

COURT OF SESSION

PRACTICE NOTE

No. 5 of 2015

Judicial Review

1. This Practice Note takes effect from 22 September 2015. It replaces Practice Notes No. 3 of 2008, No. 4 of 2008, No. 2 of 2013 and No. 2 of 2015.
2. This Practice Note covers:
 - a. Judicial review procedure,
 - b. The pre-proceedings protocol in immigration and asylum judicial reviews,
 - c. Case management in judicial reviews, and
 - d. Notes of Argument.

Judicial Review Procedure

3. This part of this Practice Note covers judicial review procedure, and in particular:
 - a. Transfers to the Upper Tribunal,
 - b. The permission stage,
 - c. Notification of intention to contest, and
 - d. Notification of readiness to proceed to a substantive hearing.

4. The purpose of this part is to provide guidance about certain aspects of judicial review procedure and to set out the court's expectations about how judicial reviews will be conducted. Appendix 4 to this Practice Note contains a table setting out the timescales which apply to a petition for judicial review and the relevant legislative references.

Transfers to the Upper Tribunal

5. Where the Lord Ordinary makes an order transferring an application to the Upper Tribunal under RCS 58.5, the Deputy Principal Clerk of Session ("DPCS") will transmit the process to the Upper Tribunal within 4 days of the interlocutor being pronounced.
6. When transmitting that process, the DPCS will-
 - a. give written notice of the transmission to the parties, and
 - b. certify on the interlocutor sheet that the parties have been notified.
7. Failure by the DPCS to follow this procedure does not affect the validity of a transfer.

The permission stage

8. The Lord Ordinary must make a decision on whether to grant or refuse permission or order an oral hearing (RCS 58.7). The Lord Ordinary will ordinarily order an oral hearing if considering refusing permission. In that event, the Lord Ordinary will normally produce a brief note that sets out the concerns which are to be addressed at the hearing. This will assist parties and the court in ensuring that hearings do not exceed 30 minutes (RCS 58.9).
9. Where permission is refused (or permission is granted subject to conditions or only on particular grounds) without an oral hearing, the petitioner may request a review of the decision at an oral hearing (RCS 58.8). A reclaiming motion to the Inner House may only be made following an oral hearing.

10. The Keeper of the Rolls may group suitable oral hearings to be heard on the same day. Procedural and substantive hearings, particularly in immigration or asylum petitions, may be grouped to be heard on a single day.

Notification of intention to contest

11. Appendix 1 to this Practice Note contains a style of notice which should be used for notifying the court of an intention to contest a petition only if permission is granted (RCS 58.6(1) (b)). This should be sent to the Petition Department in hard copy.

Notification of readiness to proceed to a substantive hearing

12. The Lord Ordinary may order parties to write to the court to confirm their readiness to proceed to the substantive hearing. Where a procedural hearing is fixed, the Lord Ordinary will normally make such an order requiring notification to be received at least 7 days before the procedural hearing. Appendix 2 to this Practice Note contains a style of notice which should be prepared by one party, usually the petitioner, on behalf of all of the parties. That party must have the permission of all parties to send this notice before sending it. Evidence of the other parties' permission (for example, print-outs of emails) should be attached to the letter.
13. The court will state whether the procedural hearing will proceed within 3 days of receipt of the letter. This will be done by emailing a copy of the interlocutor to the party's address listed on the letter.

The pre-proceedings protocol in immigration and asylum judicial reviews

14. The purpose of this part is to set out the terms of an undertaking which the Home Office has provided to the court concerning judicial reviews where the immigration or asylum status of an individual is at issue.
15. Where the Home Office 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.

16. 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.
17. 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 2 1DH". Pre-proceedings letters can be faxed to the Home Office on 0141 555 1290 and can be emailed to snjrteam@homeoffice.gsi.gov.uk. The Home Office will, ordinarily, acknowledge the pre-proceedings letter within 24 hours.
18. The wording of a pre-proceedings letter should follow as closely as is reasonably practicable the form in Appendix 3 to this Practice Note.
19. Except in cases of urgency, the petitioner'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.
20. Upon lodging a petition the petitioner's agents will 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).

Case management in judicial reviews

21. The purpose of this part is to set out the terms of a standard order which the Lord Ordinary may issue when granting permission for a judicial review to

proceed (RCS 58.11(2)) and to provide an indication of the likely timescales of the procedural steps ordered.

