

JUDICIAL REVIEW PRACTICE DIRECTION

3/2018

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Preface

- [1] The central themes of this revised Practice Direction are partnership, co-operation, efficiency and expedition. Judicial review is a distinctive species of litigation. It lacks many of the trappings of private law litigation. This is reflected, firstly, in the notion of partnership with the Court. Every party and all representatives should be conscious of this partnership and its implications at every stage. It is illustrated particularly in the supremely important duties of candour and co-operation. The related themes of efficiency and expedition require no elaboration. At heart they are designed to ensure that the principles enshrined in the over-riding objective are at the forefront of every case, from initiation to completion. The parties and the Court share the common aim of processing every case in a manner which makes the best possible use of the Court's limited resources and brings about an outcome within reasonable timescales, consistent with every party's inalienable right to a fair hearing.

General

- [1] This Practice Direction, issued with the approval of the Lord Chief Justice (NI), supersedes its predecessor (issued on 16 January 2006, revised on 30 September 2008 and 10 October 2013).
- [2] This Practice Direction complements, but does not modify or amend, the relevant provisions of the Rules of the Court of Judicature ("RCC"), in particular – but not limited to – Order 53.
- [3] Familiarity with RCC Orders 1, 24, 38, 41, 53, 54, 59, 62, 119 and 120 is essential for all judicial review practitioners.
- [4] It is not the function of the Judicial Review Office (the "Office") to prepare bundles or print papers for Judges. Exceptions to the latter will be made only in compelling circumstances and upon judicial direction.
- [5] Practitioners are urged to limit electronic communications with the Office to the absolutely essential. Part G of this Practice Direction will be strictly applied in every case.
- [6] **All email communications with the Office should be addressed only to judicialreviewoffice@courtsni.gov.uk.**

Part A Re Pre-action Protocol

- (1) The Pre-Action Protocol (“PAP”) is at Appendix I. It is an integral part of this Practice Direction.
- (2) The PAP letters in Appendix 1 will be used in every case. They contain the minimum contents and are not intended to preclude inclusion of other significant content.
- (3) The duty of strict compliance with the PAP applies in every case, except in the most urgent or compelling circumstances and irrespective of whether the proposed Respondent is legally empowered to revoke or alter the impugned decision or action. Judicial direction should be promptly and proactively sought in every such case.
- (4) The PAP mechanism has among its aims the avoidance of litigation where this can be achieved. Having regard to the time limit of three months prescribed by RCC Order 53, Rule 4, it is essential to specify certain time limits belonging to the PAP phase. To this end, as a general rule:
 - (a) The putative Applicant’s PAP letter will be transmitted not later than 7 weeks following the date of the impugned decision, act or measure.
 - (b) The agency or agencies to whom the Applicant’s PAP letter is directed shall respond within the ensuing period of 3 weeks.
- (5) Parties and practitioners are reminded that neither the Court nor the Office has any function of any kind until proceedings are initiated and lodged.
- (6) Any failure to comply properly with the PAP may have (*inter alia*) adverse costs implications for the defaulting party or its representatives.

Part B: Initiating Proceedings, the Order 53 Pleading, Service
and the leave stage generally

Preface

The Applicant's pleading is a vital element of every judicial review case. This is reflected in the model Order 53 Statement at Appendix II. Concision, clarity, precision and adequate particularity are the supreme requirements of every Order 53 pleading.

- (1) An application for leave to apply for judicial review must be made by lodging (under O53 R3(2)) -
 - (i) an ex parte docket;
 - (ii) an Order 53 Statement;
 - (iii) affidavit(s) (and exhibits).
- (2) The model Order 53 Statement at Appendix II must be used in every case, without exception.
- (3) Every Order 53 Statement will be completed in an electronic format which allows electronic transmission to the Office in urgent cases and permits any later necessary revisions.
- (4) Any request for urgent or expeditious consideration must be clearly highlighted in both the Order 53 Statement and in separate communication with the Office.
- (5) Every application for leave to apply for judicial review must be served on both the Office and the proposed Respondent or its notified or usual legal representatives, complying strictly with the service provisions of Appendices III and IV hereof.
- (6) There will be cases in which the Applicant will be expected to also serve the judicial review leave application on a person or agency with an obvious interest in the subject matter of the proceedings.
- (7) Every application for leave to apply for judicial review will be determined in one of three ways:

- (a) On the papers, where the Court is proposing to grant leave without any form of hearing.
 - (b) At an *ex-parte* hearing: this is likely to be reserved to cases of exceptional urgency or possessing some other special or compelling feature.
 - (c) At an *inter-partes* hearing attended, upon the invitation of the Court, by the proposed Respondent and any non-party so invited.
- (8) The Court, prior to determining the leave application, may, at its discretion, invite the proposed Respondent and/or any non-party on whom the application has been served to set forth their response to the Applicant's case in writing, either generally or in such specific respects as may be directed.
 - (9) Where the proposed respondent is a Northern Ireland department the solicitor and address for service are the Departmental Solicitor's Office, Centre House, 79 Chichester Street, Belfast BT1 4JE. **See Appendix III.**
 - (10) Where the proposed respondent is an Authorised Government Department the solicitor and address for service are the Crown Solicitor's Office, Royal Courts of Justice, Chichester Street, Belfast BT1 3JY. **See Appendix IV.**
 - (11) Where the proposed Respondent is a statutory body involved in the provision of health or social care, the solicitor and address for service are the Chief Legal Advisor, HSC Business Services Organisation, Directorate of Legal Services, 2 Franklin Street, Belfast, BT2 8DQ.

