Citation

1. These Rules may be cited as the Courts (Rights of Audience and Enrolment) Rules, 1992.

Right of audience as advocates

2. The following persons are entitled to appear and be heard as advocates before the Supreme Court, wherever it is sitting, and the Magistrates' Court —

- (a) members of the Bar of England, Scotland or Northern Ireland;
- (b) solicitors of the Supreme Court in England or Northern Ireland and law agents admitted to practise in Scotland;
- (c) lawyers qualified to practice in any member state of the European Communities who enjoy the right to appear before the High Court in England or the Court of Session in Scotland or to practise as solicitors in England or Scotland; and
- (d) any other persons entitled to appear and be heard as advocates before any court of unlimited jurisdiction or to carry on practise as solicitors (by whatever name called), if licensed in that behalf by the Chief Justice.

Other licensed persons

2A.⁵ (1) A person who is undertaking or who has completed a course of legal study who is being supervised by the Attorney General or the Public Solicitor as a component of the course of legal study or following the completion of the course of legal study may, subject to paragraphs (2), (3) and (4) apply, while under the supervision of the Attorney General or the Public Solicitor, to be licenced by the Chief Justice to appear and be heard as an advocate before the Supreme Court, wherever it is sitting, and the Magistrate's Court.

(2) A person submitting an application under paragraph (1) must deliver to the Registrar an application addressed to the Chief Justice, in whichever of the forms numbered RA1 and RA2 in Schedule 1 is appropriate and the application must be accompanied by such written certification of the Attorney General or the Public Solicitor that the Attorney General or the Public Solicitor considers appropriate in the circumstances that the person making the application is competent to be heard as an advocate before the Supreme Court, wherever it is sitting, and the Magistrate's Court.

(3) The Chief Justice may upon receipt of an application made under paragraph (1) request such further proof of competence that the Chief Justice considers necessary in respect of the application and may attach any conditions that the Chief Justice considers appropriate to the licence granted in respect of that application.

(4) Nothing in this rule applies to, affects or in any way substitutes a requirement under these Rules for an application to be made under rule 2 and a licence granted pursuant to

⁵ Rule 2A inserted by L.N. 28 of 2019

an application made under this rule is not a substitution for a licence granted pursuant to an application made under rule 2.

Evidence of entitlement

3. (1) A person entitled to appear and be heard as an advocate under paragraph (a) or (b) of rule 2 must, before so appearing for the first time, deliver to the Registrar a certified or photographic copy of the certificate or other document recording his or her call or admission.

(2) A person entitled to appear and be heard as an advocate under paragraph (c) of rule 2 must, before so appearing for the first time, deliver to the Registrar a certified or photographic copy of the document evidencing his or her passing or being exempted from any necessary aptitude test.

Applications for licences

4.⁶ (1) A person seeking to be licensed under paragraph (d) of rule 2 or rule 2A (1) must deliver to the Registrar an application addressed to the Chief Justice, in whichever of the forms numbered RA1 and RA2 in Schedule 1 is appropriate.

(2) An application in the form RA1 must be filed not less than 14 days before the day set down for the hearing at which the applicant wishes to be heard, or any shorter period as the Chief Justice allows.

(3) An application under sub-rule (1) must be accompanied by—

- (a) a certified or a photographic copy of the certificate or other document recording the applicant's call or admission and, if the certificate or other document is not in the English language, a translation of it in English certified to be correct; and
- (b) any prescribed fee.

Form and duration of licences

5. (1) A licence issued pursuant to paragraph (c) of rule 2 must be in form RA3 or form RA4 set out in Schedule 1, whichever is appropriate.

(2) A licence in the form RA3 is valid only for the proceeding to which it is expressed to relate, any application or counterclaim relating to it, any proceeding consolidated with it and any appeal arising from it.

(3) A licence in the form RA4 is valid—

- (a) in the case of an Islander - until revoked;
- (b) in the case of the holder of a work permit issued under the Immigration Ordinance, 2011, allowing the holder to practise in St Helena - for the duration of the work permit.

Enrolment

6. (1) A person who is an Islander and who has a right of audience under rule 2

⁶ Rule 4 amended by L.N. 28 of 2019

is entitled, on application to the Chief Justice, to be enrolled as an advocate of the Supreme Court of St Helena.

(2) A person who is not an Islander but who has a right of audience under rule 2 may, in the discretion of the Chief Justice, be enrolled as an advocate of the Supreme Court of St Helena.

(3) The Chief Justice may direct the removal from the roll of the name of any person who has—

- (a) ceased to be entitled to appear and be heard before the Supreme Court or who has been suspended from practice in any country or territory;
- (b) ceased to hold a work permit required by the Immigration Ordinance, 2011; or
- (c) been guilty of serious professional misconduct.

(4) An application for enrolment as an advocate of the Supreme Court of St Helena must be in the form RA5 in Schedule 1.

(5) For the purposes of this rule, “**the roll**” means the Roll of Advocates containing the names of those persons who are for the time being enrolled as such pursuant to these Rules, compiled and maintained by the Registrar.

