

JUDICIAL REVIEW

PRACTICE NOTE 1/2008

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ALL EMAIL QUERIES TO THE JUDICIAL REVIEW OFFICE SHOULD BE ADDRESSED TO judicialreviewoffice@courtsni.gov.uk AND NOT TO AN INDIVIDUAL IN THE OFFICE.

PART A - PRE ACTION PROTOCOL

A Pre Action Protocol for Judicial review was issued on the same day as this revised Practice Note.

A copy of the Protocol appears at Appendix I.

Where the protocol applies the parties should make use of the form of letter before application and the response to letter before application contained in the annexes to the Protocol.

Note that the Protocol will not be appropriate where the decision maker does not have power to change the decision or in urgent cases.

PART B - PLEADINGS

(1) **An application for leave to apply for judicial review** must be made by lodging (under O53R3(2)) -

- (i) an ex parte docket,
 - (ii) an Order 53 Statement, and
 - (iii) affidavit(s) (and exhibits).
- (a) The papers will be referred to the Judge. Leave may be granted on the papers. The standard form Order requires service of notice in 14 days, respondent's affidavit in 21 days, applicant's rejoinder in 14 days and the fixing of a provisional date for hearing or a date for review.
- (b) Alternatively a leave hearing will be arranged and where possible notice of the leave hearing will be required to be given by the applicant to the proposed respondent(s) and may be required to be given to any other interested parties. In addition, where possible, the applicant will be required to serve the papers on the proposed respondent(s) and may be required to serve the papers on any other interested parties.
- (c) It is the responsibility of the applicant's solicitor, and not the Judicial Review Office, to identify the appropriate respondent(s) and their legal representative(s).
- (d) Where the proposed respondent is a Northern Ireland department, the solicitor and address for service are: The Solicitor, Department of Finance and Personnel, Departmental Solicitor's Office, Centre House, 79 Chichester Street, Belfast, BT1 3JE. **The list of relevant departments is set out in Appendix II.**
- (e) Where the proposed respondent is a Department of the Government of the United Kingdom, the solicitor and address for service are: The Crown Solicitor, Royal Courts of Justice, Chichester Street, Belfast BT1 3JY. **The list of relevant departments is set out in Appendix III.**
- (f) **Immigration and Asylum Cases - Challenging Removal**

The application must be accompanied by -

- (i) a copy of the removal directions and the decision to which the application relates;

- (ii) any document served with the removal directions including any document which contains the Immigration and Nationality Directorate's factual summary of the case; and
- (iii) if the applicant is unable to comply with (i) and (ii) above, a statement of the reasons why.

(2) The O53 Statement should set out -

- (a) the name and description of the applicant;
- (b) the relief sought;
- (c) the grounds on which the relief is sought [and NOT the evidence or the arguments];
- (d) particulars of any claim to rights under the European Convention on Human Rights (as referred to in Part C below);
- (e) notice of any "devolution issue" (as referred to in Part D below); and
- (f) where relevant, a statement that the application is an "Aarhus Convention case" for the purposes of the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 ('the 2013 Regulations') and, where the applicant does not wish the 2013 Regulations to apply to the application, this should be stated also.¹

(3) Preparation of Affidavits and Exhibits

Practice Direction 5/2005 issued by the Lord Chief Justice on 25 July 2005 on "Preparation of Affidavits and Exhibits" applies to affidavits and exhibits filed in Judicial Review proceedings.

The relevant text appears in Appendix IV.

It is intended that the trial papers should, where possible, comprise one file containing two parts. The first part should contain the affidavits of all the parties with an index of affidavits. The second part should contain the exhibits of all the parties with an index of exhibits. Each part will have its own continuing pagination as new papers are filed during the progress of the case. All copying should be made on both sides of each sheet of paper.

Where the volume of material so requires there will be more than one file, but the files should contain in the first part the affidavits and in the second part the exhibits.

¹ S.R. 2013 No. 81

(4) The applicant's affidavit(s)

In addition to the matters in the above Practice Direction the applicant's affidavits should -

- (a) set out the evidence [and NOT the arguments];
- (b) explain any delay in applying promptly;
- (c) refer to any documents in the applicant's exhibits by document number or page number (it is not necessary to "beg to refer" to an exhibit);
- (d) comply with the duty of candour;
- (e) be accompanied by an index to affidavits; and
- (f) in relation to any later affidavit(s) filed on behalf of the applicant, be added to the first part of the file containing the affidavit(s) of all the parties, with continuing pagination, and be accompanied by an amended index of affidavits.

(5) The applicant's exhibit(s)

In addition to the matters in the above Practice Direction -

- (a) The papers should comprise in the first part the affidavits and in the second part the exhibits.
- (b) There should be one indexed and paginated set of applicant's exhibits.
- (c) The exhibits should include, in a separate section, the relevant correspondence in chronological order.
- (d) The affidavits and the exhibits should where possible be presented in one file. Where the volume of material requires it, the affidavits and the exhibits may be in more than one file, with the first part containing the affidavits with their own index and continuing pagination and the second part containing the exhibits with their own index and continuing pagination.
- (e) Any later exhibits of the applicant should be added to the earlier exhibits of all the parties, with continuing pagination, and accompanied by an amended index of exhibits.
- (f) Key documents should be marked in the exhibits index with an asterisk.
- (g) Copies of legislation should not be included in the exhibits.

