

**CRIMINAL APPEAL (REFERENCE OF POINTS OF
LAW) RULES
(SECTION 7)**

S.I. 71/1990

[Commencement 15th October, 1990]

1. These rules may be cited as the Criminal Appeal (Reference of Points of Law) Rules. Citation.

2. In these rules — Interpretation.

“reference” means a reference of a point of law to the court in pursuance of section 27 of the Act;

“respondent” in relation to any reference, means the acquitted person in whose case the point of law referred arose.

3. (1) Every reference shall be in writing and shall — Reference of
point of law to
court.

(a) specify the point of law referred and, where appropriate, such facts of the case as are necessary for the proper consideration of the point of law;

(b) summarise the arguments intended to be put to the court; and

(c) specify the authorities intended to be cited:

Provided that no mention shall be made in the reference of the proper name of any person or place which is likely to lead to the identification of the respondent.

(2) A reference shall be entitled “Reference under section 27 of the Court of Appeal Act” together with the year and number of the reference.

4. (1) The Registrar shall cause to be served on the respondent notice of the reference which shall also — Notice of
reference to be
served on
respondent.

(a) inform the respondent that the reference will not affect the trial in relation to which it is made or any acquittal in that trial;

(b) invite the respondent, within such period as may be specified in the notice (being not less than twenty-one days from the date of service of the notice), to inform the Registrar if he wishes to present any argument to the court and, if so, whether he wishes to present such argument in person or by counsel on his behalf.

(2) The court shall not hear argument by or on behalf of the Attorney-General until the period specified in the notice has expired unless the respondent agrees or has indicated that he does not wish to present any argument to the court.

Withdrawal or amendment of reference.

5. (1) The Attorney-General may withdraw or amend the reference at any time before the court has begun the hearing or, after that, and until the court has given its opinion, may withdraw or amend the reference by leave of the court.

(2) Notice of such withdrawal or amendment shall be served on the respondent on behalf of the Attorney-General, and the provisions of paragraphs (1)(b) and (2) of rule 4 shall, as they apply to a notice of reference, *mutatis mutandis* apply to such notice of amendment.

Confidentiality of respondent's identity.

6. The court shall ensure that the identity of the respondent is not disclosed during the proceedings on a reference except where the respondent has given consent to the use of his name in the proceedings.

PART IV

Governor-General's Administrative Rules

G.N. 256/1946
G.N. 203/1960
5 of 1987

SPECIAL LEAVE TO APPEAL TO THE PRIVY COUNCIL (SENTENCE OF DEATH) RULES

[Commencement 5th October, 1946]

5 of 1987 Sch.

1. The following administrative Rules made by the Governor-General have the purpose of regulating the procedure to be observed in dealing with applications for special leave to appeal to the Judicial Committee of the Privy Council from and on behalf of convicts under sentence of death.

5 of 1987 Sch.

2. (1) If intimation is received by the Governor-General from or on behalf of a convict that it is intended to apply to the Judicial Committee of the Privy Council for special leave to appeal, the execution will be postponed and a date, three weeks later, will be fixed before which proof must be furnished to the Governor-General or to an

officer specially authorised in this behalf that the necessary instructions and funds have been sent by air mail to a firm of solicitors in London and the necessary papers by registered ordinary mail. The convict and his adviser will be informed of the date so fixed and the papers and funds which must be sent; and also where the applicant indicates his intention of applying *in forma pauperis* of the procedure relating to such applications as set out in rule 4 below. They will be informed at the same time that unless the application for special leave is lodged in the Privy Council Office before a further date fixed by the Secretary of State and communicated to the firm of solicitors, intimation will be received by the Governor-General from the Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom and the execution will not be further postponed.

NOTE (i) — If sentences of death have been passed on more than one person in the same case, and if intimation is received from or on behalf of only one or more but not all of them of an intention to apply for leave to appeal to the Privy Council, the execution of the sentence will be postponed not only in the case of the person or persons from whom or on whose behalf such intimation has been received but also in the case of the other person or persons from whom or on whose behalf no such intimation has been received.

NOTE (ii) — The necessary funds will be a minimum of fifty guineas if one counsel is engaged but will be eighty to one hundred guineas if the record is bulky or more than one counsel is engaged. The convict and his adviser should, therefore, be advised, on receipt of intimation of intention to apply for special leave, that fifty guineas must be sent by the date fixed and that it is not unlikely that thirty to fifty guineas more will be required.