Effect of the enrolment

7. Persons enrolled as advocates under rule 6 may within St Helena, Ascension and Tristan da Cunha perform all the functions of barristers and solicitors.

Attorney General

8. The Attorney General is entitled *ex officio* to appear and be heard before the Supreme Court, wherever it is sitting, and before the Magistrates’ Court.

Additional rights of audience

9. (1) The Crown Prosecutor, any person appointed to be a public prosecutor pursuant to section 52 of the Criminal Procedure Ordinance, 1975 and the Public Prosecutor are entitled to appear and be heard as advocates in the same courts and in like manner as those persons, or classes of persons, who have such entitlement under either rule 2 or 8 of these Rules.

(2) For the purposes of sub-rule (1), the right of audience of a person appointed to be a public prosecutor is subject to sections 52 to 55 of the Criminal Procedure Ordinance, 1975.

(3) In this Rule, “Crown Prosecutor” and “public prosecutor” have the same meanings as in the Criminal Procedure Ordinance, 1975.

Fees

10. The fees set out in Schedule 2 are payable in respect of the matters to which they are expressed to relate.

Savings

11. (1) Nothing in these Rules applies to or in any way affects any person holding the office of Lay Advocate under the Lay Advocates Ordinance 1986.

(2) Nothing in these Rules affects the right of any party to appear in person and be heard in any proceedings in the Supreme Court, wherever it is sitting, and before the Magistrates' Court, or, with the leave of the court, to be represented by any other person not being an advocate or a lay advocate.

SCHEDULE 1⁷ (Rules 4, 5 and 6)

FORM RA1

COURTS (RIGHTS OF AUDIENCE AND ENROLMENT) RULES, 1992

(Rule 4)

APPLICATION FOR LICENCE

I (Name) of

(Address) being a

(delete as appropriate)

(1) (Professional qualification) of
the Court of

(2) Person being supervised by the Attorney General / Public Solicitor

APPLY for a licence to appear on behalf of (Client) before the St Helena Supreme Court/the Magistrates' Court of in the case of v (Case No /19/20.....) .

Attached is—

(delete as appropriate)

(1) a copy of the certificate evidencing my call/admission.

(2) certification of my supervision from the Attorney General / Public Solicitor.

(Signature) (Date), 20..... .

⁷ Schedule 1 amended by L.N. 28 of 2019

FORM RA2

COURTS (RIGHTS OF AUDIENCE AND ENROLMENT) RULES, 1992

APPLICATION FOR LICENCE TO APPEAR AND BE HEARD GENERALLY

(Rule 4)

I (Name) of
(Address) being

(delete as appropriate)

- an Islander

- the holder of a work permit issued under the Immigration Control Ordinance entitling me to practice as an advocate for years,

and

(delete as appropriate)

(1) being a (Professional qualification) of
the Court of

(2) being a person being supervised by the Attorney General / Public Solicitor

APPLY for a licence permitting me to appear and be heard before the St Helena Supreme Court and the Magistrates' Courts of St Helena and its Dependencies.

Attached are— *(delete where inappropriate)*

(1) a copy of the certificate evidencing my call/admission.

(2) a copy of my work permit.

(3) certification of my supervision from the Attorney General / Public Solicitor.

(Date), 20.....

(Signature)

FORM RA3**COURTS (RIGHTS OF AUDIENCE AND ENROLMENT) RULES, 1992****LICENCE**

(Rule 5)

(Name)
 of (Address)..... a of
 the Court of is licensed to appear and be heard as
 an advocate before the St Helena Supreme Court/the Magistrates' Court of
 on behalf of in the case of
 v (Case No. /19/20.....) and any application or
 counterclaim relating to it and any proceeding consolidated with it or any appeal arising from
 it.

Dated this day of, 20..... .
 Chief Justice.

FORM RA4**COURTS (RIGHTS OF AUDIENCE AND ENROLMENT) RULES, 1992****LICENCE TO APPEAR AND BE HEARD GENERALLY**

(Rule 5)

(Name) of
 (Address)
 IS LICENSED to appear and be heard as an advocate before the St Helena Supreme Court and
 the Magistrates' Courts of St Helena and its Dependencies.

This licence * - will continue in force until revoked.

- will expire on the day of, 20..... .

Dated this day of, 20..... .
 Chief Justice.

* Delete as appropriate

FORM RA5**COURTS (RIGHTS OF AUDIENCE AND ENROLMENT) RULES, 1992****APPLICATION FOR ENROLMENT**

(Rule 6)

To— The Honourable the Chief Justice.

I (Name)

of (Address)

being a (Professional Qualification) of
the Court of and being—

(Delete as appropriate)

(a) an Islander

(b) the holder of a subsisting work permit issued under the Immigration Ordinance,
2011 on (Date) (Number) authorising me to practise as
an advocate in St Helena,

apply to be enrolled as an advocate of the Supreme Court of St Helena.

(Signature)

(Date), 20..... .

