
 STATUTORY INSTRUMENTS

1978 No. 182

JUDICIAL COMMITTEE

The Malaysia (Appeals to Privy Council) Order 1978

Made - - - - 9th February 1978
 Coming into Operation 2nd March 1978

At the Court at Buckingham Palace, the 9th day of February 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas an Agreement was concluded on 30th May 1977 between Her Majesty's Government in the United Kingdom and the Government of the Federation of Malaysia for alteration of the arrangements for the reference to the Judicial Committee of the Privy Council of appeals from the Federal Court of Malaysia:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by section 3 of the Federation of Malaya Independence Act 1957(a) and section 5 of the Malaysia Act 1963(b) 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:—

1.—(1) This Order may be cited as the Malaysia (Appeals to Privy Council) Order 1978 and shall come into operation on 2nd March 1978.

(2) The following Orders are hereby revoked—

The Federation of Malaya (Appeals to Privy Council) Order in Council 1958(c);

The Malaysia (Appeals to Privy Council) Order in Council 1963(d);

The Malaysia (Appeals to Privy Council) (Amendment) Order 1969(e).

(3) In this Order, unless the context otherwise requires—

“appeal” includes an application for leave to appeal;

“the Committee” means the Judicial Committee of the Privy Council;

“the Constitution” means the Constitution of Malaysia;

“the Federal Court” means the Federal Court of Malaysia.

(4) Unless the context otherwise requires, the Interpretation Act 1889(f) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

(a) 1957 c. 60.
 (d) S.I. 1963/2086.

(b) 1963 c. 35.
 (e) S.I. 1969/369.

(c) S.I. 1958/426.
 (f) 1889 c. 63.

2.—(1) The Committee shall have jurisdiction in respect of appeals from the Federal Court to His Majesty the Yang di-Pertuan Agong by leave of the Federal Court—

- (a) from any final judgment or order in any civil matter where—
 - (i) the matter in dispute in the appeal amounts to or is of the value of twenty-five thousand dollars or upwards;
 - (ii) the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right of like amount or value; or
 - (iii) the case is from its nature a fit one for appeal; and
- (b) from any interlocutory judgment or order which the Federal Court considers a fit one for appeal.

(2) The Committee shall also have jurisdiction in respect of appeals from the Federal Court to His Majesty the Yang di-Pertuan Agong—

- (a) in any of the cases referred to in subsection (1) hereof where leave of the Federal Court has not been duly obtained; and
- (b) in any case arising in a civil matter other than the cases referred to in subsection (1) hereof,

where application for special leave to appeal has been made and His Majesty, acting on the recommendation of the Committee, has granted special leave to appeal.

(3) (a) Notwithstanding subsections (1) or (2) hereof the Committee shall not have jurisdiction in respect of appeals—

- (i) from any decision as to the effect of any provision of the Constitution including the validity of any written law relating to such provision; or
- (ii) from any opinion pronounced on a reference under Article 130 of the Constitution.

(b) The provisions of paragraph (a) of this subsection shall not apply to any appeal pending on 1st January 1978.

3. The Judicial Committee Act 1833(a) shall apply in relation to appeals from the Federal Court subject to the exceptions and modifications set out in Schedule 1 to this Order.

4. The jurisdiction conferred on the Committee by this Order shall be exercised in accordance with the Rules set out in the Schedule to the Order in Council dated 20th December 1957(b), as from time to time amended, but the said Rules as so amended shall have effect in their application to that jurisdiction subject to the modifications set out in Schedule 2 to this Order.

5. Any report or recommendation made by the Committee in respect of an appeal from the Federal Court shall be in such form as may from time to time appear convenient to the Committee and shall be delivered by the Registrar of the Privy Council to a Secretary of State for transmission to His Majesty the Yang di-Pertuan Agong.

N. E. Leigh,
Clerk of the Privy Council.

(a) 1833 c. 41.

(b) S.I. 1957/2224.

SCHEDULE 1

APPLICATION OF THE JUDICIAL COMMITTEE ACT 1833

The provisions of the Judicial Committee Act 1833 set out in Part I of this Schedule shall not apply in relation to appeals from the Federal Court, and the provisions of the said Act set out in the first column of Part II shall apply subject to the modifications set out in the second column.