Immigration and Asylum Cases - Challenging Removal Or Deportation.

- (12) Every application for leave to apply for judicial review and/or interim relief or expedition 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;
 - (iii) If the applicant is unable to comply with (i) and (ii) above, a statement of the reasons why.

- (iv) Particulars of the time/date/method of service of the papers on the proposed Respondent or its representative.

The Leave Bundle

- (13) Every leave application bundle shall:
- (a) Have as its first page an index describing fully and coherently each element of the contents.
 - (b) Be paginated from beginning to end.
 - (c) Be composed in the following manner and sequence:
 - Ex parte docket.
 - Certificate of Urgency, where appropriate, accompanied by the Applicant's draft interim relief order.
 - Order 53 Statement, accompanied by proposed litigation timetable and, where appropriate, any Certificate of Legal Aid.
 - Each supporting affidavit, every affidavit to be followed by its particular exhibited documents.
 - PAP correspondence (always the final components).

Affidavits and Exhibits

- (14) Practice Direction 5/2005 ("PD5") 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 is in Appendix V.**
- (15) Every affidavit will have one exhibits sheet. The documents thus exhibited will be identified and described in the composite index specified in [13] (a) above.
- (16) Every affidavit shall, in addition to complying with RCC Order 41 and PD5:
- (i) Comply with the deponent's duty of candour to the Court.

- (ii) Consist exclusively of averments of fact.
- (iii) Avoid sworn argument.
- (iv) Avoid mere comment.
- (v) Avoid repetition of previous sworn averments and quotations from other affidavits
- (vi) Omit reference to any statutory provisions or case law.
- (vii) Proactively and fully address issues such as urgency, expedition, anonymity, missing/unavailable material documents and delay.
- (viii) Will not exhibit legislation or cases.

Urgent applications

- (17) Every urgent application for leave or interim relief or interlocutory relief **during office hours** may be arranged by email or telephone to the Judicial Review Office at –

email address – judicialreviewoffice@courtsni.gov.uk

Tel Nos. **028 90724695 & 028 90725917**

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

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

Tel No **028 90724618**

or the Out of Hours Mobile phone number - which has been provided to legal practitioners via the relevant channels.

Note that applications out of office hours are exceptional, to be confined to compelling cases where it is not possible for the matter to be dealt with during office hours.

(19) Urgent applications **out of term** must be accompanied by a **Certificate of Urgency, explaining WHY urgent processing is requested**, signed by Counsel and lodged before any hearing, and may be arranged -

(i) **(during office hours)** by email or telephone 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.

(20) **Compassionate temporary release and kindred applications.** Every challenge by a prisoner to a negative compassionate temporary release decision and every kindred challenge shall be compliant with the requirements specified in Re McKee's Application for Judicial Review [2018] NIQB 60 at [1] - [13]. **These are reproduced in Appendix VII.**

Hearing Dates

(21) The general rule is that the date for every hearing - leave, interim relief, case management review, substantive adjudication *et al* - will be determined by the Judge and notified to the parties/their representatives. The parties and their representatives are, however, strongly encouraged to proactively communicate with each other and the Office from the earliest stage possible with a view to applying for an agreed hearing date or making representations in respect thereof. All such notifications and representations, provided that they are timeously made, will be taken into account by the Court.

(22) Every prospective or actual judicial review Respondent and every interested party must pay particular attention to the timetable attached to the Order 53 pleading, timeously and proactively engaging with all other parties/their legal representatives.

(23) Every application to vacate or vary a hearing date of any kind will be made timeously, in writing, containing the essential brief particulars and following communication among all parties and their representatives.

PART C: POST-LEAVE

Notice of Motion

- (24) Where leave has been granted an originating motion must be **issued** in 14 days or leave lapses [RCC Order 53, R5(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.

Draft Orders

- (25) The relevant party will provide the Office with a draft order, containing all necessary terms, and indicating the agreement or absence thereof of every other party, in all such cases as are appropriate.
- (26) A draft order will be especially appropriate in cases where the parties/their representatives are agreed about the proposed course of action and, without prejudice to the generality of the foregoing, in the following instances in particular:
- (i) Interim relief.
 - (ii) Protective costs.
 - (iii) Timetabling matters.
 - (iv) Final disposal.
- (27) Every draft order relating to final disposal will include a recital or recitals stating in **concise** and intelligible terms the basis of/reasons for the course of action/outcome which the Court is invited to sanction. In many cases this will entail a simple statement such as:

“AND THE RESPONDENT having [provided OR done OR completed ... OR agreed to provide/do/complete] ‘X’ by ‘Y’ date”

- (28) Where the parties are unable to agree on costs they shall proactively provide, with the draft order, their competing written representations, not to exceed two A4 pages without the express prior permission of the Court.