NOTE (iii) — The necessary papers will include two copies of the printed paper book and a certified copy and two further copies of the judgment, etc., of the Supreme Court.

NOTE (iv) — Whenever an intimation is received of the intention of a person condemned to death to apply to the Judicial Committee, three copies of the paper book and of the judgment of the Supreme Court will be forthwith addressed directly by the Cabinet Secretary for and on behalf of the Governor-General to the Legal Adviser at the

Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom, one copy of each being a certified copy. One of such sets of papers will be sent by the first available air mail.

(2) If proof is not furnished before the date fixed that the necessary papers, instructions and funds have been sent to a firm of solicitors in London, the execution will not be further postponed unless the Governor-General is satisfied that the delay is due to no fault of the convict or his adviser. If in any special case the Governor-General for this reason allows an extension of the date for furnishing of proof the further date within which proof must be furnished will be intimated to the convict or his adviser.

(3) If proof is furnished before the date fixed, the convict or his adviser is required to intimate the name of the firm of solicitors to whom the papers, instructions and funds have been sent and the registered numbers of the packages containing such papers, instructions and funds, and the name of the firm, the date of the despatch of the papers, etc., and the registered number of the package will be communicated to the Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom by telegram directly by the Governor-General.

NOTE: If proof is furnished that the necessary papers and instructions, but less than the minimum funds referred to in Note (ii) to rule 2(1) hereof, have been sent to a firm of solicitors in England, the Governor-General will forthwith telegraph to the Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom the names of the convict and such solicitors.

(4) After proof is furnished that the necessary papers, instructions and funds have been sent to England, the execution will be, except in cases under rule 4(2) hereof, postponed until intimation is received by the Governor-General from the Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom that the application for special leave has not been lodged in the Privy Council Office by the date fixed or by such date as the Secretary of State may have decided to extend the date to or that the application has been dismissed by the Judicial Committee.

5 of 1987, Sch.

3. (1) On receipt of the telegram referred to in the Note to rule 2(3) enquiries will be made by the Office of the Secretary of State for Foreign and Commonwealth Affairs

of the United Kingdom of the prisoner's solicitors whether they are prepared to proceed with the case and on receipt of a reply that the firm of solicitors will proceed, the Secretary of State will fix a date by which the application must be lodged at the Privy Council Office. This date will be communicated to the prisoner's solicitors and telegraphed to the Governor-General. If the solicitors do not reply that they will proceed, the Governor-General will be informed by telegram and execution will not be further delayed.

(2) When a petition has been lodged in the Privy Council the Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom will inform the Governor-General of the fact by telegram.

(3) The Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom will inform the Governor-General of developments in the Privy Council in any case which presents unusual features.

(4) The Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom will communicate to the Governor-General by telegram the result of an application to the Privy Council for special leave to appeal. The Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom will also forward in due course a copy of the Order in Council to the Governor-General by ordinary mail.

4. (1) In furnishing proof that he has despatched the necessary papers to a solicitor in England, a petitioner who intends to make application *in forma pauperis* under rule 8 of the Procedure Rules of the Judicial Committee of the Privy Council, shall also furnish proof of despatch by air mail of an affidavit or affirmation made by himself stating that he is not worth four hundred dollars in the world except his wearing apparel and that he is unable to provide sureties, accompanied by a certificate of counsel that the petitioner has reasonable grounds of appeal. Thereupon proof of the despatch of funds as required by rule 2(1) hereof shall not be required.

*G.N. 203/1960;
5 of 1987, Sch.*

(2) Such a petitioner and his advisers shall be informed that solicitors in England are under no obligation to act in a case *in forma pauperis*. The solicitor instructed by them must be instructed by air mail and be required to inform the Office of the Secretary of State for Foreign and

Commonwealth Affairs of the United Kingdom in writing, whether he intends to act or not. If the Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom receives no consent or receives intimation that the solicitor instructed is unable to act, the Governor-General will be informed by telegram and the execution will not be further delayed.

5 of 1987, Sch.

5. In every case where the Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom has been informed of the postponement of execution of a sentence owing to the convict's intention to apply to the Privy Council for special leave to appeal, the Office of the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom will also be informed in due course by telegram that the sentence has been carried out or has been commuted, as the case may be.