SCHEDULE 2

(Rule 10)

FEES

- | | | |
|----|---|---------|
| 1. | On filing an application for a licence under rule 4 | £20.00 |
| 2. | On filing an application for enrolment under rule 6 | £200.00 |

COURTS (APPEALS AND RULES) ORDINANCE, 2017

COURT OF APPEAL RULES, 1998

(Deemed to have been made by the President of the Court of Appeal under
section 89(1) of the Constitution)

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General

Citation

1. These Rules may be cited as the Court of Appeal Rules, 1998.

Application

2. (1) Subject to sub-rule (2), these Rules apply to all proceedings before the St Helena Court of Appeal.

(2) Where there is no provision in these Rules, the rules of procedure for the time being in force in England and Wales relating to appeals to the Court of Appeal apply.

Interpretation

3. In these Rules—

“**Court**” means the Court of Appeal;

“**judge**” means the President or a Justice of Appeal appointed pursuant to section 86 of the Constitution;

“**President**” means the President of the Court;

“**Registrar**” means the Registrar of the Court;

“**service officer**” means any police officer or an officer of the Supreme Court authorised to effect service of documents;

Extension or abridgement of time

4. (1) The Court or a single judge may, on such terms as it or he thinks just, order that the time within which a person is required or authorised to do any act be extended or abridged.

(2) Unless otherwise ordered by the Court, when the time for doing any act expires on a day when the Registrar’s office is closed, the act is deemed to have been done in time if done on the next day when that office is open.

Application for leave to appeal

5. (1) If leave to appeal is required, application for such leave must be made within 42 days after the date of the decision appealed.

(2) Application for leave to appeal, or for leave to appeal out of time, must be made *ex parte* supported by an affidavit.

(3) Immediately upon receipt of such an application the Registrar must refer it to a single judge who may determine the matter without a hearing.

(4) If leave to appeal is refused by a single judge without a hearing, the application may be renewed with leave of the Court at its next sitting.

(5) If leave to appeal is granted, Notice of Appeal must be filed within 14 days after the date when leave was granted.

Civil and family jurisdiction

Notice of Appeal

6. (1) Subject to rule 5(5), any appeal to the Court in its civil or family jurisdiction must be made within 42 days after the date of the judgment or order appealed by filing with the Registrar a Notice of Appeal.

(2) A Notice of Appeal may be given in respect of the whole or any part of the judgment or order appealed.

- (3) A Notice of Appeal must be substantially in Form 1 in the Schedule, and must—
- (a) identify the judgment or order appealed against, stating whether appeal is made against the whole or in part, and if in part specifying which part;
 - (b) state the form of the order which the appellant seeks; and
 - (c) state separately and concisely each ground of appeal, with particulars where appropriate.

(4) Except with the leave of the Court (which may be given by a single judge) an appellant is not entitled on the hearing of an appeal to rely on any ground of appeal or to apply for any relief not specified in the Notice of Appeal.

Respondent's Notice

7. (1) A respondent who is served with a Notice of Appeal and who wishes to contend—

- (a) that the decision of the Supreme Court should be varied, whether in any event or in the event of the appeal being allowed in whole or in part;
- (b) that the decision of the Supreme Court should be affirmed on grounds other than those relied upon by that court; or
- (c) by way of cross-appeal that the decision of the Supreme Court was wrong in whole or in part,

must within 42 days after service on the respondent of a Notice of Appeal file with the Registrar a Respondent's Notice.

- (2) A Respondent's Notice must—
- (a) if rule 7(1)(a) or 7(1)(c) applies, state the form of the order sought; and
 - (b) state concisely the grounds of the respondent's contention.

(3) Except with the leave of the Court (which may be given by a single judge) a Respondent may not on the hearing of an appeal ~~to~~ rely on any ground of appeal or to apply for any relief not specified in the Respondent's Notice.

Amendment of Notices

8. (1) A Notice of Appeal or a Respondent's Notice may be amended without leave, by filing with the Registrar a Notice incorporating the amendments desired.

- (2) An amended Notice may be filed—
- (a) if the appeal is to be determined on written submissions under rule 18 - not later than the date upon which the documents are to be sent to the members of the Court; and
 - (b) in any other case - not later than 28 days before the Court is due to commence sitting.

Documents to be served personally

9. (1) Subject to rules 11 and 12, every document required to be served must be served personally by delivering a sealed copy to the party required to be served.

(2) If a party acts in person, service of any document on or by the party must be effected by a service officer.

Who must be served

10. The party filing any document with the Registrar (unless in connection with an *ex parte* application) must within 14 days after it was filed serve—

- (a) every other party who is directly affected by the appeal; and
- (b) any other persons the Court or a single judge directs.

Service by or on advocate

11. If an advocate has notified the Court in writing that he or she represents any party—

- (a) service of any document required to be served must be effected by that advocate; and
- (b) service of any document on that party must be effected by delivering a sealed copy to that advocate.

Substituted service or dispensing with service

12. (1) If it appears to the Registrar that it is impracticable for any reason to serve any document in accordance with rules 9 to 11, the Registrar may grant leave to substitute some other form of service which appears to the Registrar to be likely to bring that document to the notice of the person required to be served.

(2) If it appears to a judge that it is impracticable to serve a party in accordance with rules 9 to 12(1), or that it is otherwise necessary or expedient to dispense with service of any document on any party, the judge may make an order dispensing with such service.