PART D: BUNDLES OF DOCUMENTS

- (29) Every leave application bundle compliant with the requirements specified in Part B above shall become **Trial Bundle 1, Part II**.
- (30) The **Trial Bundle 1, Part I** shall in every case consist of, in the following sequence:
- The Order 53 Statement, in final form, showing in colour any amendments.
 - The Notice of Motion.
 - All Orders/directions of the Court from the inception of proceedings.
 - Where appropriate: chronology, agreed schedule of material facts, list of dramatis personae, glossary.
 - Skeleton arguments.
- (31) Further regulation of **Trial Bundle 1:**
- (a) It will have a new covering index, reflecting its enlarged contents.
 - (b) The pagination of Part I will be IA, IB etc.
 - (c) The pagination of Part II will be unchanged.
- In this way **Trial Bundle 1, Part II** will be an exact duplicate of the **leave bundle**.
- (32) **Trial Bundle No 2** will be an indexed and paginated compilation consisting of (a) any materials provided by the Respondent at the leave stage and (b) the totality of the Respondent's affidavits and exhibited documents and will in every case begin with a comprehensive covering index.
- (33) **Trial Bundle No 3** will contain the affidavit evidence and exhibited documents of any authorised participating interested party and will comply fully with all of the aforementioned requirements.
- (34) In any case where the Applicant, with the permission of the Court, rejoins to the Respondent's affidavit evidence and documents:

- (i) **Trial bundle 1, Parts I and II** will be as directed above.
 - (ii) The Applicant's rejoinder affidavit/s (where appropriate) and exhibits will be compiled as **Trial Bundle 1, Part III**, continuing the pagination of Part II **and** the covering index at the beginning of the bundle will be revised accordingly.
 - (iii) Where for reasons of volume or otherwise the mechanism in (ii) above is not feasible, the Applicant's rejoinder materials will be assembled in a new bundle, with a new covering index and new pagination **and** the bundle will be described as **Trial Bundle No 3** unless this is not practically feasible.
 - (iv) The pagination in Trial Bundle 1, Part 2 will be an extension of the last page number in Part 1.
 - (v) The composite covering index at the beginning of the bundle will be amended accordingly.
- (35) In any case where, for reasons of bulk or otherwise, the pleadings/affidavits/documentary exhibits cannot be accommodated in bundles of conventional size, this will frequently be an indicator that a **core bundle** is required, irrespective of any special or specific direction of the Court. Where appropriate, this issue will be proactively addressed by the parties' representatives and the Applicant/its representatives will file such bundle with the Office and serve same on all other parties/their representatives **at latest 7 working days prior to the scheduled hearing date.**

Planning/Environmental Judicial Reviews

- (36) In every planning/environmental judicial review, the trial bundles will be compliant with the requirements specified above, together with the following:
- (a) All planning policy documents in the evidence will be assembled in chronological sequence in a free standing bundle.
 - (b) Photocopies of planning policies are frequently of unsatisfactory quality; accordingly, "original" brochures/leaflets *et al* should normally be used.

- (c) All photographs and maps, IN COLOUR, shall be assembled in a free standing bundle OR, where feasible, in a separate Part 2 of the Policies Bundle.
- (d) Each of the aforementioned bundles shall begin with a comprehensive covering index.
- (e) The Applicant shall, following consultation with all other parties, provide at least 7 days prior to the substantive hearing date:
 - (i) A chronology of material dates and events.
 - (ii) A schedule of agreed material facts (only where directed)
 - (iii) A glossary of terms/acronyms.
 - (iv) A list of *dramatis personae*.

PART E: STANDARD DIRECTIONS

- (1) The Applicant's representatives have the lead responsibility in all matters pertaining to the compilation and filing of bundles of documents, as elaborated below. This responsibility will be discharged via sensible and reasonable liaison with the representatives of all other parties.
- (2) The first two time limits specified below will be measured from the date of the Order of the Court granting leave to apply for judicial review:
 - (i) Respondent's affidavit evidence and exhibited documents: 28 days.
 - (ii) Any interested parties' affidavit evidence and exhibited documents: *ditto*.
 - (iii) Any rejoinder by the Applicant: 21 days later.
 - (iv) The Applicant's skeleton argument: within 14 days of (iii) above.
 - (v) Skeleton arguments of the Respondent/interested party: within 14 days of (iv) above.
 - (vi) Agreed bundle/s of authorities: within 7 days of (v) above.
- (3) All of the aforementioned standard directions will apply automatically unless the Court specifically directs otherwise.
- (4) Anything not expressly addressed in this Practice Direction or by specific order of the Court will not preclude the parties/their representatives from proactively taking further steps in furtherance of the overriding objective enshrined in Order 1, Rule 1A. These may inexhaustively include the preparation of:
 - (i) Schedules of agreed material facts.
 - (ii) Schedules of contentious material facts.
 - (iii) Chronologies.
 - (iv) Dramatis Personae.
 - (v) Glossary of terms/acronyms.

- (5) The steps specified in [4] above should be considered in every case and will be especially apposite in the following types of judicial review:
- (i) Planning/environmental.
 - (ii) Legacy.
 - (iii) Prisons.
 - (iv) Education.
 - (v) Children's/Health Trust cases.
 - (vi) Health and Social Care cases.
- (6) In every case embraced by [4] – [5] above, the time limit for serving/filing the relevant instrument will be 7 clear days in advance of the substantive judicial review hearing.

