

COURT OF SESSION

PRACTICE NOTE

No. 2 of 2013

Immigration and asylum judicial reviews

1. This practice note replaces Practice Note No. 1 of 2012. It takes effect from 24 September 2013.

Pre-proceedings letter

2. Where the immigration or asylum status of an individual is in question, the Home Office has provided an undertaking to the Court that where it is notified of a stated intention to raise judicial review proceedings in a pre-proceedings letter in accordance with the procedure set out in this Practice Note, such notification, of itself, will not cause the Home Office (i) to initiate or accelerate a decision to issue a removal direction, (ii) to initiate or accelerate the removal of the person from the United Kingdom and access to Scottish jurisdiction or (iii) to use the notification as a factor in the initiation or acceleration of such directions or decisions.
3. If the Home Office receives a pre-proceedings letter before it has issued a removal direction, it will not remove the individual before it has responded to the letter. If removal directions have been issued before a pre-proceedings letter has been sent, agents of the individual do not need to send a pre-proceedings letter before commencing a judicial review application.
4. The agents of the individual should send any pre-proceedings letter to [a designated official] at the Home Office. The nominated addressee is "The Litigation Unit, Home Office, Festival Court, 200 Brand Street, Glasgow G51

1DH". Pre-action letters can be faxed to the Home Office on 0141 555 1561 and can be emailed to snjrteam@homeoffice.gsi.gov.uk. The Home Office will, ordinarily, acknowledge the pre-action letter within 24 hours.

5. The wording of a pre-proceedings letter should follow as closely as is reasonably practicable the form of letter which is appended to this Practice Note.
6. Except in cases of urgency, the individual's agents should allow 14 days after the delivery of the pre-proceedings letter for the Home Office to respond to that letter before commencing proceedings.
7. Upon commencing proceedings, the individual's agents are to produce with the petition and copy to the Office of the Advocate General (preferably in electronic form) the case documents in their possession which are relevant to the application (including, if any, the pre-proceedings letter and the Home Office's response to that letter).

First order and procedural first hearing

8. On the petition being presented to the Lord Ordinary in terms of Rule of Court 58.7 (first order), the Lord Ordinary will, ordinarily:
 - (a) order service of the petition on the Advocate General for and on behalf of the Secretary of State for the Home Department within 7 days,
 - (b) order the respondent to lodge Answers and any documents on which he or she founds within 4 weeks of that service, and
 - (c) fix a date for a procedural first hearing.
9. If an application is made for an interim order and the Lord Ordinary requests it, the Office of the Advocate General will provide the court with an Immigration Factual Summary setting out the history of the case.

10. Each party who is to be represented at the procedural first hearing is to exchange and lodge in process not later than two days before that hearing (a) a short statement of issues and of the legal authorities on which he or she relies, (b) any further documents, to which he or she intends to refer, and (c) an estimate of the duration of the substantive hearing. Counsel are expected to discuss these matters and the future progress of the case before the procedural first hearing with a view to identifying the matters in dispute and the most efficient means of their resolution.
11. In cases relating to an unappealable decision of the Upper Tribunal practitioners should be prepared, at the procedural first hearing, to address the Lord Ordinary on whether the test in *Eba v Advocate General* 2012 SC (UKSC) 1 (the “*Eba test*”) is met.
12. At the procedural first hearing the Lord Ordinary will consider the pleadings and the statement of issues, ascertain the parties’ state of preparation, the likely duration of the hearing and identify whether the case can be heard along with other similar cases. The Lord Ordinary may exercise any of the powers set out in Rule of Court 58.9 (first hearing) as may be appropriate. This includes requiring the lodging of notes of argument and authorities and the determination of the petition (rule 58.9 (2) (a)) following the consideration of the *Eba test*. Where a substantive first hearing is to be allocated the Lord Ordinary will, ordinarily, consult with the Keeper of the Rolls.
13. The Keeper of the Rolls will maintain a record of court days allocated to Immigration and Asylum Judicial Reviews and the issues raised in the cases allocated to those days.

Brian Gill

Lord President

Edinburgh
29 August 2013

APPENDIX

[Name of designated official]

The Litigation Unit

Home Office

Festival Court

200 Brand Street

Glasgow

G51 1DH

Dear Sirs

[Insert title, first and last name and address of the claimant]

[Insert date of birth and nationality of claimant]

[Insert Home office, Port or other relevant reference]

[Set out the name, address and reference details of any legal advisers dealing with the claim]

[Set out the details of any interested parties and confirm that they have been sent a copy of this letter]

[Set out the details of the matter being challenged]

[Set out the date and details of the decision, or act or omission being challenged, a brief summary of the facts and, in brief terms, why it is contended to be wrong]

[Set out the details of the remedy sought from the Home Office, including whether a review or any interim remedy is 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]

[Set out the details of any documents that are considered relevant and necessary. This should include details of any documentation or policy in respect of which disclosure is sought and an explanation as to why these are relevant. If reliance is being placed on a statutory duty to disclose information, this should be specified]

[Set out the address for the reply to this letter by the Home Office and for the service of any court documents]

[Include a proposed date by which the Home Office should reply to this letter. The precise time will depend on 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]