(3) Application for an order under rule 12(1) or (2) must be made *ex parte* on affidavit showing what steps have already been taken to effect service and stating the grounds of the application.

Proof of service

13. (1) A person serving any document under these Rules must promptly endorse the original with details of the time, date and mode of service, and the server's means of knowledge of the identity of the person served.

(2) The endorsement must be filed promptly with the Registrar and is *prima facie* evidence that the document was duly served as stated on it.

Mode of application

14. (1) Any application relating to an appeal (other than an application for leave to appeal or to appeal out of time) must be made on notice substantially in Form 2 in the Schedule, supported by an affidavit.

(2) Any party served with notice of application may file an affidavit in reply within 14 days after service of the notice on the party.

(3) If the Court is then sitting, the Registrar must notify the parties of the time and

date when the application will be heard.

- (4)** If the Court is not then sitting—
 - (a)** after 14 days from the date of service of the notice of application the Registrar must send to a single judge—
 - (i)** the notice of application;
 - (ii)** the affidavit(s) filed in support; and
 - (iii)** any affidavit(s) filed in reply;
 - (b)** the judge may determine the matter without a hearing and must notify the Registrar in writing of his or her order;
 - (c)** upon receipt of the judge's order the Registrar must give notice to the parties in Form 3 in the Schedule.

Renewal of application

15. If an application is refused by a single judge without a hearing it may be renewed with the leave of the Court at its next sitting.

Powers of the court in civil matters

16. **(1)** Subject to rule 16(3), an appeal is to be by way of consideration of the documents.

(2) On determining an appeal the Court has all the powers of the Supreme Court.

(3) The Court may receive further evidence on questions of fact—

- (a)** without leave as to matters which have occurred since the trial in the Supreme Court; and
- (b)** otherwise only with leave.

(4) The Court may draw inferences of fact and may give any judgment or make any order which in its opinion ought to have been given or made, and may make any further order that the justice of the case requires.

(5) The Court may –

- (a)** exercise the powers under the foregoing paragraphs in respect of any part of the decision of the Supreme Court even though that matter has not been raised in the Notice of Appeal or Respondent's Notice; and
- (b)** make any order, on terms it thinks just, to ensure the determination on the merits of the real question in issue between the parties.

(6) On the hearing of an appeal the Court may make any order which could be made on application for a new trial or to set aside a verdict, finding or judgment of the Supreme Court.

(6A) The Court does not need to order a new trial on the ground of misdirection or improper admission or rejection of evidence, unless in the opinion of the Court the misdirection, admission or rejection has caused some substantial wrong or miscarriage of justice.

(7) If damages awarded by a judge are found to be excessive or inadequate, the Court

may substitute a sum that appears to it to be proper.

Transcripts

17. (1) A transcript of the proceedings in the Supreme Court will not be prepared unless requested by a party when filing the Notice of Appeal or Respondent's Notice, as the case may be.

(2) A party may request a transcript of a specified part of the proceedings in the Supreme Court.

(3) The party requesting a transcript must pay the prescribed fee.

Determination of appeals on written submissions

18. (1) An appeal must be determined on written submissions without a hearing if—

- (a) it is an appeal from an interlocutory order, judgment or decision; or
- (b) (i) the appellant includes in the Notice of Appeal a statement consenting to the appeal being determined in this manner; and
- (ii) the respondent within 14 days after service of the Notice of Appeal files with the Registrar a written consent in Form 4 in the Schedule; or
- (c) at any time before the appeal is set down for an oral hearing all parties file with the Registrar their written consent in Form 4,

and in all such cases the procedure set out in the following sub-rules applies.

(2) The appellant must, within 28 days after service on the appellant of the Respondent's consent, file with the Registrar written arguments in support of the appeal.

(3) The respondent must, within 28 days after being served with the appellant's written arguments, file with the Registrar written arguments in opposition to the appeal.

(4) The appellant may, within 14 days after such service as is referred to above, file with the Registrar further written arguments in reply.

(5) Except for interlocutory appeals, any party may at any time before expiry of the time for filing written arguments in reply under rule 18(4), withdraw consent to the appeal being dealt with on written submissions; and the appeal must thereupon proceed in accordance with rule 19.

(6) On expiry of the time for filing written arguments in reply under rule 18(4), the Registrar must send to each member of the Court a copy of—

- (a) the judgment appealed;
- (b) the Notice of Appeal and any Respondent's Notice and amended notice;
- (c) every written submission;
- (d) the pleadings and orders in the action;
- (e) if requested, a transcript of the proceedings in the lower court;
- (f) all documentary exhibits relevant to the stated grounds of appeal;
- (g) a list of all other exhibits relevant to the stated grounds of appeal,

and must notify all parties when this has been done.

(7) Each member of the Court must –

- (a) consider the documents and give his or her determination of the appeal, either in the form of a judgment or by concurring with one or both of the judgments of the other members of the Court; and
- (b) sign the determination.

(8) The judgment of the majority of the members of the Court is the judgment of the Court on that appeal.

(9) The President must send the judgments of the Court to the Registrar, who upon receipt must supply a copy to each party.