PART F: SKELETON ARGUMENTS

- (1) Practice Direction 6/2011 issued by the Lord Chief Justice on 21 December 2011 at Part A deals with Skeleton Arguments and Related Documents. **Relevant extracts are set out in Appendix VI.**
- (2) In addition to the matters appearing in the Practice Direction –
 - (a) Skeleton arguments are compulsory in substantive Judicial Review proceedings.
 - (b) They 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) Skeleton arguments will be served in every case electronically, unless otherwise directed by the Court.
- (3) Unless otherwise directed by the Court skeleton arguments will not exceed six A4 pages of normal font size.
- (4) **Time limits:** see E(2) above.
- (5) Skeleton arguments will not be provided at any initial or interim stage unless specifically directed by the Court. A request for a direction may be made at any time.
- (6) **Reserved Judgments.** The Court may give specific directions relating to matters such as the circulation and correction of a draft judgment, confidentiality and embargo on publication in any case.

APPENDIX I

PRE-ACTION PROTOCOL FOR JUDICIAL REVIEW

General

1. Strict compliance with this Pre-action Protocol ("PAP") is required in all but the most exceptional of cases. Attention is drawn to paragraph [14] of the Model Order 53 Statement (Appendix II *infra*).
2. This PAP does not affect the time requirements specified in Order 53, Rule 4 of the Rules of the Court of Judicature.
3. The requirement of compliance with this PAP extends to cases in which the proposed Respondent may contend that it has no legal power to reconsider or remake the impugned act or decision.

Non - Litigation Options

4. Having regard to the principle that litigation is a measure of last resort and bearing in mind the components of the overriding objective any non-compliance with this PAP may be reflected in the exercise of the Court's discretion relating to costs.
5. 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:
 - (i) Discussion and negotiation.
 - (ii) 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.
 - (iii) 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).

- (iv) Mediation – a form of facilitated negotiation assisted by an independent neutral party.
6. 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.
7. 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 Agency 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 .
8. Where the Court considers that there has been an unreasonable or otherwise inappropriate failure by any party to comply with the provisions of this PAP this will normally be reflected in the exercise of the Court’s discretion regarding costs.

The Applicant’s PAP Letter

9. 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.
10. Applicants should normally use the suggested **standard form** for the letter outlined in Annex A.
11. 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.

12. 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.**
13. 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 proposed Respondent's PAP response

14. Proposed respondents should normally respond within 21 days at most 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.
15. 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.
16. If the **application is being conceded in full** the reply should say so in clear and unambiguous terms.
17. 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; and

- (e) where appropriate, confirm whether or not they will oppose any application for an interim remedy.

18. 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

The Applicant's PAP Letter

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. **The address for reply and service of court documents**
(Insert the address for the reply.)
12. **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. Addressees

- (a) 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.
- (b) **Where the subject matter of the PAP letter 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**

- (c) **Where the subject matter of the PAP letter concerns a decision by a local authority:**

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

- (d) **Where the subject matter of the PAP letter 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

- (e) Where the application concerns a decision by a department or body for whom the Departmental Solicitor customarily acts – the letter before application should be addressed to the author/office/department of the impugned decision and, quoting the Departmental Solicitor's reference if known, to:

Departmental Solicitor
2nd floor Centre House,
79 Chichester Street
Belfast BT1 4JE

Telephone number: 90542514.

- (f) Where the **subject matter of the PAP letter** concerns a decision, measure or an act of a health and social care body:

Chief Legal Adviser
HSC Business Services Organisation
Directorate of Legal Services
2 Franklin Street
Belfast BT2 8DQ

- (g) **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

The Proposed Respondent's PAP Response

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

Address for further correspondence and service of court documents

(Set out the address for any future correspondence on this matter)

APPENDIX II

MODEL ORDER 53 STATEMENT

No 2018/..../01

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

—————
In the Matter of an Application by
For leave to apply for Judicial Review
—————

ORDER 53 STATEMENT

[1] The Applicant

1.1 The Applicant is, who is

[2] The Proposed Respondent

2.1 The proposed Respondent is

[3] The impugned decision/omission

3.1 The Applicant is challenging the proposed Respondent's decision dated whereby it was determined that [OR] the proposed Respondent's failure to [within a reasonable time?]

[4] The relief sought

4.1 The Applicant seeks the following primary relief:

(i)

(ii)

(iii) Costs.