- (h) Only necessary documents should be exhibited. Relevant extracts only should be included where appropriate. The Court may disallow costs where superfluous materials are included.

(6) Notice of Motion

- (a) Where leave has been granted an originating motion must be **issued** in 14 days or leave lapses [O53R5(5)]. Where leave has lapsed, an application for extension of time or for a further grant of leave must be made by summons and an affidavit explaining the failure to issue and serve the notice of motion in time. The Court may order costs against the party who has failed to comply with the time limits.
- (b) The notice of motion should specify only the relief and grounds in respect of which leave has been granted.
- (c) The notice of motion should be accompanied by the O53 Statement as amended by the grant of leave.
- (d) An affidavit of service of the notice of motion should also be filed in the Office within 14 days of the grant of leave.

(7) Replying affidavit(s)

In addition to the matters in the above Practice Direction the replying affidavit(s) should –

- (a) set out the evidence [and NOT the arguments];
- (b) refer to the respondent’s exhibits, or to the exhibits of any other party, by document number or page number (it is not necessary to “beg to refer” to an exhibit);
- (c) comply with the duty of candour; and
- (d) be added to the part containing the affidavits already filed, with continuing pagination, and accompanied by an amended index of affidavits.

(8) Respondent’s exhibit(s)

In addition to the matters in the above Practice Direction –

- (a) There should be one indexed and paginated set of respondent’s exhibits.

- (b) The respondent's exhibits should be added to the part of the file containing the applicant's exhibits. Where the volume of material requires it the affidavits and exhibits may be in more than one file, with the first part containing the affidavits with their own index and continuing pagination and the second part containing the exhibits with their own index and continuing pagination.
- (c) Material contained in the applicant's exhibits should not be copied into the respondent's exhibits. References to material contained in the applicant's exhibits should be to the document number or page number.
- (d) Key documents should be marked in the exhibits index with an asterisk.
- (e) If there are two or more respondents *represented by the same solicitor*, there should be one combined set of respondents' exhibits.
- (f) Similarly if there are notice parties or interveners filing affidavits *where they are represented by the respondent(s) solicitor*, there should be one combined set of respondents' exhibits if possible.
- (g) Copies of legislation should not be included in the exhibits.
- (h) Only necessary documents should be exhibited. Relevant extracts only should be included where appropriate. The Court may disallow costs where superfluous materials are included.

(9) Interlocutory matters

- (a) An interlocutory application can be listed by arrangement with the office on the issue of the requisite papers.
- (b) A case may be listed for mention by arrangement with the Office. If the date has not been agreed with the other parties they should be on notice of the date for mention as the Court is unlikely to take any step in the absence of other parties being on notice.
- (c) Interim orders: Where the parties seek an interlocutory order and are agreed as to the terms of that proposed order they should lodge with the Office a document (with one copy) signed by the parties setting out the terms of the proposed agreed order, and where appropriate citing authorities and statutory provisions relied on. The Office will then submit the document to the Judge and if satisfied that the order should be made the order will be made without the need for attendance by the parties or their representatives.

(10) Urgent applications

- (a) Urgent applications **during office hours** may be arranged by email or telephone or fax to the Judicial Review Office at –

email address – judicialreviewoffice@courtsni.gov.uk

Tel Nos 028 90724673 & 028 90724642

Fax No 028 90313836

Note that during office hours the preferred means of contact is by email.

- (b) Urgent applications **out of office hours** may be arranged by telephone to the RCJ out of hours contact telephone number –

Tel No 028 90235111.

Note that applications out of office hours should only be arranged where it is not possible for the matter to be dealt with during office hours.

- (c) **Certificate of Urgency**

Urgent applications **out of term** must be accompanied by a **Certificate of Urgency** signed by Counsel and lodged before any hearing, and may be arranged –

- (i) (**during office hours**) by email or telephone or fax to the Judicial Review Office at the contacts above.

Note that during office hours the preferred means of contact is by email

- (ii) (**outside office hours**) by telephone to the RCJ out of hours contact telephone number above.

PART C - HUMAN RIGHTS ACT 1998

- (1) Particulars must be given of any claim to rights under the European Convention. [O121R5]
- (2) A “Convention right” is defined in section 1 of the Human Rights Act 1998 as the rights and fundamental freedoms set out in-
 - (a) Articles 2 to 12 and 14 of the Convention,
 - (b) Articles 1 to 3 of the First Protocol, and
 - (c) Article 1 of the Thirteenth Protocol, as read with Articles 16 to 18 of the Convention.
- (3) A party who intends to rely on a “Convention right” or rights shall **state that fact and shall specify** -
 - in the case of an applicant, in the **Order 53 Statement**,
 - in any other case, in a **notice** filed in the Central Office and served on the other parties:
 - (a) details of the Convention right(s) which it is alleged have been (or would be) infringed and details of the alleged infringement;
 - (b) the relief sought;
 - (c) whether the relief sought includes-
 - (i) a declaration of incompatibility; or
 - (ii) damages in respect of a judicial act to which section 9(3) of the Act applies;
 - (d) where the relief sought includes a declaration of incompatibility, details of the legislative provision(s) alleged to be incompatible and the grounds on which it is (or they are) alleged to be incompatible;
 - (e) where the proceedings are brought following a finding by another court or tribunal that a public authority has acted in a way which is made unlawful by section 6(1) of the Act, [*unlawful for a public authority to act in a way that is incompatible with a Convention right*] details of that finding;
 - (f) where the proceedings relate to a judicial act which is alleged to have infringed a Convention right or rights of a party as provided by section 9 of the Act, [*proceedings in respect of a judicial act*] details of

the judicial act complained of and of the court or tribunal which is alleged to have performed that act.

