

**PITCAIRN COURT OF APPEAL (CRIMINAL)
RULES 2014**

Made by the Honourable Sir Bruce Robertson, President,
pursuant to Section 51 of the Constitution of Pitcairn.

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Rules 7 Feb 2014

**PART I
PRELIMINARY PROVISIONS**

Title

1. These rules are the Pitcairn Court of Appeal (Criminal) Rules 2014.

Commencement

2. These rules come into force on 7 February 2014.

Interpretation

3. In these rules, unless the context otherwise requires—
appeal on the papers means an appeal to be disposed of by way of a hearing on the papers as described in section 35B of the Ordinance

appellant includes an applicant for leave to appeal

bail appeal means an appeal under section 63 or section 65 of the Bail Ordinance 2002 which relates to a decision on bail made by a Supreme Court Judge

Court means the Pitcairn Court of Appeal

exhibit

(a) includes all books, papers, video and audio tapes, documents and all other property, matters and things connected with the proceedings against any appellant which

(i) were received in the Trial Court when the appellant was committed for trial or for sentence; or

(ii) have been produced or used in evidence in the proceedings;

and

(b) includes any written statement given to the Judge by the appellant;

but

(c) does not include original statements or depositions not used at trial or an information or plea filed in the Trial Court

general appeal means

(a) an appeal under section 36(1) of the Ordinance against conviction or sentence or both; or

(b) an appeal under the Contempt of Court Act 1981 of the Parliament of the United Kingdom against a finding of criminal contempt or a sentence for criminal contempt or both

oral appeal means

(a) an appeal to be disposed of under section 35A of the Ordinance by way of a hearing involving oral submissions; or

(b) a bail appeal; or

- (c) a summary proceedings appeal
- Ordinance** means the Judicature (Appeals in Criminal Cases) Ordinance (cap. 4)
- prosecutor** means the Public Prosecutor or a prosecutor acting on his or her behalf
- prosecutor appeal** means an appeal or an application for leave to appeal by or behalf of the Public Prosecutor under any enactment
- Registrar** means the registrar of the Pitcairn Court of Appeal
- summary proceedings appeal** means an appeal under section 21 of the Ordinance
- Trial Court** means a Magistrate’s Court or the Supreme Court, as the case may require
- Trial Judge** includes a sentencing Judge

- 4.—(1) These rules apply to
- (a) applications for leave to appeal; and
 - (b) prosecutor appeals; and
 - (c) general appeals; and
 - (d) bail appeals; and
 - (e) summary proceedings appeals.

Application of Rules

(2) These rules also apply to steps which are incidental to appeals referred to in subclause (1) (including applications made to the Court for leave to appeal in relation to those appeals).

(3) On its own initiative, or on the application of a party, the Court or a Judge of the Court may direct, authorise or accept a departure from these rules or shorten or extend any appointed period for reasons of urgency or for any other reason.

5. The forms set out in the schedule, or forms to the same effect, must be used in all appropriate cases.

Forms

PART II—PROCEDURE

Institution of appeal

6.—(1) An application for leave to appeal (other than by a prosecutor) under Part IIA or Part III of the Ordinance must be made by notice of application for leave to appeal in form 1.

Form of notice of appeal and notice of application for leave to appeal

(2) A prosecutor appeal must be made by notice of appeal or notice of application for leave to appeal (as the case requires) in form 2.

(3) A general appeal must be made by notice of appeal in form 3.

(4) A bail appeal (other than by a prosecutor) must be made by notice of appeal in form 4.

(5) A summary proceedings appeal (other than by a prosecutor) must be made by notice of appeal in form 5.

Other applications may be included in notice of appeal or of application for leave to appeal

7. A notice of appeal or notice of application for leave to appeal given in any of forms 1 to 5 may include either or both of the following

- (a) an application for leave to call a witness;
- (b) an application for leave to be present.

Persons required or authorised to sign notices and other documents

8.—(1) The appellant must sign a notice of appeal or a notice of application for leave to appeal unless

- (a) the notice is required to be marked and signed in accordance with subclause (2); or
- (b) another person signs the notice under any of subclauses (3) to (5).

(2) An appellant who is unable to write must affix his or her mark on the notice in the presence of a witness who must also sign the notice.