[5] **Grounds of Challenge**

The Applicant's grounds of challenge are:

(i) **Illegality.** The Applicant contends that the impugned decision was unlawful in the following respects:

(a)

(b)

(c)

(ii) **Immaterial considerations.** The Applicant further contends that the impugned decision is vitiated by the proposed Respondent having taken into account the following immaterial facts/considerations:

(a)

(b)

(c)

(iii) **Material considerations.** The Applicant further contends that the impugned decision is vitiated by the proposed Respondent having failed to take into account the following material facts/considerations:

(a)

(b)

(c)

(iv) **Procedural unfairness.** The Applicant contends that the impugned decision was procedurally unfair in the following respects:

(a)

(b)

(c)

(v) **Irrationality.** The Applicant contends that the impugned decision was irrational in the Wednesbury sense in the following respects:

(a)

(b)

(c)

(vi) **Improper motive/bad faith.** The Applicant contends that the impugned decision is vitiated by improper motive/bad faith in the following respects:

(a)

(b)

(c)

(vii) **Breach of statutory duty/requirement.** The Applicant contends that the impugned decision is vitiated by the proposed Respondent's failure to comply with the following statutory duty/requirements:

(a)

(b)

(c)

(viii) Substantive legitimate expectation. The Applicant contends that he had a substantive legitimate expectation that This expectation was engendered by This expectation was frustrated in the following respects:

(a)

(b)

(c)

(ix) Breach of EU law. The Applicant contends that pursuant to [MEASURE OF EU LAW] of he had the following legal rights:

(a)

(b)

(c)

The Applicant further contends that his aforementioned right/s was/were breached in the following respects:

(d)

(e)

(f)

(x) Breach of Prison Rules. The Applicant contends that the impugned decision is unlawful as it infringed the following provision/s of the Prisons and Young Offenders Centres Rules :

(a)

(b)

(c)

In the following specific respects:

(d)

(e)

(f)

(xi) Breach of policy. The Applicant contends that he is entitled to rely upon the proposed Respondent's policy [description, date particulars etc] The impugned decision is in breach of said policy in the following respects:

(a)

(b)

(c)

(xii) Planning policies. The Applicant contends that the impugned decision is in breach of [description of relevant policy: name/title, date, particulars etc] in the following respects:

(a)

(b)

(c)

[6] **Interim relief**

The Applicant seeks the following form/s of interim relief:

(a)

(b)

(c)

[7] The grounds upon which the Applicant seeks interim relief are:

- (a)
- (b)
- (c)

[8] **Expedition**

The Applicant requests expedition on the following grounds:

- (a)
- (b)
- (c)

[9] **Human rights: declaration of incompatibility**

9.1 It is hereby certified, with reference to Order 121(2) of the Rules of the Court of Judicature, that one of the issues raised in these proceedings is whether the Court should make a declaration that
[*relevant provision/s of primary legislation*] is incompatible with
[*relevant protected Convention right*] under section 4 of the Human Rights Act 1998.

[*Alternatively*]

9.2 It is hereby certified, with reference to Order 121(3A) of the Rules of the Court of Judicature, that one of the issues raised in these proceedings is whether the Court should find that
[*relevant provision of subordinate legislation*] is incompatible with [..... *relevant protected Convention right*].

[10] **Devolution issues**

10.1 It is hereby certified, with reference to Order 120, Rule 2 of the Rules of the Court of Judicature, that these proceedings give rise to a “**devolution issue**” within the meaning of Schedule 10 to the Northern Ireland Act 1998.

10.2 It is further certified that the Applicant has complied with Part D of the Judicial Review Practice Note 1/2008 by filing **the attached Notice** and serving same on all parties to these proceedings and, further, that the said Notice specifies the facts, circumstances and points of law said to give rise to a devolution issue in sufficient detail to enable the Court to determine whether this is so.

[11] **Service**

11.1 It is hereby certified that this Statement and all accompanying documents were:

(a) Served on [name] by [method] at [address, to specify individual office where appropriate***]..... on [date].

(b) Served on[Ditto.]

(c) Served on [Ditto]

11.2 If the matter is urgent, service by email must be preceded by a telephone call to check that the email will be received.

11.3 ***If service is by hand delivery at a multi occupancy/public building, leaving a document at the front reception desk does not put the solicitor on notice. Thus service has to be effected at/in the *office* of the solicitor.

[12] **Legal Aid**

The Applicant is/is not an assisted person.

[If legally aided] The certificate of legal aid is attached.

[13] **Protective Costs Order**

There is no application for such an order.

[OR]

The Applicant's application for a protective costs order, with accompanying draft order, is attached.

[14] **PAP REQUIREMENTS**

I, the solicitor whose signature appears at the end of this document, certify that the PAP requirements of the JR Practice Direction [have/have not] been fully observed

[IF 'have not', insert here relevant explanation, information etc]

[15] **JR PRACTICE Direction**

I, the solicitor whose signature appears at the end of this document, certify that there has been full compliance with the JR Practice Direction.

[16] **PROPOSED LITIGATION TIMETABLE**

The Applicant's proposed litigation timetable is as follows:

(a)

(b)

(c)

(d)

(e)

(f)

[17] **LEGAL REPRESENTATION**

Name of Applicant's solicitor:

[The individual responsible solicitor and firm]

Name of Applicant's counsel:

Name of legal representative/s of proposed Respondent/s:

SIGNATURE OF RESPONSIBLE SOLICITOR

Signed: _____

[MUST BE THE SOLICITOR PERSONALLY RESPONSIBLE]

of [FIRM]

Solicitors for the Applicant

Solicitor's email address: _____

Dated this day of [MONTH & YEAR]

APPENDIX III

Service on Northern Ireland Departments

THE EXECUTIVE OFFICE

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 Executive Office (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 of Justice Act (Northern Ireland) 2010 and the Departments Act (Northern Ireland) 2016.