(10) The judgment is effective on the date on which it is served upon the parties.

Determination of appeals at oral hearing

19. (1) This rule applies to all appeals except those dealt with in accordance with rule 18.

(2) After expiry of the time for filing a Respondent's Notice the Registrar must, after conferring with the President, fix a date for hearing and notify the parties of the date.

(3) The Registrar must prepare a bundle of documents comprising those documents listed in rule 18(6) and supply a copy to each member of the Court and to each party.

(4) Each party or their advocates must, not later than 14 days before the date of hearing, file with the Registrar—

- (a) skeleton arguments;
- (b) if appropriate, a chronology of events; and
- (c) a list of authorities upon which the party intends to rely and copies of them.

(5) The Court may give directions as to the order in which the parties are to be heard; but if no such directions are given—

- (a) the appellant presents the appellant's case;
- (b) each respondent in turn presents each respondent's case; and
- (c) the appellant may reply.

(6) (a) The judgment is the opinion of the whole or of a majority of the members of the Court.

(b) Only one judgment is to be given, but a member of the Court who dissents may briefly state his or her reasons for so doing.

(7) Unless otherwise ordered by the Court or by the Supreme Court, an appeal does not stay execution or proceedings of the Supreme Court.

Criminal jurisdiction

Notice of Appeal

20. (1) An appeal to the Court in its criminal jurisdiction must be commenced by filing with the Registrar a Notice of Appeal.

(2) A Notice of Appeal must be filed—

- (a) if leave to appeal is required - within 14 days after leave is granted;
- (b) if no leave is required - within 42 days after the date of the decision appealed.

(3) A Notice of Appeal may be given in respect of conviction or sentence, or both conviction and sentence.

(4) A Notice of Appeal must be substantially in Form 5 in the Schedule and must state separately and concisely each ground of appeal, with particulars.

Action by Registrar

21. On receipt of a Notice of Appeal the Registrar must—

- (a) cause a copy to be served on the respondent;
- (b) prepare a transcript of any part of the proceedings in the court below relevant to the stated grounds of appeal;
- (c) prepare a bundle of documents comprising copies of—
 - (i) the indictment;
 - (ii) the transcript;
 - (iii) all documentary exhibits relevant to the stated grounds of appeal;
 - (iv) a list of other exhibits relevant to the stated grounds of appeal; and
 - (v) if the appeal is against sentence, details of previous convictions cited to the lower court, and of any social enquiry report.

Powers of the court in criminal matters

22. The provisions of rules 16(1) to 16(6) apply to appeals in criminal matters.

Determination of appeals without a hearing

23. (1) An appeal may be determined without a hearing—

- (a) if the President so directs; or
- (b) if the appellant so requests in writing.

(2) If the President ~~so~~ directs that an appeal be determined without a hearing—

- (a) the Registrar must immediately notify all parties in Form 6 in the Schedule; and
- (b) the appellant must within 28 days after service of that notice file written arguments in support of the appeal.

(3) If the appellant requests that an appeal be determined without a hearing, the appellant must —

- (a) include the request in the Notice of Appeal; and
- (b) within 28 days after filing the Notice of Appeal file written arguments in support of the appeal.

(4) The respondent may, within 28 days after receiving the appellant's written arguments, file with the Registrar written arguments in opposition to the appeal.

(4A) If the respondent files written arguments in opposition to the appeal, the appellant may, within 14 days after receiving them, file with the Registrar further written arguments in reply.

(5) On expiry of the time for filing written arguments in reply the Registrar must send to each member of the Court—

(a) the documents listed in rule 21(c); and

(b) all written submissions,

and must notify the parties when this has been done.

(6) Thereafter the provisions of rules 18(7) to 18(10) apply.

Determination of appeals on oral hearing

24. On an oral hearing of an appeal, the provisions of rule 19 apply, except that the documents must be those listed in rule 21(c).

SCHEDULE

FORMS

COURT OF APPEAL RULES, 1998

FORM 1

(Rule 6(3))

NOTICE OF APPEAL – CIVIL

IN THE ST HELENA COURT OF APPEAL

Appeal No....

(on appeal from the Supreme Court)

BETWEEN

A. B. Appellant

and

B. C. Respondent

NOTICE OF APPEAL

TAKE NOTICE that I intend to apply to the Court of Appeal against the judgment/order of Mr Justice given/made in this action on whereby it was adjudged/ordered that
(set out the terms of the judgment or order)

FOR AN ORDER that
(set out the terms of the order sought)

ON THE GROUNDS that
(set out the grounds of appeal)

*AND FURTHER TAKE NOTICE that the Appellant consents to the appeal being determined

on written submissions without a hearing

Dated

(Signed)

(Advocate for) the above Appellant
of (address)
To: The Respondent
of (address)

(* delete if inappropriate)
FILED ON (date)
Registrar

COURT OF APPEAL RULES, 1998

FORM 2
(Rule 14(1))

NOTICE OF APPLICATION

IN THE ST HELENA COURT OF APPEAL
Appeal No....
(on appeal from the Supreme Court)

BETWEEN
A. B. Appellant
and
B. C. Respondent

To: (name)
of: (address)

TAKE NOTICE THAT

1. The (party) has applied to a single judge for an order that (set out the terms of the order sought) in support of which(party) has filed an affidavit a copy of which is annexed.
2. If you object to the order sought you must file an affidavit in reply within 14 days from the date of service of this notice on you.
3. After 14 days has elapsed the application will be determined by a judge without a hearing.