(3) A notice required to be signed by an appellant who contends that the appellant was not responsible for his or her actions on the ground that he or she was insane at the relevant time may be signed by the appellant's solicitor or counsel or by any other person authorised to act on the appellant's behalf.

(4) A notice or other document required to be signed by an appellant which is a body corporate may be signed on its behalf by a duly authorised agent of the body corporate.

(5) A notice or other document required to be signed by the Public Prosecutor may be signed on his or her behalf by an authorised prosecutor.

Notice of application for leave to appeal is sufficient notice of appeal

9. An appellant's notice of application for leave to appeal is a sufficient notice of appeal if the Court grants the appellant leave to appeal.

Mode of bringing appeal and effecting service

10.—(1) A person appeals by filing in the registry of the Court a notice of appeal or a notice of application for leave to appeal (as the case requires).

(2) An appeal is brought, or an application for leave to appeal is made, when the notice of appeal or the notice of application for leave to appeal, as the case may be, is received in the registry of the Court.

(3) The Registrar is responsible for effecting service of notices of appeal and notices of application for leave to appeal.

Application for extension of time

11. An appellant who seeks an extension of time within which to appeal, or to apply for leave to appeal, may include an application for an extension of time within his or her notice

of appeal, or his or her notice of application for leave to appeal, by completing the relevant part of the form.

12. A notice in any of forms 1 to 5 which is given out of time must be treated as if it contains an application for extension of time.

Form must be treated as application for extension of time if notice given out of time

Preparation for hearing

13.—(1) On receiving a notice of appeal for a general appeal, the Registrar must obtain for the use of the Court the documents and records relating to the trial (which include the trial transcript, the trial Judge’s notes (if the Registrar considers them relevant to the grounds of appeal) and the other documents, exhibits and things connected with the proceeding which the Registrar considers relevant to the grounds of appeal and appropriate for inclusion in the preliminary case on appeal).

Documents required for general appeals

(2) The preliminary case on appeal, together with any additional material required to enable the Court to decide the appeal, constitutes the final case on appeal for a general appeal.

14. On receiving notice of appeal or notice of application for leave to appeal in any of forms 1,2,4 or 5, the Registrar must obtain for the use of the Court the material relevant to the decision or ruling under appeal.

Documents required for other appeals

15. On receiving an application for extension of time under rule 11 or a form having that effect under rule 12, the Registrar must comply with rule 13 (in the case of a general appeal) or rule 14 (in the case of any other appeal) and the relevant rule applies with the necessary modifications.

Documents required for extension of time

16.—(1) A Judge of the Trial Court may direct that a document, exhibit or other thing be delivered out of the Trial Court to any person the Judge considers entitled to delivery and the Judge may make delivery subject to any conditions he or she thinks fit.

Trial Court may direct delivery of documents, etc.

(2) However, subclause (1) does not apply to property which could be made subject to an order for the restitution of property under any enactment.

17.—(1) In any proceeding under Part III of the Ordinance, the Registrar must, if the Court or a Judge of the Court so directs, request the Judge of the Trial Court to provide the Court with a report in writing setting out his or her opinion about the case generally or about any particular point arising in the proceeding.

Court may request Trial Court to provide report

(2) The Registrar must disclose the report

(a) to any party who requests a copy of it unless the

Court otherwise directs; and

(b) to any other person on the direction of the Court.

(3) To enable a Judge to prepare the report, the Registrar must provide the Judge with any document concerning the proceeding and in the Registrar's possession if the Judge requests the document or the Court or a Judge of the Court directs the Registrar to provide the document.

Examination of witnesses otherwise than before Court

18.—(1) If the Court orders the examination of witnesses to be conducted otherwise than before the Court, the examination must, subject to any special directions the Court may give, be conducted in accordance with the provisions of rules of the Supreme Court made under paragraph (b) of section 20 of the Judicature (Courts) Ordinance (cap.2 of the 2001 Revised Edition of the Laws) or if there are no such rules, so far as practicable as may be directed by the Chief Justice or other Judge of the Supreme Court under subsections (2) and (3) of section 17 of the said ordinance.

(2) The parties or their counsel are entitled to be present at, and take part in, the examination of any witness.