Authorised Northern Ireland departments

Solicitor and Address for Service

| | | |
|---|---|-----------------------------|
| The Executive Office |) | |
| The Department of Agriculture, Environment and Rural Affairs |) | |
| The Department for Communities |) | |
| The Department for the Economy |) | The Solicitor Department of |
| The Department of Education |) | Finance Departmental |
| The Department of Finance |) | Solicitor's Office Centre |
| The Department of Health |) | House |
| The Department for Infrastructure |) | 79 Chichester Street |
| The Department of Justice |) | BELFAST |
| Commissioner of Valuation for Northern Ireland |) | BT13JE |
| Registrar General of Births, Deaths and Marriages for Northern Ireland |) | |

- (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.

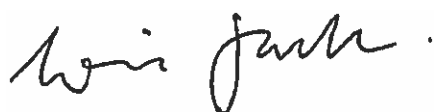
(Section 17 (3A))

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.

- B. This list supersedes the list published on 7 May 2013.



A senior officer of the Executive Office

20 May 2016

APPENDIX IV

Service on Authorised Government Departments

Office of the First Minister and Deputy First Minister 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 The Crown Solicitor for Northern Ireland Royal Courts of Justice Chichester Street Belfast BT1 3JY |
|---|--|

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

LORD CHANCELLOR'S DEPARTMENT

DEPARTMENT FOR CONSTITUTIONAL AFFAIRS

NORTHERN IRELAND COURT SERVICE

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

DEPARTMENT OF WORK AND PENSIONS

OFFICE OF THE DEPUTY PRIME MINISTER

EXPORT CREDITS GUARANTEE DEPARTMENT

OFFICE OF FAIR TRADING

NORTHERN IRELAND OFFICE

DEPARTMENT FOR TRANSPORT

HER MAJESTY'S TREASURY

NATIONAL SAVINGS AND INVESTMENTS

DEPARTMENT OF TRADE AND INDUSTRY

(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 V

Practice Direction 5/2005 issued by the Lord Chief Justice on 25 July 2005: "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:

- (i) 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,

eg 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.*

*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 initialed 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)).*

APPENDIX VI

Practice Direction 6/2011 issued by the Lord Chief Justice on 21 December 2011

PART A - SKELETON ARGUMENTS AND RELATED DOCUMENTS

3. Subject to paragraphs 4 to 5 skeleton arguments must be provided by the applicant, respondent, or other party as follows:
 - (a) in civil and criminal appeals before the Court of Appeal, including sentencing appeals, cases stated and references by the Director of Public Prosecutions under section 36 of the Criminal Justice Act 1988;
 - (b) in any judicial review proceedings;
 - (c) in proceedings in the Chancery Division commenced by writ;
 - (d) in any other class of proceedings in the Queen's Bench, Chancery or Family Division where a judge directs, including those involving litigants in person;
 - (e) in any class of proceedings (not covered by (c) or (d)) before masters where the master directs;
 - (f) in any proceeding where the applicant or respondent anticipate that points of law of any complexity will be argued; and
 - (g) in any other proceedings where the court directs.
4. In the case of a criminal appeal to the Court of Appeal for which leave is required the applicant shall lodge a skeleton argument with the notice of appeal, to enable the Single Judge to properly consider the case. Where the skeleton argument does not contain sufficient information to enable the Single Judge to do so, he may refuse leave.
- 4A. When making an application for leave to appeal under the Extradition Act 2003, the applicant shall lodge a skeleton argument with the ex parte motion to enable the Single Judge to properly consider the case. Where the skeleton argument does not contain sufficient information to enable the Single Judge to do so, he may refuse leave.
5. In any proceeding the court may dispense with the requirement for skeleton arguments.

6. A litigant in person will be expected to provide a skeleton argument unless the court dispenses with the requirement.
7. The Court may require the provision of a supplemental skeleton argument by the applicant, respondent, or other party.

Form and content of skeleton arguments

8. Skeleton arguments must be typed and shall state:
 - (a) The full title and record number of the proceedings
 - (b) The name of the party providing the skeleton argument;
 - (c) The name of counsel and the solicitor appearing on behalf of that party. (Or the phrase “acting in person” in the case of litigants in person).
 - (d) Where the points in the skeleton argument arise from portions of a transcript of evidence or from police interviews, the relevant portion or portions of the transcript or police interview (that is the page of the Book of Appeal, the paragraph and line number).
 - (e) Where there are references to legislation; the relevant statute, article, section, regulation etc.
 - (f) Where there are references to authorities the proposition of law that the authority demonstrates shall be clearly stated. Authorities and, if appropriate, the part of the judgment that supports the proposition shall be cited with reference to the particular page number and (where available) paragraph reference for the passage in the case, textbook or journal.

Schedules

9. Each skeleton argument shall have the following schedules:
 - (a) A list of authorities. Full citations shall be given (including of unreported cases) in accordance with the practice set out in Annex E1. For cases, textbooks and articles, page numbers and, where available, paragraph references for the passage relied on are required. The sections of a statute or other legislative instrument relied on shall also be specified. An example is attached at Annex A.
 - (b) The core authorities upon which a party is relying, especially those that it is definitely intended to cite to the court, whether cases,

statutes, textbooks or other material. These shall appear first in the list of authorities, and shall be differentiated from the other authorities by means of an asterisk beside the list number. The number of core authorities in a case shall only rarely exceed ten.