- (4) An **Order 121(2) Notice** will be issued by the Court to the Crown and the parties if the Court is considering making a declaration of incompatibility of primary legislation. The Court will join as a party, if the requisite notice is given, a Minister, a member of the Scottish Executive, a Northern Ireland Minister or a Northern Ireland Department.
- (5) An **Order 121(3A) Notice** will be issued by the Court to the Crown and the parties where the Court is considering the compatibility of subordinate legislation with a Convention right. The Court may join the Crown as a party.
- (6) For the Court to identify any incompatibility issue that may arise and to comply with the notice requirement in the Rules, any party raising such an issue should specify clearly the necessary particulars in the Order 53 Statement, in the case of applicants, or in the notice, in the case of any other party.

PART D - DEVOLUTION ISSUES

- (1) A party raising a “devolution issue” shall specify in a **Notice** filed in the Office and served on each of the parties to the proceedings **the facts and circumstances and points of law** on the basis of which it is alleged that the devolution issue arises, in sufficient detail to enable the Court to determine whether a devolution issue arises in the proceedings. [O120R2]
- (2) A “devolution issue” is defined in Schedule 10 of the Northern Ireland Act 1998 as –
 - (a) a question whether any provision of an Act of the Assembly is within the legislative competence of the Assembly;
 - (b) a question whether a purported or proposed exercise of a function by a Minister or Northern Ireland department is, or would be, invalid by reason of section 24; [*Minister or department has no power to act or legislate where incompatible with Convention rights, Community law, involves discrimination on religious belief or political opinion or seeks to modify entrenched enactments*]
 - (c) a question whether a Minister or Northern Ireland department has failed to comply with any of the Convention rights, any obligation under Community law or any order under section 27 [*Minister may make an order for quotas for international or Community obligations*] so far as relating to such an obligation; or
 - (d) any question arising under the Act about excepted or reserved matters.

A devolution issue shall not be taken to arise in any proceedings merely because of any contention of a party to the proceedings if it appears to the court or tribunal before which the proceedings take place to be frivolous or vexatious.

- (3) Notice by a party of a devolution issue will result in the Court giving notice to the Attorney General, the Attorney General for Northern Ireland and the appropriate Minister or department, any of whom may enter an appearance as a party in the proceedings [O120R3] and any such party shall file a document summarising their legal arguments in respect of the issue [O120R4].

PART E - SKELETON ARGUMENTS.

Practice Direction 6/2011 applies to judicial review proceedings. In particular, the following requirements should be noted:

- (a) Skeleton arguments are compulsory in substantive judicial review proceedings.
- (b) Skeleton arguments are not required in applications for leave, unless directed by the Court.
- (c) Skeleton arguments should include the names and email addresses of counsel and solicitors.
- (d) The applicant's skeleton argument must be delivered to the Judicial Review Office and the other parties (together with the trial papers as referred to in Part F below) at least 10 working days before the hearing date and that the skeleton arguments of all other parties must be delivered at least 5 working days before the hearing date.
- (e) When completing the delivery of the trial papers to the Judicial Review Office the applicant must also provide written or email confirmation that all the papers have been delivered to all the other parties. **If there is non-compliance with this requirement the application will be listed for mention on the following day and an appropriate sanction may be imposed.**

PART F - PAPERS FOR THE HEARING

- (a) The applicant is responsible for ensuring that the Judicial Review Office and the other parties are in possession of a common set of papers, containing all relevant pleadings required for the hearing of the Judicial Review, including the applicant's skeleton argument and related documents, at least 10 working days before the hearing date (less one working day for delivery by email). The papers for the hearing must also include the pleadings filed by the respondent(s) and any other party. The respondent(s) and any other party will each be responsible for lodging their respective skeleton arguments and related documents.
- (b) It is intended that the papers filed in the manner referred to in Part B will build up into one file for the hearing, or more than one file if necessary. These papers may be used as the papers for the hearing, with the addition of updated indexes and the skeleton arguments and related documents.
- (c) There will be cases where the materials filed in the exchanges of affidavits are not all necessary for the hearing. At review of the case prior to hearing the Court may direct that a "core" bundle should be prepared for the hearing. Unless the Court directs otherwise, this "core" bundle should be in the form outlined above, with one part containing affidavits and another part containing exhibits. The contents of the "core" bundle will be directed by the Court, either specifically or in general outline. **It will be the responsibility of the applicant to prepare and file the "core" bundle in accordance with the directions of the Court.**
- (d) **Determination of proceedings:**
 - (i) Where the parties are agreed as to the terms on which proceedings in the Court can be disposed of and require an order of the Court to put those terms into effect, they should lodge with the Office a document (with one copy) signed by the parties setting out the terms of the proposed agreed Order and a short statement of the matters relied on as justifying the making of the order, authorities and statutory provisions relied on being quoted. The Office will then submit the document to the Judge and if satisfied that the Order should be made, the Order will be made without the need for attendance by the parties or their representatives.
 - (ii) If the Court is not satisfied on the information originally provided or subsequently provided at the Court's request, that the Order can properly be made, the proceedings will be listed for hearing in the normal way.
- (e) **Discontinuance /Withdrawal of proceedings:**
 - (i) Where the parties are agreed that proceedings should be withdrawn but require the leave of the Court to do so, or seek an Order as to costs in

relation to those proceedings, they should lodge with the Office a document (with one copy) signed by the parties, setting out the terms of the proposed withdrawal. The Order will be made without the need for attendance by the parties or their representatives. The Court file will then be closed.