Registrar may issue witness subpoenas

19. The registrar may issue a writ of subpoena in the name of the Court if the Court makes an order under rules of Court to secure the attendance of a person as a witness either before

(a) the Court; or

(b) any officer of the Court or any Magistrate or any other person appointed by the Court for the purpose.

Authorities bundles

20.—(1) In this rule, **authorities bundle** means a bundle of authorities and legislation on which a party relies.

(2) This rule applies whenever written submissions are filed, whether for the purpose of an appeal on the papers or of an oral appeal.

(3) At the time a party provides his or her submissions to the Court, he or she must also provide to the Court

(a) if the appeal is to be heard by three Judges, four copies of an authorities bundle for Court use;

(b) if the appeal is to be heard by five Judges, six copies of an authorities bundle for Court use;

(c) if the appeal is to be heard on the papers, sufficient additional copies of an authorities bundle so that the Registrar can provide one copy for each other party.

(4) An authorities bundle must contain

(a) only cases to which counsel intends to refer the Court and to rely on for more than a general principle; and

(b) as its first page, a list of the authorities, including

their citations.

Mode of hearing

21. Rules 22 to 25 (mode of hearing) and rules 29 to 32 (appeals on the papers apply to all appeals except bail appeals and summary proceedings appeals. Application of mode of hearing provisions and appeals on papers provisions

22. A party's initial submissions on the mode of hearing must be set out in the notice of appeal or notice of application for leave to appeal required by rule 6. Submissions on mode of hearing

23.—(1) The initial decision on the mode of hearing must be made by the Court or a Judge in accordance with section 35A of the Ordinance (which enables the Court or Judge to have regard to the criteria set out in section 35A(2) of the Ordinance. Procedure within Court to determine initially mode of hearing

(2) The Court may, at any time, either on its own initiative or on the application of any party, change the mode of hearing a particular appeal or application to an oral hearing in accordance with section 35A(4) of the Ordinance.

24. The Registrar must notify the parties in writing of the decision about the mode of hearing and the reasons, in accordance with section 35A(6) of the Ordinance. Decision on mode of hearing

25. If a party to an appeal wishes the Court to reconsider a decision under section 35A of the Ordinance on the mode of hearing, the party may include further submissions on this matter in written submissions on the merits under rule 29. Further mode of hearing submissions

Oral appeals

26.—(1) This rule applies to oral appeals. Registrar to give parties notice of fixture for oral appeals

(2) The Registrar must allocate a fixture for every oral appeal.

(3) Notice of the time and place fixed for the hearing must be given by the Registrar to

- (a) the prosecutor; and
- (b) the accused person or convicted person; and
- (c) if the appellant is in custody and the Court has granted the appellant leave to be present at the hearing, the superintendent of the penal institution concerned.

27.—(1) This rule applies to oral appeals Timing of submissions on merits

(2) The appellant must provide full written submissions on the appeal.

(3) The appellant must provide his or her written submissions to the Court and to the respondent not less than 28 days before the hearing date.

(4) The respondent must provide his or her written submissions to the Court and to the appellant not less than 14 days before the hearing date.

(5) If the appeal is to be heard by three Judges, four copies of the submissions must be provided for Court use.

(6) If the appeal is to be heard by five Judges, six copies of the submissions must be provided for Court use.

Right of reply at oral hearing

28. A party who wishes to exercise the right of reply in an appeal that is to be heard as an oral appeal must exercise that right orally at the hearing.

Appeals on papers

Period allowed for making written submissions on merits

29.—(1) This rule applies to appeals on the papers.

(2) In this rule, **appointed period** means a period appointed under subclause (4) and, when used in subclause (9), includes a period appointed under subclause (7)(a).

(3) For the purposes of this rule

- (a) the time allowed for making submissions begins to run on the date on which the appellant or respondent receives the relevant notice or material;
- (b) if sent by mail or fax, the notice or material must be treated as having been received three days after the date on which it is sent to that party's last known postal address or fax address.

(4) The Registrar must appoint a period of not less than 28 days within which the appellant may make written submissions in support of the appeal (including further submissions about the Court's decision on the mode of hearing).

(5) Notice of the appointed period must be given by the Registrar to

- (a) the appellant; and
- (b) the respondent.