- (c) A chronology of relevant events including any previous court history, provided by the applicant. An example is attached at Annex B. It will be assumed that this is agreed between the applicant and respondent unless the skeleton arguments state otherwise.
- (d) In criminal appeals a list of the interviews being relied upon, set out in chronological order. These references shall include the page number in Book of Appeal, paragraph number etc.
- (e) In complex cases a list of the key persons in the case and their part in the case. An example is attached at Annex C.

Delivery of skeleton arguments, bundles of authorities and related documents

10. Subject to any contrary direction by the court, in cases before the Court of Appeal and the Divisional Court:
 - (a) the applicant shall lodge in the Office (see Annex F) and copy to the respondent and any other party a skeleton argument, at least thirteen working days before the date fixed for the hearing;
 - (b) the respondent shall lodge in the Office and copy to the applicant and any other party a skeleton argument at least eight working days before the date fixed for hearing;
 - (c) any other party shall lodge in the Office and copy to all other parties a skeleton argument at least eight working days before the date fixed for hearing;

Each party shall lodge their book of authorities and all related documents at least seven working days before the date fixed for hearing.

11. Where lodgement is by hard copy, four copies of all documentation referred to in this Part must be lodged with the Office in Court of Appeal cases and three copies in Divisional Court cases.
12. In all other cases, subject to any contrary direction by the Court:
 - (a) the applicant shall lodge in the Office (see Annex F) and copy to the respondent and any other party a skeleton argument at least ten working days before the date fixed for the hearing;

- (b) the respondent shall lodge in the Office and copy to the applicant and any other party a skeleton argument at least five working days before the date fixed for hearing;
- (c) any other party shall lodge in the Office and copy to all other parties a skeleton argument at least five working days before the date fixed for hearing;

Each party shall lodge their book of authorities and all related documents at least four working days before the date fixed for hearing.

13. No submission of supplemental skeleton arguments, authorities or other documents is permitted after these deadlines without the leave of the Court.
14. Books of Authorities shall be compiled in accordance with Annex E1. Where a party has less than fifteen authorities, they shall be submitted in hard copy. Where a party has fifteen or more authorities, they shall be submitted electronically and in hard copy, subject to any contrary direction by the Court. Skeleton arguments and schedules thereto shall, where possible, be submitted to the relevant Office in electronic format. Electronic submission shall be in accordance with Annex E and the relevant e-mail addresses are given at Annex F.
15. Electronic documents may be submitted by e-mail either as a series of Word files or as an unlocked PDF file. Electronically scanned documents should not be submitted. A read-receipt will be required as proof of lodgement. Where the skeleton argument or schedules contain sensitive information, that is information in relation to which reporting restrictions may be imposed by law or requested by a party, it should not be sent by unencrypted e-mail, but instead be lodged by submitting one CD copy or a copy on another commonly used lockable digital recording medium such as a memory-stick to the relevant Office as a PDF file. Further details are in Annex E.
16. Where it is not possible to send copies of particular authorities by e-mail, the requisite number of paper copies shall be lodged in the relevant Office no later than the date of submission of the electronic documents.
17. Any party or their solicitor, where they have one, may request that the Judges' Reference Library provide to them by e-mail a composite electronic PDF document of the skeleton arguments and authorities relied on by all parties, for their use in preparation and in court.

APPENDIX VII

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.

APPENDIX VIII

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].

APPENDIX IX

PUBLIC FUNDING

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 X

COMPASSIONATE TEMPORARY RELEASE AND SIMILAR CASES

See Part B, paragraph [21] and the reference to Re McKee's Application for Judicial Review [2018] NIQB, paragraphs [1] - [13], reproduced below:

"[1] Applications by sentenced prisoners for the facility commonly known as Compassionate Temporary Release ("CTR") are commonplace. Typical scenarios are a proposed hospital visit to be with a seriously ill or dying family member or attendance at the funeral or wake of such a person or to attend a child's First Holy Communion ceremony. Equally commonplace are judicial review challenges to negative decisions.

[2] The Court's experience in the present case and in other recent cases is such that some general guidance is considered both timely and essential.

[3] In the first place, the act of submitting to the prison authorities an application for CTR should be notified promptly to the Judicial Review Office ("JRO"). This will be easily accomplished in cases where the prisoner has instructed a solicitor. However, it not infrequently occurs that applications of this kind are submitted by the prisoner concerned without the involvement of any legal representative. In all such cases, the recipient of the application should take immediate steps to alert the JRO, either directly or through the usual legal representative, attaching the CTR application.

[4] Strenuous efforts must be made in every case to ensure that the Court receives all relevant documentary materials. These include in particular the application submitted, any accompanying attachments, the impugned decision and the most significant documents identified expressly or by implication therein. The prison authorities should be particularly alert to certain realities. These include the strong possibility that the prisoner will not have retained either a copy of the application submitted or any accompanying documents. This kind of omission can be easily rectified via the mechanism proposed above and the response decision letter. These matters are of critical importance as they enable the Court to conduct the exercise, an important one in virtually every case, of juxtaposing claims and assertions made in the Applicant's affidavit evidence with the contents of relevant underlying documents. This is especially desirable in cases where the challenging prisoner makes the familiar averment that the decision maker failed to take specified matters into account.