- (ii) Where leave of the Court is not necessary for proceedings to be withdrawn and no order as to costs is sought, the applicant must inform the Office in writing, confirming that all other parties to the proceedings have been notified. The Court file will then be closed.
- (iii) An applicant who files a notice of discontinuance must serve a copy of the notice on every other party to the proceedings. Unless the Court orders otherwise, an applicant who discontinues is liable for the costs that a respondent against whom he discontinues incurred on or before the date on which notice of discontinuance was served on him. On receipt of a notice of discontinuance, the Court file will be closed.

APPENDIX I

PRE-ACTION PROTOCOL FOR JUDICIAL REVIEW

Introduction

1. This protocol sets out a code of good practice and contains the steps which parties should generally follow before making an application for leave to bring judicial review (“the application”).
2. It does not affect the time limit specified which requires that any application must be filed promptly and in any event not later than 3 months after the grounds to make the application first arose.
3. This protocol does not impose a greater obligation on a public body to disclose documents or give reasons for its decision than that already provided for in statute and common law. Nonetheless, where the court considers that a public body should have provided **relevant** documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose sanctions. It is important however that the applicant sets out clearly the specific documents, if any, sought and of which he/she is aware.
4. This protocol *will not be appropriate* where the proposed respondent does not have the legal power to change the decision being challenged, for example decisions issued by tribunals such as the Asylum and Immigration Tribunal.
5. This protocol *will not be appropriate* in urgent cases, for example, when directions have been set, or are in force, for the applicant’s removal from the UK, or where there is an urgent need for an interim order to compel a public body to act where it has unlawfully refused to do so (for example, the failure of a local housing authority to secure interim accommodation for a homeless applicant). In such cases an application should be made immediately. A letter before application will not stop the implementation of a disputed decision in all instances. However, in emergency cases, it is good practice to fax to the proposed respondent the draft application which the applicant intends to issue. An applicant is also normally required to notify a respondent when an interim mandatory order is being sought
6. The Courts take the view that litigation should be a last resort, and that applications should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs.
7. It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However,

summarised below are some of the options for resolving disputes without litigation:

- (1) Discussion and negotiation.
- (2) Ombudsmen – the Parliamentary and Health Service, Police and Prison Services for Northern Ireland. Ombudsmen have discretion to deal with complaints relating to maladministration. The British and Irish Ombudsman Association provide information about Ombudsman schemes and other complaint handling bodies and this is available from their website at www.bioa.org.uk. Parties may wish to note that the Ombudsmen are not able to look into a complaint once court action has been commenced.
- (3) Early neutral evaluation by an independent third party, (for example, a lawyer experienced in the field of administrative law or an individual experienced in the subject matter of the claim).
- (4) Mediation – a form of facilitated negotiation assisted by an independent neutral party.

However it is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.

8. Judicial review may not be appropriate in every instance. Applicants are strongly advised to seek appropriate legal advice when considering such proceedings and, in particular, before adopting this protocol or making a claim. Although the Legal Services Commission will not normally grant full representation before a letter before application has been sent and the proposed respondent given a reasonable time to respond, initial funding may be available, for eligible applicants, to cover the necessary work.
9. All applicants will need to satisfy themselves whether they should follow the protocol, depending upon the circumstances of his or her case. Where the use of the protocol is appropriate, the court will normally expect all parties to have complied with it and will take into account compliance or non-compliance when giving directions for case management of proceedings or when making orders for costs.

The letter before application

10. Before making an application, the applicant should send a letter to the proposed respondent. The purpose of this letter is to identify the issues in dispute and establish whether litigation can be avoided.
11. Applicants should normally use the suggested **standard form** for the letter outlined in Annex A.

12. The letter should contain **the date and details of the decision, act or omission being challenged and a clear summary of the facts** on which the application is based. It should also contain the details of any relevant information that the applicant is seeking and an explanation of why this is considered relevant. It should contain a statement of whether or not the applicant wishes the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 to apply to the application and, if the applicant wishes the regulations to apply, the grounds on which they apply.
13. The letter should normally contain the **details of any interested parties** known to the applicant. They should be sent a *copy* of the letter before the application *for information*. **Applicants are strongly advised to seek appropriate legal advice when considering such proceedings and, in particular, before sending the letter before the claim to other interested parties or making an application.**
14. The application should not normally be made until the proposed reply date given in the letter before the application has passed, unless the circumstances of the case require more immediate action to be taken.

