

SCHEDULE 1

The Rules of the Supreme Court (Northern Ireland) 1980 COURT OF APPEAL ETC.

ORDER 53

APPLICATIONS FOR JUDICIAL REVIEW

Procedure for application for judicial review

1. There shall be a procedure, to be known as an application for judicial review, under which application may be made to the Court for one or more of the following forms of relief, that is to say, relief by way of—

- (a) an order of mandamus;
- (b) an order of certiorari;
- (c) an order of prohibition;
- (d) a declaration;
- (e) an injunction.

[E.r. 1]

Exercise of jurisdiction in a criminal cause or matter

2.—(1) Save as otherwise provided by this Order and subject to paragraph (3) and to rules 3(3) and 8(1), in a criminal cause or matter the jurisdiction of the Court on or in connection with an application for judicial review shall be exercised by three judges sitting together.

(2) Where the Lord Chief Justice so directs, such jurisdiction may be exercised by two judges.

(3) In vacation any jurisdiction under this rule may, where necessary, be exercised by a single judge.

(4) No appeal shall lie from an order made by a judge exercising jurisdiction under paragraph (3), but an application may be made by motion within 10 days to the Court, constituted in accordance with paragraph (1) or (2), to set aside or discharge the order and to substitute such other order as the Court may think fit.

(5) Where in accordance with paragraph (2) a matter is heard before two judges and those judges differ in opinion, it shall be re-heard and determined by three judges.

(6) Notwithstanding this rule, any jurisdiction on consent may be exercised by a single judge in accordance with section 16(5) of the Act.

Grant of leave to apply for judicial review

3.—(1) Leave of the Court shall be obtained in accordance with this rule before any application for judicial review, other than an application for an order of certiorari by the Attorney General acting on behalf of the Crown, is made.

(2) An application for leave must be made *ex parte* by lodging in the Central Office—

- (a) a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and
- (b) an affidavit or affidavits, as the case may require, verifying the facts relied on.

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(3) The jurisdiction of the Court to consider and determine an application for leave may be exercised by a judge while sitting in chambers.

(4) Without prejudice to its powers under section 18(2)(d) of the Act and Order 20, rule 8, the Court hearing an application for leave may direct or allow the applicant's statement to be amended, whether by specifying different or additional grounds of relief or otherwise, on such terms; if any, as it thinks fit.

(5) The Court shall not, having regard to section 18(4) of the Act, grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(6) Such leave shall not be granted if, having regard to the nature of the persons and bodies against whom relief may be granted by way of an order of mandamus, prohibition or certiorari, the Court is satisfied that the case is one in respect of which relief could not be granted by way of any such order.

(7) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(8) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(9) The Court on considering an application for leave may make an order granting relief by way of an order of mandamus, certiorari or prohibition where it considers that in the special circumstances of the case such an order should be made forthwith.

(10) Upon consideration of an application for leave the Court may direct the applicant to appear before it and no application for leave shall be refused without first giving the applicant an opportunity of being heard.

(11) In a criminal cause or matter the Court shall, for the purposes of paragraph (9), or a refusal of leave under paragraph (10), be constituted in accordance with rule 2.

(12) The applicant shall be informed of the result of the application, unless it has been decided in his presence.

(13) Where leave to apply for judicial review is granted, then (without prejudice to the generality of section 19 of the Act)—

- (a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;
- (b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

[E.r. 3]

Delay in applying for relief

4. Without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made, where leave to apply for relief by way of judicial review has not been sought within three months after the date of the proceeding, act or omission complained of, the Court shall not grant such leave or relief unless it is satisfied that the granting of the relief sought would not cause hardship to or unfairly prejudice the rights of any person.

[E.r. 4]

Mode of applying for judicial review

5.—(1) Where leave has been granted to make an application for judicial review, the application shall be made to the Court by originating motion, and the grounds relied on and the relief granted shall only be one or more of those specified in the application.