[5] Alertness on the part of all concerned, in particular the prisoner and/or any legal representative, to "real world" considerations is essential. These include, in every case, the need for the decision maker and any official advising or informing him to conduct appropriate enquiries with a view to examining and verifying the contents of the prisoner's application and in due discharge of the

public law duty of being properly informed. Time is also required to ensure that the ensuing decision is of an appropriate quality and standard: this, properly analysed, is a solemn public law duty. These time constraints are unavoidable in a context where the proposed event will, in most cases, be scheduled to occur within a very few days.

[6] *These latter considerations underscore the lead for the early alert highlighted in [3] above and the corresponding requirement that any judicial review challenge be instituted with the maximum expedition. Proactive, informative and continuous liaison with JRO personnel by both parties is indispensable at all stages.*

[7] *In high speed litigation situations of this kind, the Court will be alert to the practical limitations which may influence and constrain the litigation product. Certain kinds of omission or error may qualify to be forgiven. However, practitioners must be particularly alert to the requirements governing the form and content of affidavits prescribed by Order 41 of the Rules of the Court of Judicature. Above all there must always be strict compliance with Rule 5, which provides:*

“An affidavit may contain statements of information or belief with the sources and grounds thereof.”

[8] *This is especially important with regard to affidavits sworn by a solicitor purporting to rehearse the client’s instructions or other factual matters. Non-compliance with this fundamental requirement of the Rules is most unlikely to be excused. Furthermore, in the vast majority of cases its practical effect will be to weaken the prisoner’s legal challenge.*

[9] *While the practice of the Judicial Review Court makes provision for the reception of draft affidavits, this facility should be viewed as wholly exceptional. Two particular observations are apposite. First, it is difficult to conceive of any circumstances in which this facility will be extended to a solicitor’s affidavit. Second, it being understandable that in certain cases the prisoner’s affidavit cannot be sworn due to time and related practical constraints, the solicitor’s affidavit must [a] contain a full explanation for this and [b] contain suitable averments sufficient to reassure the court that all appropriate steps and precautions have been taken to vouchsafe the accuracy and reliability of the contents. The reason for this caution and restraint lies in the great importance which this court has consistently attached to the solemnity and gravity of affidavits having the status and effect of properly sworn evidence. To view the regulatory requirements governing affidavits as some kind of (mere) formality is to indulge in misconception of a fundamental kind.*

[10] *Fluctuation and evolution are not uncommon in this sphere of litigation. One of the most important lessons for legal representatives is alertness to the need, in appropriate cases, to proactively and speedily invite the prison authorities*

to take into account any new or revised information and to review the initial decision in the light thereof.

[11] Judicial time and resource are at a premium in every case of this kind. Judges frequently have to deal with these cases out of hours. They dutifully and willingly do so. Practitioners must be on standby from the earliest possible hour to receive very short notice of a scheduled Court listing. They must also bear in mind that every case of this kind interrupts the judicial schedule which, as everyone should know, extends well beyond visible sitting commitments. Hence the convenience of the court will invariably be paramount.

[12] There are certain other considerations of a prosaic nature. While the Judicial Review Practice Note makes clear that it is not the function of JRO personnel to print electronic documents for the Judge some flexibility, in the interests of expedition and procedural fairness, is usually possible in urgent cases of this kind. This dispensation must never be abused. Additionally, the Court will almost invariably give an oral judgment. This entails an inalienable duty on the part of practitioners to conscientiously make a detailed note of all that the Judge says. Furthermore, without judicial prompting or direction, the exercise of forwarding both parties' practitioners' agreed text of the oral judgment to the JRO, normally within at most three hours of conclusion of the hearing, should be undertaken as a matter of course.

[13] In any case where the time constraints are such that the only viable option open to the Court is judicial adjudication on the papers, it will be appropriate, as it was in the present case, to invite the parties' representations on this possibility. Order 53, Rule 3(3) expressly empowers the Court to consider and determine an application for leave in chambers. A hearing, whether *ex parte* or *inter-partes*, is not made obligatory. It is of course the practice of the High Court in this jurisdiction to refuse leave to apply for judicial review only where the Applicant has been afforded the opportunity of an oral hearing conducted in such manner as the Court may consider fair and appropriate. However, this is not necessarily an inalienable element of every litigant's right to fair judicial adjudication, it being trite that context is the critical determining factor in this respect. The reach of the overriding objective – in Order 1 Rule 1A – and the breadth of the Court's case management powers, reposing in its inherent jurisdiction (as to which see Ewing v Times Newspapers [2010] NIQB 65 at [10] – [11] especially) should not be underestimated in this connection. Such powers could conceivably extend to permitting oral renewal of an application for leave refused on the papers upon good and sufficient grounds – such as, merely by illustration, the availability of important documentary or other evidence which could not with reasonable diligence have been provided at an earlier stage.”