The letter of response

15. Proposed respondents should normally respond within 14 days using the **standard format** at Annex B. Failure to do so will be taken into account by the court and sanctions may be imposed unless there are good reasons.
16. Where it is not possible to reply within the proposed time limit the respondent should send an interim reply and propose a reasonable extension. Where an extension is sought, reasons should be given and, where required, additional information requested. **This will not affect the time limit for making an application for judicial review** nor will it bind the applicant where he or she considers this to be unreasonable. However, where the court considers that a subsequent application is made prematurely it may impose sanctions.
17. If the **application is being conceded in full** the reply should say so in clear and unambiguous terms.
18. If the **application is being conceded in part or not being conceded at all**, the reply should say so in clear and unambiguous terms, and:
 - (a) where appropriate, contain a new decision, clearly identifying what aspects of the claim are being conceded and what are not, or give a clear timescale within which the new decision will be issued;
 - (b) provide a fuller explanation for the decision, if considered appropriate to do so;

- (c) address any points of dispute, or explain why they cannot be addressed;
 - (d) enclose any **relevant** documentation requested by the applicant or provide access to relevant documentation requested by the applicant. It should explain why the documents are not being enclosed or explain why access is not being made available;
 - (e) where appropriate, confirm whether or not they will oppose any application for an interim remedy; and
 - (f) where the applicant wishes the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 to apply to the application, state if and why the respondent does not consider the regulations to apply.
19. The response should be sent to **all interested parties** identified by the applicant and contain details of any other parties who the respondent considers also have an interest. It may also be worthwhile for a proposed respondent to make contact with an interested party to ensure it is aware of any delay/prejudice points relevant to the issues.

Annex A

Letter before application

Section 1 - Information required in a letter before application

1. Proposed claim for judicial review

To

(Insert the name and address of the proposed respondent - see details in section 2.)

2. The applicant

(Insert the title, first and last name and the address of the applicant.)

3. Reference details

(When dealing with large organisations it is important to understand that the information relating to any particular individual's previous dealings with it may not be immediately available. Therefore it is important to set out the relevant reference numbers for the matter in dispute and/or the identity of those within the public body who have been handling the particular matter in dispute - see details in section 3.)

4. The details of the matter being challenged

(Set out clearly the matter being challenged, particularly if there has been more than one decision.)

5. The issue

(Set out the date and details of the decision, or act or omission being challenged, a brief summary of the facts and why it is contended to be wrong including any breach of Human Rights relied on.)

6. The details of the action that the respondent is expected to take

(Set out the details of the remedy sought, including whether a review or any interim remedy is being requested.)

7. The details of the legal advisers, if any, dealing with this claim

(Set out the name, address and reference details of any legal advisers dealing with the application.)

8. The details of any interested parties

(Set out the details of any interested parties and confirm that they have been sent a copy of this letter.)

9. The details of information sought

(Set out the details of any information that is sought. This may include a request for a fuller explanation of the reasons for the decision that is being challenged.)

10. The details of any documents that are considered relevant and necessary

(Set out the details of any documentation or policy in respect of which the disclosure is

sought and explain why these are relevant. If you rely on a statutory duty to disclose, this should be specified.)

11. Costs

(If it is an Aarhus Convention case, state whether or not it is intended that the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 should apply. If it is intended that the regulations should apply, set out the grounds on which they apply.)

12. The address for reply and service of court documents

(Insert the address for the reply.)

13. Proposed reply date

(The precise time will depend upon the circumstances of the individual case. However, although a shorter or longer time may be appropriate in a particular case, 14 days is a reasonable time to allow in most circumstances.)

Section 2 - Address for sending the letter before application

Public bodies have requested that, for certain types of cases, in order to ensure a prompt response, letters before application should be sent to specific addresses.

- **Where the application concerns a decision in an immigration, asylum or nationality case:**

Litigation Team
UK Visas and Immigration
Festival Court 1
200 Brand Street
Glasgow
G51 1DH

Email: SNIJRTeam@homeoffice.gsi.gov.uk
Fax: 03703369648

- **Where the application concerns a decision by a local authority:**

The address on the decision letter/notification; and their legal department

- **Where the application concerns a decision by a department or body for whom the Crown Solicitor acts and the Crown Solicitor has already been involved in the case the letter before application should be addressed to the person who sent the letter notifying the decision and a copy should also be sent, quoting the Crown Solicitor's reference, to:**

The Crown Solicitor's Office
Royal Courts of Justice
Chichester Street
Belfast BT1 3JY

- **Where the application concerns a decision by a department or body for whom the Departmental Solicitor acts and Departmental Solicitor has already been involved in the case the letter before application should be addressed to the person who sent the letter notifying the decision and a copy should also be sent, quoting the Departmental Solicitor's reference, to:**

The Solicitor
Department of Finance and Personnel
Departmental Solicitor's Office
Centre House
79 Chichester Street
Belfast
BT1 3JE

In all other circumstances, the letter should be sent to the address on the letter notifying the decision.

Section 3 - Specific reference details required

Public bodies have requested that the following information should be provided in order to ensure prompt response.

- **Where the claim concerns an immigration, asylum or nationality case, dependent upon the nature of the case:**
 - the Home Office reference number;
 - the Port reference;
 - the Asylum and Immigration Tribunal reference number;
 - the National Asylum Support Service reference number; or if these are unavailable;
 - the full name, nationality and date of birth of the claimant.
- **Where the claim concerns a decision by the Legal Services Commission:**
 - the certificate number.