(6) A copy of all written submissions received by the Court from the appellant within the appointed period must be sent by the Registrar to the respondent and the respondent may make written submissions within

- (a) 14 days if the respondent is the Public Prosecutor; or
- (b) 28 days in the case of any other respondent.

(7) A copy of all written submissions received by the Court from the respondent within the applicable period stated in subclause (6) must be sent by the Registrar to the appellant and

- (a) the appellant may make written submissions in reply within a period of not less than 14 days appointed by the Registrar; and

- (b) the Registrar must send the respondent a copy of the appellant's submissions in reply.
- (8) Each party must file in the Court
 - (a) four copies of that party's submissions for Court use; and
 - (b) sufficient additional copies so that the Registrar can provide one copy for each other party.
- (9) The Court or a Judge of the Court may extend any appointed period.

30. The Court must not begin hearing an appeal on the papers until all the periods prescribed or directed under rule 29 have expired.

Timing of appeal on papers

31. A hearing on the papers under section 35A of the Ordinance must be conducted by three Judges and may take the form of each Judge separately considering the relevant materials (including any written submissions) before the Judges arrive at their decision.

Panel for hearing on papers

32.—(1) If the Court, having considered any further submissions on the mode of hearing under rules 25 and 29(4), decides to change the mode of hearing, it must give its decision in accordance with section 35A(6) of the Ordinance.

Change of mode of hearing

- (2) If the Court orders a hearing involving oral submissions
 - (a) the Registrar must allocate a fixture; and
 - (b) notice of the time and place fixed for the hearing of the appeal or application must be given in accordance with rule 26(3).

(3) The submissions already filed constitute the written submissions for the hearing unless the Court otherwise directs.

(4) If the Court, having considered any further submissions on the mode of hearing under rules 25 and 29(4), decides not to change the mode of hearing, it may give its decision on that matter at the same time as it gives its decision on the merits of the appeal or application.

Decisions

33.—(1) All decisions of the Court may be delivered—

- (a) in open Court; or
- (b) through the Registrar.

Mode of delivery of decisions

34.—(1) As soon as a Judge or the Court has delivered a decision, the Registrar must give notice of it to

- (a) the parties; and
- (b) if appropriate, the Registrar of the Trial Court; and
- (c) if appropriate and if a party is in custody, the superintendent of the relevant penal institution.

Notification of decisions

(2) Whenever a power of the Court has been exercised by a Judge and a party has the right to have that decision reviewed by the Court, the Registrar must, at the same time as giving notice of the decision, inform that party of his or her right to have that decision reviewed by the Court.

(3) Any application for review must be in writing and must be filed within seven days after receipt of the notification referred to in subclause (2).

PART III—MISCELLANEOUS PROVISIONS

Abandonment of appeal

35.—(1) An appellant may, at any time abandon an appeal by filing in the registry of the Court a notice advising that he or she

- (a) does not intend further to prosecute the appeal; and
- (b) abandons all further proceedings concerning that appeal.

(2) The notice must be signed by

- (a) the appellant personally; or
- (b) the appellant's solicitor or counsel.

(3) If the notice is signed by the appellant personally, the appellant's signature must be witnessed and the witness must add the witness's address and description after the witness's signature.

(4) A notice under this rule may be in form 6.

Persons to be heard by Court before restitution order annulled or varied

36.—(1) This rule applies if, on the trial of a person entitled or given leave to appeal under the Ordinance, an order for restitution of property has been made in the Supreme Court.

(2) Before any order is made by the Court of Appeal, the following persons are entitled to be heard before the Court of Appeal

- (a) the person in whose favour or against whom the order of restitution has been made;
- (b) with the leave of the Court, any other person.

Payment received under fine must be retained until appeal decided

37.—(1) A person who lawfully receives a fine paid by a person sentenced on conviction to payment of a fine must retain the fine until the Registrar of the Trial Court is notified of the Court's decision on any related appeal.

(2) An appellant who is in custody in default of payment of a fine must be treated for the purposes of Part III of the Ordinance and these rules as a person sentenced to imprisonment.

Successful appellant entitled to return of amount paid towards fine

38. An appellant who has paid a fine in accordance with a sentence and is successful on appeal is entitled, subject to the order of the Court, to the return of the amount paid or part of the amount paid, as the case may be.