22. A standard order may appoint the following –

- parties to adjust their pleadings until two weeks prior to the date of the procedural hearing; and to lodge final versions of their pleadings not later than one week prior to the procedural hearing;
- parties to mark up any relevant documents indicating the parts they intend to rely on not later than one week prior to the procedural hearing;
- parties to lodge a list and bundle of authorities, which should be marked up to indicate the parts the party intends to rely on, not later than one week prior to the procedural hearing;
- Notes of Argument to be lodged not later than one week prior to the procedural hearing;
- Statements of Issues to be lodged not later than one week prior to the procedural hearing;
- affidavits to be lodged in respect of those facts founded on by a party at the substantive hearing not later than one week prior to the procedural hearing;
- parties to write to the court to confirm whether they are ready to proceed to the substantive hearing and, if they are not, to give an explanation why, not later than one week prior to the procedural hearing.

Notes of Argument

23. The purpose of this part is to set out the court's expectations of the content of a Note of Argument, when one is ordered to be produced.

24. A Note of Argument must state briefly the submissions the party intends to develop at the substantive hearing.

25. A Note of Argument must state, in brief numbered paragraphs, the points that the party intends to make. After each point, it must identify by means of a page or paragraph reference the relevant passage in any notes of evidence or other document on which the party relies in support of the point.
26. For every authority that is cited, the Note of Argument must state the proposition of law that the authority demonstrates, and identify the page or paragraph references for the parts of the authority that support the proposition.
27. A Note of Argument must cite only one authority for each proposition of law, unless additional citation is necessary for a proper presentation of the argument.

Edinburgh

September 2015

Lord Justice Clerk

Appendix One

Petitions Department
Court of Session
Parliament House
Parliament Square
Edinburgh
EH1 1RQ
Court ref: [reference]
Date: [date]

Notification of intention to contest a petition for Judicial Review under Rule 58.6(2) of the Rules of the Court of Session

by

(Name of party)

I have been served with the petition of [A.B.] (*designation and address*) for Judicial Review of
(*state briefly matter sought to be reviewed*) by [C.D.].

I do not intend to participate in the decision to grant or refuse permission.

I intend to contest the petition if permission is granted.

(signed)

Appendix Two

Petitions Department
Court of Session
Parliament House
Parliament Square
Edinburgh
EH1 1RQ
Court ref: [reference]
Date: [date]

Notification of parties' readiness to proceed to a substantive hearing

by

(Name of party)

and

(Name of party)

[and ...]

I am writing on behalf of the parties to the petition of [A.B.] (*designation and address*) for Judicial Review of (*state briefly matter sought to be reviewed*) by [C.D.]. I have permission from the other parties to write on their behalf and attach evidence of that permission.

On (*date*) the Court fixed a procedural hearing for (*date*) and a substantive hearing for (*date*). The Court stated that the procedural hearing may be cancelled if parties wrote to confirm their readiness to proceed to a substantive hearing by (*date*). [*or* The Court did not fix a procedural hearing but ordered parties to write to confirm whether they were ready to proceed to a substantive hearing by (*date*).]

The parties are ready [*or* are not ready] to proceed to the substantive hearing.

[All of the Court's case management orders have been complied with or will be complied with by the date of the substantive hearing.]

(signed)

(address and email address)

Appendix Three

[Name of designated official]
The Litigation Unit
Home Office
Festival Court
200 Brand Street
Glasgow
G51 1DH

Dear Sirs

PRE-ACTION PROTOCOL LETTER

[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]

(signed)

Appendix Four

Procedural step	Time limit	Legislative reference
Petition lodged	3 months from the date on which the grounds giving rise to the petition first arose	Rule 58.3; Section 27A (1) of the Court of Session Act 1988; Article 4 of The Courts Reform (Scotland) Act 2014 (Commencement No. 3, Transitional and Saving Provisions) Order 2015
Order for intimation and service	Intimation within 7 days from of the order granting intimation and service. Answers/notification within 21 days from the date of service	Rule 58.4
Decision on permission	Within 14 days from the end of the period for lodging answers	Rule 58.7
If permission refused, request a review	Within 7 days from the day on which the decision is made	Rule 58.8; Section 27C (2) of the Court of Session Act 1988
Reclaiming following an oral hearing	Within 7 days from the day on which the Court makes its decision	Rule 58.10; Section 27D (2) of the Court of Session Act 1988
Permission granted: substantive hearing fixed	Within 12 weeks from the date on which permission is granted	Rule 58.11 (1) (a)
Permission granted: procedural hearing fixed	Within 6 weeks from the date on which permission is granted	Rule 58.11 (1) (b)