Annex B

Response to a letter before application

Information required in a response to a letter before application

- 1 **The applicant**
(Insert the title, first and last names and the address to which any reply should be sent.)
- 2 **From**
(Insert the name and address of the respondent.)
- 3 **Reference details**
(Set out the relevant reference numbers for the matter in dispute and the identity of those within the public body who have been handling the issue.)
- 4 **The details of the matter being challenged**
(Set out details of the matter being challenged, providing a fuller explanation of the decision, where this is considered appropriate.)
- 5 **Response to the proposed application**
(Set out whether the issue in question is conceded in part, or in full, or will be contested. Where it is not proposed to disclose any information that has been requested, explain the reason for this. Where an interim reply is being sent and there is a realistic prospect of settlement, details should be included.)
- 6 **Details of any other interested parties**
(Identify any other parties who you consider have an interest who have not already been sent a letter by the applicant.)
- 7 **Costs**
(Where the applicant has stated that the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 apply, state if this is disputed and the grounds on which it is disputed.)
- 8 **Address for further correspondence and service of court documents**
(Set out the address for any future correspondence on this matter.)

Annex C

Notes on public funding for legal costs in judicial review

Public funding for legal costs in judicial review is available through solicitors working in private practice and the Not-For-Profit sector.

Funding may be provided for:

- **Legal Advice and Assistance** to provide initial advice and assistance under the 'Green Form scheme', which includes possible extensions on application to the Northern Ireland Legal Services Commission ("NILSC"). Authority for the proposed work to be done by way of an extension must be obtained from the NILSC prior to the work being undertaken.
- **Legal Aid** to provide representation in the judicial review proceedings. This is available in two forms, either a limited civil aid certificate or a full civil aid certificate depending on the circumstances. The applicant's solicitor must ensure that a copy of all correspondence with the proposed respondent is enclosed with the application for funding. This should include – as a minimum – a letter before application in the terms of this protocol, and as referred to in the cases of *Cunningham* [2004] NIQB 58 and X [2007] NIQB 113.

The proposed respondent should have been afforded a reasonable opportunity for a response, without which the NILSC may view any application for funding received as premature. Counsel's opinion should also be furnished where available.

Authority may be granted for a limited certificate, for example to obtain counsel's opinion or in relation to an application for leave hearing.

Subject to all relevant information being provided to the NILSC, and to the outcome of any leave hearing, consideration can be given to granting a full certificate.

Prior to any engagement of senior counsel, application for authority must be made to the NILSC, to include junior counsel's comments on the necessity of this instruction.

Where in the view of the NILSC the circumstances of the case warrant same, a full certificate may be granted from the outset.

APPENDIX II

Service on Northern Ireland Departments

OFFICE OF THE FIRST MINISTER AND DEPUTY FIRST MINISTER

**CROWN PROCEEDINGS ACT 1947
10 & 11 Geo. 6 ch.44**

List of Authorised Northern Ireland departments and the name and address for service of the person who is acting for the purposes of the Act as Solicitor in Northern Ireland for such departments, published by the Office of the First Minister and deputy First Minister (a) in pursuance of Section 17 of the Crown Proceedings Act 1947 as extended to Northern Ireland in relation to Her Majesty's Government in Northern Ireland by the Crown Proceedings (Northern Ireland) Order 1981 read with the Departments (Northern Ireland) Order 1999, the Department for Employment and Learning Act (Northern Ireland) 2001 and the Department of Justice Act (Northern Ireland) 2010.

<i>Authorised Northern Ireland departments</i>	<i>Solicitor and Address for Service</i>
Department of Agriculture and Rural Development)	
Department of Culture, Arts and Leisure)	
Department of Education)	
Department for Employment and Learning)	
Department of Enterprise, Trade and Investment)	
Department of the Environment)	The Solicitor
Department of Finance and Personnel)	Department of Finance and Personnel
Department of Health, Social Services and Public Safety)	Departmental Solicitor's Office
Department of Justice)	Centre House
Department for Regional Development)	79 Chichester Street
Department for Social Development)	Belfast
Office of the First Minister and deputy First Minister)	BT1 3JE
Commissioner of Valuation for Northern Ireland)	
Registrar General of Births, Deaths and Marriages for Northern Ireland)	
Northern Ireland Authority for Energy Regulation)	

(a) See Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481).

NOTES

- A. Sections 17 and 18 of the Crown Proceedings Act 1947 as extended to Northern Ireland, in relation to Her Majesty's Government in Northern Ireland, contain provision to the following effect:-

(Section 17 (3))

Civil proceedings against the Crown in right of Her Majesty's Government in Northern Ireland shall be instituted against the appropriate authorised Northern Ireland Department or, if none of the authorised Northern Ireland Departments is appropriate or the person instituting the proceedings has any reasonable doubt whether any and if so which of those Departments is appropriate, against the Attorney General for Northern Ireland.

(Section 17 (3A))

Civil proceedings against the Crown may be instituted in Northern Ireland against the Attorney General for Northern Ireland if the alleged liability arises out of the performance of any function pursuant to any agency arrangement or the person instituting the proceedings has any reasonable doubt whether the alleged liability of the Crown arises in respect of Her Majesty's Government in the United Kingdom or in respect of Her Majesty's Government in Northern Ireland.