Dated

Registrar

COURT OF APPEAL RULES, 1998

FORM 3
(Rule 14(4))

NOTICE OF ORDER OF SINGLE JUDGE

IN THE ST HELENA COURT OF APPEAL
Appeal No....
(on appeal from the Supreme Court)

BETWEEN
A. B. Appellant
and
B. C. Respondent

To: _____ and _____ (the parties)
TAKE NOTICE THAT the application of the _____ (party applying)
made on _____ (date) has been determined by a single judge who has ordered that:
(set out terms of order made)

Dated

Registrar

COURT OF APPEAL RULES, 1998

FORM 4
(Rule 18(1))

CONSENT TO DETERMINATION OF APPEAL ON WRITTEN SUBMISSIONS

IN THE ST HELENA COURT OF APPEAL
Appeal No....
(on appeal from the Supreme Court)

BETWEEN
A. B. Appellant
and
B. C. Respondent

TAKE NOTICE THAT the _____ (party) consents to this appeal being determined on
written submissions in accordance with rule 18 of the Court of Appeal Rules, 1998.

Dated

(Advocate for) the (party)

Filed on (date)

Registrar

COURT OF APPEAL RULES, 1998

FORM 5
(Rule 20(4))

NOTICE OF APPEAL – CRIMINAL

IN THE ST HELENA COURT OF APPEAL
Appeal No....
(on appeal from the Supreme Court)

BETWEEN
A. B. Appellant
and
The Crown Respondent

TAKE NOTICE THAT I wish to appeal to the Court of Appeal against my conviction/sentence/conviction and sentence before the Supreme Court on (date)
for the offence(s) of
(set out relevant offences)
for which I was sentenced to
(set out relevant sentences)

ON THE GROUNDS THAT
(set out concise grounds of appeal)

(If appropriate)

AND FURTHER TAKE NOTICE that I request that this appeal be determined without a hearing in accordance with rule 18 of the Court of Appeal Rules, 1998.

(Advocate for) Appellant

Filed on (date)

Registrar

COURT OF APPEAL RULES, 1998

FORM 6
(Rule 23(2))

NOTICE OF PRESIDENT'S DIRECTION

IN THE ST HELENA COURT OF APPEAL
Appeal No....

(on appeal from the Supreme Court)

BETWEEN

A. B. Appellant

and

B. C. Respondent

To: (the parties)

TAKE NOTICE THAT the President of the St Helena Court of Appeal has directed that this appeal be determined without an oral hearing in accordance with rule 23 of the Court of Appeal Rules, 1998.

Dated

Registrar

**ST HELENA COURT OF APPEAL
(APPEAL TO PRIVY COUNCIL) ORDER, 1964**

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Her Majesty, by virtue and in the exercise of the powers in that behalf by section 1 of the Judicial Committee Act 1844 or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows—

Short title

1. (1) This Order may be cited as the St Helena Court of Appeal (Appeal to Privy Council) Order 1964.

(2) This Order shall come into operation on the date on which the St Helena Court of Appeal Order 1964 comes into operation.⁸

Interpretation

2. (1) In this Order, unless the context otherwise requires—
“**appeal**” means appeal from a judgment of the Court to Her Majesty in Council;

⁸⁸ The St Helena Court of Appeal Order 1964 is not published on the www.legislation.gov.uk; but see 1964 III p 4014.

“Court” means the St Helena Court of Appeal established by section 86 of the Constitution set out in the Schedule to the St Helena, Ascension and Tristan da Cunha Constitution Order 2009;

“judgment” means a judgment of the Court given in the exercise of any jurisdiction conferred upon it by any law for the time being in force in St Helena and includes a decree, order, ruling, sentence or decision of the Court;

“record” means the aggregate of papers relating to an appeal (including pleadings, proceedings, evidence and judgments) proper to be laid before Her Majesty in Council on the hearing of an appeal;

“St Helena” means the territory of St Helena, Ascension and Tristan da Cunha.

(2) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Order and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament.

Right of appeal

3. Subject to the provisions of this Order, an appeal shall lie—

- (a) as of right from any final judgment, where the matter in dispute on the appeal amounts to or is of the value of five thousand pounds sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards; and
- (b) at the discretion of the Court, from any other judgment, whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great or general importance or otherwise, ought to be submitted to Her Majesty in Council for decision.

Application for leave to appeal

4. Applications to the Court for leave to appeal shall be made by motion or petition within twenty-one days of the date of the judgment to be appealed from, and the applicant shall give all other parties concerned notice of his intended application.