39. A Judge of the Trial Court may give any directions that he or she considers proper concerning

Trial Court Judge may give directions concerning order to pay pro-secution costs, etc.

- (a) the suspension, pending appeal, of any order made under any enactment for the payment of the costs of the prosecution or any part thereof.
- (b) any consequence flowing from a conviction.

40.—(1) The Registrar must keep a register, in any form he or she thinks fit, of all

Register must be kept

- (a) notices of appeal and notices of application for leave to appeal received by the Registrar; and
- (b) decisions of the Court given in the appeals referred to in those notices.

(2) The register must be open for public inspection during the Court's ordinary office hours or, if necessary, at any other time arranged by the Registrar.

41. Notices may be given to the Court by serving them by hand or by sending them to the Registrar, at his or her office, by mail, fax or any other written or printed means.

Mode of giving notice to Court

42. A notice may be given to a party

- (a) at his or her postal address by mail or by any other written or printed means; or
- (b) by faxing it to a fax number supplied by the party.

Mode of giving notice to parties

43. The performance of any duty imposed on any person under Part III of the Ordinance or these rules may be enforced by order of the Court.

Court order may enforce rules

44.—(1) Non-compliance by a party with these rules does not prevent that party from continuing to take part in the appeal if the Court considers that the non-compliance may be waived or remedied by amendment or otherwise.

Effect of non-compliance with rules

(2) The Court may, in any manner that it thinks fit

- (a) direct the party to remedy the non-compliance; and
- (b) if the party was not present in Court when the direction was given, direct the Registrar to transmit its direction to the party.

45. In any matter not expressly provided for by these rules, the Court may give any direction that it thinks best calculated to carry out the purposes of Part III of the Ordinance or other relevant enactment.

Cases not provided for in rules

SCHEDULE**Forms**

Form 1

Notice of application for leave to appeal

*Sections 35DD, 35E, 36(1)(a)(iii) and 36(1)(b), Judicature (Appeals in Criminal Cases) Ordinance**In the Pitcairn Court of Appeal**Queen v***To the Registrar of the Court of Appeal**

I, [full name], the person named in the proceeding described above, give you notice that I apply for the leave of the Court of Appeal to appeal to that Court against [Give particulars of the decision against which you wish to appeal, including the date on which and the place at which it was made] on the grounds set out below and I give answers as follows to the following questions

- 1 (a) Is any lawyer now acting for you?
(b) If so, give his or her name and address and fax number.
(c) Have you applied, or do you intend to apply for a grant of legal aid under the Legal Aid (Criminal Proceedings) Ordinance?
- 2 If you are currently in a penal institution, which one?
- 3 If you do not currently have a lawyer, what is your current postal address and fax number (if any)?
- 4 (a) If you are in custody and are granted an oral hearing, do you wish to apply for leave to be present?
(b) If so, what are your reasons for seeking leave to be present?
[If you wish to have bail, you must apply separately in writing setting out the reasons and grounds for your application.]
- 5 You have 28 days from the date of the decision against which you wish to appeal in which to file your application. The Court may extend this time. If your application is out of time, what are your reasons for saying that the Court should nevertheless extend the time and consider your application?
- 6 What are the grounds of your application for leave to appeal?
- 7 Include in this application anything that is relevant to the decision about whether your appeal should be considered at an oral hearing or be dealt with on the papers, such as
 - (a) whether you have been assisted by counsel in preparing your application for leave;
 - (b) (if relevant) whether you have been provided with copies of the relevant trial documentation;
 - (c) the gravity of the offence;
 - (d) the nature and complexity of the issues raised by your application;
 - (e) whether any evidence should be called;
 - (f) any relevant cultural or personal factors.

Dated this *[date]* day of *[month]* *[year]*

.....
Signature of applicant

Note

Your application will be considered at an oral hearing (i.e. a hearing at which oral submissions may be made) *unless* the Court or a Judge determines that the application can be fairly dealt with on the papers and either has no realistic prospect of success or clearly should be allowed. In that case, the application will be dealt with at a hearing on the papers. This is a hearing at which the Court makes its decision solely on the basis of the written material before it.