(Section 18)

All documents required to be served on the Crown in right of Her Majesty's Government in Northern Ireland for the purpose of or in connection with any civil proceedings by or against the Crown in right of Her Majesty's Government in Northern Ireland shall, if those proceedings are by or against an authorised Northern Ireland Department, or the person, if any, acting for the purposes of this Act as Solicitor for that Department, or if there is no such Solicitor and no person so acting, or if the proceedings are brought by or against the Attorney General for Northern Ireland on the Solicitor, Department of Finance and Personnel.

- B. This list supersedes the list published on 18 July 2006.

Neill Jackson
A senior officer of the Office of the First Minister and deputy First Minister

7 May 2013

APPENDIX III

Service on Authorised Government Departments

CROWN PROCEEDINGS ACT 1947

10 & 11 Geo. 6 ch. 44

List of Authorised Departments of the Government of the United Kingdom and the name and address for service of the person who is acting for the purposes of the Act as Solicitor in Northern Ireland for such Departments, published by the Office of the First Minister and Deputy First Minister(a) in pursuance of Section 17 of the Crown Proceedings Act 1947 as extended to Northern Ireland in relation to Her Majesty's Government in the United Kingdom by the Crown Proceedings (Northern Ireland) Order 1981 read with the Departments (Northern Ireland) Order 1999.

Authorised Government Departments

Solicitor and Address for Service

ADVISORY, CONCILIATION AND

ARBITRATION SERVICE

ASSETS RECOVERY AGENCY

BOARD OF TRADE

CABINET OFFICE

HER MAJESTY'S REVENUE AND CUSTOMS

CROWN ESTATE COMMISSIONERS

MINISTRY OF DEFENCE

HOME OFFICE

PUBLIC PROSECUTION SERVICE FOR NORTHERN
IRELAND

The Crown Solicitor for
Northern Ireland

LORD CHANCELLOR'S DEPARTMENT

Royal Courts of Justice

DEPARTMENT FOR CONSTITUTIONAL AFFAIRS

Chichester Street

NORTHERN IRELAND COURT SERVICE

BELFAST

DEPARTMENT FOR ENVIRONMENT, FOOD
AND RURAL AFFAIRS

BT1 3JY

DEPARTMENT FOR WORK AND PENSIONS

OFFICE OF THE DEPUTY PRIME MINISTER

EXPORT CREDITS GUARANTEE DEPARTMENT

OFFICE OF FAIR TRADING

NATIONAL SAVINGS AND INVESTMENTS

NORTHERN IRELAND OFFICE

DEPARTMENT OF TRADE AND INDUSTRY

DEPARTMENT FOR TRANSPORT

HER MAJESTY'S TREASURY

(a) See Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481)

NOTES

- A. Sections 17 and 18 of the Crown Proceedings Act 1947 as extended to Northern Ireland, in relation to Her Majesty's Government in the United Kingdom, contain provision to the following effect:

(Section 17(3))

Civil proceedings against the Crown shall be instituted against the appropriate authorised Government department, or, if none of the authorised Government departments is appropriate or the person instituting the proceedings has any reasonable doubt whether any and if so which of those departments is appropriate, against the Attorney General (for Northern Ireland).

(Section 17(3A))

Civil proceedings against the Crown may be instituted in Northern Ireland against the Attorney General (for Northern Ireland) if the alleged liability arises out of the performance of any function pursuant to an agency arrangement or the person instituting the proceedings has any reasonable doubt whether the alleged liability of the Crown arises in respect of Her Majesty's Government in the United Kingdom or in respect of Her Majesty's Government in Northern Ireland.

(Section 18)

All documents required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown shall, if these proceedings are by or against an authorised Government department, be served on the Solicitor, if any, for that department, or the person, if any, acting for the purposes of this Act as Solicitor for that department, or if there is no such Solicitor and no person so acting, or if the proceedings are brought by or against the Attorney General (for Northern Ireland) on the Crown Solicitor for Northern Ireland.

- B. A list of Northern Ireland authorised departments and the addresses for service in Northern Ireland was published on 29th September 2000.
- C. This list supersedes the list published on 1st October 2004.

Neill Jackson
A Senior Officer of the Office
of the
First Minister and Deputy
First Minister

22 February 2006

APPENDIX IV

Practice Direction 5/2005 issued by the Lord Chief Justice on 25 July 2005 on "Preparation of Affidavits and Exhibits".

1. *Practitioners and litigants in person are reminded of the need to comply with the requirements of the Rules of the Supreme Court (Northern Ireland) 1980 ("the Rules") as to the preparation and layout of affidavits and exhibits. For convenience, some key requirements of the relevant rules are scheduled to this Direction but the list is not exhaustive.*
2. *Any affidavit which does not comply with the requirements of the Rules or this practice direction may be rejected by the Court or made the subject of an order for costs.*
3. *There should be shown at the top right hand corner of the first page of each affidavit and exhibit:*
 - (j) *the party on whose behalf it is filed;*
 - (ii) *the initials and surname of the deponent;*
 - (iii) *the number of the affidavit in relation to the deponent;*
 - (iv) *the date when sworn,*
e.g. 2nd Defendant: A B Smith: 3rd 24.6.05.
4. *It is important that a document referred to in an affidavit can be quickly and easily identified. This is especially so when there are several such documents. Where a deponent refers to more than one document, rather than each being exhibited separately a bundle of the documents should be exhibited as one exhibit and referred to, when first mentioned, accordingly (eg "... in the exhibited bundle marked 'AB 1' and signed by me"). The bundle should be paginated (with page numbers being consecutive at the centre bottom of each page) and indexed (with each document being given a particular number). The description of the document in the Index should conform to its description in the body of the affidavit. In the body of the affidavit the deponent, having exhibited the bundle, can either refer to a particular document by reference to its page number(s) in the bundle or by its number in the Index eg "I refer to a copy of the said Mortgage (document number 1 in the Index to the exhibited bundle)".*
5. *When a deponent makes more than one affidavit to which documents are exhibited, the page numbers in the subsequent bundle and the document numbers in the Index to the*

subsequent bundle should follow consecutively from the previous bundle and Index thereto.