Conditional leave to appeal

5. Leave to appeal under section 3 of this Order shall, in the first instance, be granted by the Court only—

- (a) upon condition of the appellant, within a period to be fixed by the Court but not exceeding ninety days from the date of the hearing of the application for leave to appeal, entering into good and sufficient security to the satisfaction of the Court in a sum not exceeding 500 pounds sterling for the due prosecution of the appeal and the payment of all such costs as may become payable by the applicant in the event of his not obtaining an order granting him final leave to appeal, or of the appeal being dismissed for non-prosecution, or of the Judicial Committee ordering the appellant to pay costs of the appeal (as the case may be); and
- (b) upon such other conditions (if any) as to the time or times within which the appellant shall take the necessary steps for the purposes of procuring the preparation of the record and the despatch thereof to England as the Court, having regard to all the circumstances of the case, may think it reasonable to impose.

Powers of a single judge

6. All or any of the powers and functions of the Court under this Order, except the exercise of the discretion conferred by section 3(b) of this Order; may be exercised by any judge of the Court:

Provided that any order, directions or decision made or given in pursuance of this section may be varied, discharged or reversed by the Court when consisting of three judges which may include the judge who made or gave the order, directions or decision.

Stay of execution

7. Where the judgment appealed from requires the appellant to pay money or do any act, the Court shall have power, when granting leave to appeal, either to direct that the said judgment shall be carried into execution or that the execution thereof shall be suspended pending the appeal, as to the Court shall seem just, and in case the Court shall direct the said judgment to be carried into execution, the person in whose favour it was given shall, before the execution thereof, enter into good and sufficient security, to the satisfaction of the Court, for the due performance of such Order as Her Majesty in Council shall think fit to make thereon.

Manner of providing security

8. For the purposes of sections 5 and 7 of this Order, a person may provide security in any manner that the Court may approve in his case, and for the avoidance of doubts it is declared that such security may with the approval of the Court consist in whole or in part of a deposit of money.

Preparation of record

9. (1) The preparation of the record shall be subject to the supervision of the Court, and the parties may submit any disputed question arising in connection therewith to the decision of the Court, and the Court shall give such directions thereon as the justice of the case may require.

(2) The Registrar, as well as the parties and their legal agents, shall endeavour to exclude from the record all documents (more particularly such as are merely formal) that are not relevant to the subject matter of the appeal and, generally, to reduce the bulk of the record as far as practicable, taking special care to avoid the duplication of documents and the unnecessary repetition of headings and other merely formal parts of documents; but the documents omitted to be copied or printed shall be enumerated in a list to be placed after the index or at the end of the record.

(3) Where in the course of the preparation of a record one party objects to the inclusion of a document on the ground that it is unnecessary or irrelevant and the other party nevertheless insists upon its being included, the record, as finally printed shall, with a view to the subsequent adjustment of the costs of and incidental to such document, indicate in the index of papers or otherwise, the fact that, and the party by whom, the inclusion of the document was objected to.

(4) The reasons given by Judges of the Court for or against any judgment pronounced

in the course of the proceedings out of which the appeal arises shall be communicated by them in writing to the Registrar, and shall be included in the record.

Printing of record

10. (1) The record may be printed in St Helena or may be printed in England if the parties agree to its being printed but in the absence of such agreement shall be duplicated by process approved by the Registrar of the Privy Council. If the record is to be printed it shall be printed in accordance with the Rules set forth in the Schedule to this Order.

(2) If the record is printed in St Helena the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council forty copies of such record, one of which copies he shall certify to be correct by signing his name on, or initialling, every eighth page thereof and by affixing thereto the seal of the Court.

(3) Where the record is to be printed or duplicated in England, the Registrar shall, at the expense of the appellant, transmit to the Registrar of the Privy Council one certified copy of such record, together with an index of all the papers and exhibits in the case. No other certified copies of the record shall be transmitted to the agents in England by or on behalf of the parties to the appeal.

(4) Where part of the record is printed in St Helena and part is to be printed or duplicated in England, subsections (2) and (3) of this section shall, as far as possible, apply to such parts as are printed in St Helena and such as are to be printed or duplicated in England respectively.

Consolidation of appeals

11. Where there are two or more applications for leave to appeal arising out of the same matter, and the Court is of opinion that it would be for the convenience of the Lords of the Judicial Committee and all parties concerned that the appeals should be consolidated, the Court may direct the appeals to be consolidated and grant leave to appeal by a single order.

Failure to prosecute appeal

12. Where an appellant, having obtained an order granting him conditional leave to appeal, and having complied with the conditions imposed on him by such order, fails thereafter to apply with due diligence to the Court for an order granting him final leave to appeal, the Court may, on an application in that behalf made by the respondent, rescind the order granting conditional leave to appeal, notwithstanding the appellant's compliance with the conditions imposed by such an order, and may give such directions as to the costs of the appeal and security entered into by the appellant as the Court shall think fit, or make such further or other order in the premises as, in the opinion of the Court, the justice of the case requires.

Notice to other parties

13. (1) On an application for final leave to appeal, the Court may enquire whether notice or sufficient notice of the application has been given by the appellant to parties concerned and, if not satisfied as to the notices given, may defer the granting of the final leave to appeal, or may give such other directions in the matter as, in the opinion of the Court, the justice of the case

requires.