(2) The application shall be grounded on the original statement and affidavit or affidavits lodged in support of the application for leave.

(3) The notice of motion must be served on all persons directly affected and, where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the notice must also be served on the clerk or registrar of the court and, where any objection to the conduct of the judge is to be made, on the judge. For the purpose of this paragraph the expression “court” and “judge” shall be deemed to include a tribunal and the president or chairman of a tribunal respectively.

(4) Unless the Court granting leave has otherwise directed, there must be at least 10 days between the service of the notice of motion and the day named therein for hearing.

(5) A notice of motion must be issued within 14 days after the grant of leave or else leave shall lapse.

(6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion must be filed before the motion is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion.

(7) If on the hearing of the motion the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice may be served on that person.

(8) Except in a criminal cause or matter the Court of Appeal may hear and determine an application for an order under this rule where the Court has granted leave under rule 3 on appeal from the refusal of such leave by the Court.

[E.r. 5]

Statements and affidavits

6.—(1) Copies of the statement in support of the application for leave under rule 3 must be served with the notice of motion and, subject to paragraph (2), no grounds shall be relied upon nor any relief sought at the hearing except the grounds and relief set out in the statement.

(2) Without prejudice to its powers under section 18(2)(d) of the Act and Order 20, rule 8, the Court may on the hearing of the motion direct or allow the applicant to amend his statement, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.

(4) Each party to the application must supply to every other party on demand and on payment of the proper charges copies of every affidavit which he proposes to use at the hearing including, in the case of the applicant, the affidavit or affidavits in support of the application for leave under rule 3.

[E.r. 6]

Claims for damages

7.—(1) On an application for judicial review the Court may, subject to paragraph (2), award damages to the applicant if—

- (a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates, and
- (b) the Court is satisfied that, if the claim had been made in a separate action begun by the applicant at the time of making his application, he would have been entitled to such damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

[E.r. 7]

Application for discovery, interrogatories, cross-examination, etc.

8.—(1) Unless the Court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to a judge in chambers.

In this paragraph “interlocutory application” includes an application for an order under Order 24 or Order 26 or Order 38 rule 2(3), or for an order dismissing the proceedings by consent of the parties.

(2) In relation to an order made by a master pursuant to, paragraph (1), Order 58, rule 1, shall have effect as if a reference to the Court were substituted for the reference to a judge in chambers.

(3) In a criminal cause or matter no appeal shall lie from an order made by a judge pursuant to paragraph (1), but an application may be made by motion within 5 days to the Court, constituted in accordance with rule 2, to set aside or discharge the order and to substitute such other order as the Court may think fit.

(4) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

Hearing of application for judicial review

9.—(1) On the hearing of any motion under rule 5, any person who desires to be heard in opposition to the motion, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with notice of the motion.

[E.r. 8]

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion he has lodged in the Central Office a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion.

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the Queen's Bench Division.

(4) Where—

- (a) the relief sought is an order of certiorari, and
- (b) the Court is satisfied that there are grounds for quashing the decision in issue,

the Court may, instead of quashing the decision, remit the matter to the lower deciding authority concerned, with a direction to reconsider it and reach a decision in accordance with the ruling of the Court or may reverse or vary the decision of the lower deciding authority.

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(5) Subject to section 18(6) of the Act, the Court may direct pleadings to be delivered or authorise or require oral evidence to be given where this appears to the Court to be necessary or desirable.

(6) Where the Court directs pleadings to be delivered, it may order the proceedings to continue as if they had been begun by writ; and Order 28 rule 8 shall apply as if the application had been made by originating summons.

Right of appeal

10. Leave shall not be required for an appeal to the Court of Appeal from—

- (a) an order refusing an application for leave under rule 3; or
- (b) an order granting or refusing an application for judicial review.

[E.r. 9]

11. The provisions of this Order shall apply to an application under section 24 of the Act as they apply to an application for judicial review.

[E.r. 10]