PART I

Section 3
Section 4
Section 14
Section 16

Section 20
Section 21
Section 23
Section 24
Section 31

PART II

(1)	(2)
Section 5	The words "to his Majesty" and the proviso shall be omitted.
Section 8	The following section shall be substituted:— "8. In any matter which shall come before the said judicial committee it shall be lawful for the said committee to direct or recommend that such witnesses shall be examined or re-examined, and as to such facts, as to the said committee shall seem fit, notwithstanding any such witness may not have been examined, or no evidence may have been given on any such facts in a previous stage of the matter; and it shall also be lawful for the said committee, upon any appeal, to recommend that the matter which shall be the subject of such appeal shall be remitted to the court from the decision of which such appeal shall have been made, and at the same time to recommend that such court shall rehear such matter, in such form, and either generally or upon certain points only, and upon such rehearing take such additional evidence, though before rejected, or reject such evidence before admitted, as the said committee shall recommend."
Section 9	For the words "or if a Quaker or a Moravian" the words "or if he so desires" shall be substituted.
Section 13	The following section shall be substituted:— "13. In any matter which shall come before the said judicial committee it shall be lawful for the said committee to recommend that a new trial be held either generally or as to certain points only."
Section 15	The following section shall be substituted:— "15. The costs in any appeal or matter referred to the said judicial committee shall be paid by such party or parties, person or persons, as his Majesty the Yang di-Pertuan Agong shall, on the recommendation of the said committee, direct and shall be taxed by the aforesaid registrar or such other person or persons, to be appointed by his Majesty in council, as the said committee shall direct."

Section 28 For the words “and his Majesty in council shall have and enjoy in all respects such and the same powers of enforcing judgments, decrees, and orders, as are” there shall be substituted the words “as is”.

SCHEDULE 2

MODIFICATIONS OF THE JUDICIAL COMMITTEE RULES 1957 IN THEIR RELATION TO APPEALS FROM THE FEDERAL COURT

1. Save as is otherwise provided in this Schedule or where the context otherwise requires, any reference in the Rules to Her Majesty or Her Majesty in Council shall be construed as a reference to His Majesty the Yang di-Pertuan Agong acting on the recommendation of the Committee, and references to Orders of Her Majesty in Council shall be construed accordingly.
2. For the words “Her Majesty in Council” in the definition of “Record” in paragraph (1) of Rule 1 there shall be substituted the words “the Judicial Committee”.
3. Paragraph 1 of this Schedule shall not apply to the definition of “Agent” in paragraph (1) of Rule 1.
4. For the words “Her Majesty in Council” in the definition of “Party” in paragraph (1) of Rule 1 there shall be substituted the words “the Judicial Committee”.
5. For the words “Her Majesty in Council” in paragraph (2) of Rule 1 there shall be substituted the words “The Judicial Committee”.
6. For the words “to advise Her Majesty” in Rule 3 there shall be substituted the words “to recommend to His Majesty the Yang di-Pertuan Agong”.
7. For the words “to advise Her Majesty” in Rule 6 there shall be substituted the words “to recommend to His Majesty the Yang di-Pertuan Agong”.
8. For the words “if Her Majesty in Council, on the advice of” in Rule 10 there shall be substituted the words “if His Majesty the Yang di-Pertuan Agong, on the recommendation of”.
9. For the words “Her Majesty” in the last sentence of Rule 11, the words “His Majesty the Yang di-Pertuan Agong” shall be substituted.
10. For the words “Her Majesty” in Rule 36 there shall be substituted the words “His Majesty the Yang di-Pertuan Agong”.
11. For the words “Her Majesty” in Rule 56 there shall be substituted the words “His Majesty the Yang di-Pertuan Agong”.
12. For the word “Orders” in Rule 75 there shall be substituted the word “recommendations”.
13. For the words “given their decision” in Rule 77 there shall be substituted the words “announced their recommendation”.
14. The following Rule shall be substituted for Rule 80:—

“80. A statement of the amount allowed by the Taxing Officer on taxation shall, subject to any appeal from his taxation to the Judicial Committee, and subject to any recommendation from the Committee to the contrary, be transmitted to His Majesty the Yang di-Pertuan Agong for insertion in His Order determining the Appeal or Petition”.
15. The following items in Part II of Schedule B shall be omitted, that is to say:—

“Original Order of Her Majesty in Council determining an Appeal
Any other original Order of Her Majesty in Council
Plain copy of an Order of Her Majesty in Council”.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order amends and consolidates Orders conferring jurisdiction on the Judicial Committee of the Privy Council in respect of appeals from the Federal Court of Malaysia.

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