(2) The Registrar shall, with all convenient speed, transmit to the Registrar of the Privy Council a certificate to the effect that the respondent has received notice, or is otherwise aware, of the order of the Court granting final leave to appeal and of the transmission of the record to England.

Prosecution of appeal

14. An appellant who has obtained final leave to appeal shall prosecute his appeal in accordance with the Rules for the time being regulating the general practice and procedure in appeals to Her Majesty in Council.

Withdrawal of appeal

15. (1) An appellant who has obtained an order granting him conditional leave to appeal may at any time prior to the making of an order granting him final leave to appeal withdraw his appeal on such terms as to costs and otherwise as the Court may direct.

(2) Where an appellant, having obtained final leave to appeal, desires to withdraw his appeal, the Court may, upon an application in that behalf made by the appellant, grant him a certificate to the effect that the appeal has been withdrawn, and the appeal shall thereupon be deemed, as from the date of such certificate, to stand dismissed without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

Dismissal for non-prosecution

16. Where an appellant, having obtained final leave to appeal, fails to show due diligence in taking all necessary steps for the purpose of procuring the dispatch of the record to England, any respondent may after giving the appellant due notice of his intended application, apply to the Court for a certificate that the appeal has not been effectually prosecuted by the appellant, and if the Court sees fit to grant such a certificate the appeal shall be deemed, as from the date of such certificate, to stand dismissed for non-prosecution without express Order of Her Majesty in Council, and the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as the Court may think fit to direct.

Substitute parties

17. (1) Where at any time between the order granting final leave to appeal and the dispatch of the record to England, the record becomes defective by reason of the death or change of status of a party to the appeal, the Court may, notwithstanding the order granting final leave to appeal, on an application in that behalf made by any person interested, grant a certificate showing who, in the opinion of the Court, is the proper person to be substituted or entered on the record in place of or in addition to the party who has died or undergone a change of status, and the name of such person shall thereupon be deemed to be so substituted or entered on the record as aforesaid without express Order of Her Majesty in Council.

(2) Where the record subsequently to its despatch to England becomes defective by reason of the death or change of status of a party to the appeal, the Court shall, upon an

application in that behalf made by any person interested, cause a certificate to be transmitted to the Registrar of the Privy Council showing who, in the opinion of the Court, is the proper person to be substituted, or entered on the record, in place of, or in addition to, the party who has died or undergone a change of status.

Printing case

18. The case of each party to the appeal may be printed in St Helena or printed or duplicated in England and shall, in any event, be printed in accordance with the Rules set forth in the Schedule to this Order, and shall be signed by at least one of the counsel who attends at the hearing of the appeal, or by the party himself if he conducts his appeal in person.

Form of case

19. The case shall consist of paragraphs numbered consecutively and shall state, as concisely as possible, the circumstances out of which the appeal arises, the contentions to be urged by the party filing the case, and the reasons of appeal. Reference by page and line to the relevant portions of the record as printed shall, as far as practicable, be printed in the margin, and care should be taken to avoid, as far as possible, the reprinting in the case of long extracts from the record. The taxing officer in taxing the costs of the appeal shall, either of his own motion or at the instance of any party, inquire into any unnecessary prolixity in the case, and shall disallow the costs occasioned thereby.

Costs in St Helena

20. Where the Judicial Committee directs a party to bear the costs of an appeal incurred in St Helena, such costs shall be taxed by the proper officer of the Court in accordance with the rules for the time being regulating taxation in the Court.

Enforcing judgment

21. Any Order which Her Majesty in Council may think fit to make on an appeal from a judgment of the Court may be enforced in like manner as any judgment of the Court should or might have been executed.

Pending proceedings

22. (1) In respect of any judgment of the St Helena Court of Appeal established by the St Helena Court of Appeal Order 1964, or of the Court, given before the commencement of this Order, an appeal may be commenced, continued and concluded or continued and concluded, as the case may be, in accordance with the provisions of this Order as nearly as may be as if it were an appeal from a judgment of the Court given after the commencement of this Order.

(2) Any Order that Her Majesty in Council may see fit to make on any such appeal or any Order on an appeal from the St Helena Court of Appeal established by the St Helena Court of Appeal Order 1964 or from the Court made by Her Majesty before the commencement of this Order, but not enforced before such commencement, may be enforced as if it were an Order made on an appeal from a judgment of the Court given after the commencement of this Order.

Special leave to appeal

23. Nothing in this Order contained shall be deemed to interfere with the right of Her Majesty upon the humble petition of any person aggrieved by any judgment of the Court, to admit his appeal therefrom upon such conditions as Her Majesty in Council shall think fit to impose.

SCHEDULE

(Articles 10(1) and 18)

I. Records and cases in appeals to Her Majesty in Council shall be printed in the form known as demy quarto.

II. The size of the paper used shall be such that the sheet, when folded and trimmed, will be 11 inches in height and 8½ inches in width.

III. The type to be used in the text shall be pica type, but long primer shall be used in printing accounts, tabular matter and notes.

IV. The number of lines in each page of pica type shall be 47 or thereabouts, and every tenth line shall be numbered in the margin.