6. *Clearly legible photographic copies of original documents may be exhibited instead of the originals provide the originals are made available to all parties for inspection before the hearing and to the Court at the hearing.*
7. *Court documents which prove themselves such as probates, letters of administration, orders and affidavits should not be exhibited though copies of such documents (except, where the hearing is before a Master, orders, affidavits and other documents already filed in the same action or proceeding) should be included in the documents lodged in court for the hearing of the matter. The originals of land certificates, documents of title, and grants of probate or letters of administration should be brought to the hearing and, subject to the direction of the Court, will be handed back immediately after perusal and notation to the party who made them available.*
8. *Affidavits must be so prepared that there is no likelihood of the pages becoming separated and should be bound safely together in a secure manner which does not hamper filing. If staples are used they should be used only to the extent necessary to secure the pages ie only 1 or 2 staples in the top left hand corner. Treasury tags should be avoided as should binders of a thickness disproportionate to that of the pages they secure or which would otherwise hamper filing.*
9. *The normal filing clause to be added to an affidavit reads:
"This affidavit is filed by X, Y and Co of (address including postcode) solicitors for the plaintiff (or as the case may be)."*
10. *The address (not simply the name of the town) at which the affidavit was sworn should be set out clearly in the jurat. If the signature of the person before whom the affidavit is sworn is not decipherable it should be further clarified below by means of a rubber stamp or in block capitals. It should be clearly shown whether such a person is a solicitor or a commissioner for oaths.*
11. *The certificate of the person before whom an affidavit is sworn must be either endorsed on the document or bundle of documents being exhibited or if on a separate sheet must be attached to the documents in the same manner as an affidavit should be bound (but without annexing the exhibit to the affidavit).*

12. *The following is an example of a certificate identifying an exhibit and of the short title permitted by Order 41 rule 1(2) and (3) for affidavits:*

*“IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
..... DIVISION*

BETWEEN

JOHN SMITH & ORS

Plaintiff;

WILLIAM BROWN & ORS

Defendants.

This is the exhibit marked JS 1 referred to in the affidavit of John Smith sworn before me on

(Signature)

A solicitor (or Commissioner for oaths)”

13. *There is no need for the deponent to sign the exhibit.*
14. *Where a deponent wishes to refer to a document already exhibited to some other deponent’s affidavit he should not also exhibit it to his own affidavit but refer to the exhibited document or (as the case may be) the appropriate page number in the relevant exhibited bundle of that other affidavit.*
15. *It is the responsibility of the solicitor or litigant in person by whom any affidavit is filed to ensure that every page of every exhibit is fully and easily legible.*
16. *Where at the time of the hearing the affidavits or exhibits (whether of single documents or bundles) have become numerous they should be put in a consolidated bundle or file or files and be paged consecutively throughout and indexed. The exhibits should be in a separate bundle or file.*

SCHEDULE

Some key provisions of the Rules in respect of affidavits

1. *Affidavits may contain statements of information or belief. Any such statements must be accompanied by statements of the sources or grounds of the information or belief and if not so accompanied are inadmissible: Order 41 rule 5; Re J. L. Young Manufacturing Co -v- Young [1900] 2 Ch. 763.*
2. *Every affidavit must be on A4 S10 paper of durable quality having a blank margin not less than 3.8 cm wide on the left side of the face of the paper and on the right side of the reverse (Order 66 rule 1).*
3. *Every affidavit must be bound in book form and, whether or not both sides of the paper are used the printed, written or typed side of the page must be numbered consecutively (Order 41 rule 1(5)).*
4. *Every affidavit must be divided in paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject (Order 41 rule 1(6)).*
5. *Dates, sums and other numbers must be expressed in an affidavit in figures and not in words (Order 41 rule 1(7)).*
6. *Every affidavit must be endorsed with a note showing on whose behalf it is filed and an affidavit not so endorsed may not be filed or used without the leave of the court (Order 41 rule 9(2)).*
7. *An affidavit which has in its jurat or body any interlineation, erasure or other alteration shall not be filed or used in any proceedings without the leave of the court unless the person before whom the affidavit was sworn has initialled the alteration and, in the case of an erasure, has re-written in the margin of the affidavit any words or figures written on the erasure and has signed or initially them (Order 41 rule 7(1)). Where an affidavit is sworn at any office of the Supreme Court, the official stamp of that office may be used instead of such signature or initials (Order 41 rule 7 (2)).*
8. *Exhibits must not be annexed to the affidavit (Order 41 rule 11(1)).*
9. *Every exhibit to an affidavit must be marked and labelled with the initials of the deponent followed by a number (rule 11(3)) and identified by a certificate of the person before whom it is sworn which certificate must bear the same title as that of the affidavit (rule 11(2)).*