

HC81 - Asylum, immigration and citizenship list

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1. Proceedings to which this Practice Direction applies

This Practice Direction applies, save where otherwise specified herein, to:

- (a). any proceedings which include relief subject to s. 5 of the Illegal Immigrants (Trafficking) Act 2000 as amended from time to time;
- (b). any other proceedings which include relief related to asylum, subsidiary protection, immigration, freedom of movement, naturalisation, citizenship, marriages, civil partnerships or relationships alleged to have been entered into for immigration advantage, or areas related to any of the foregoing; and
- (c). any proceedings which include relief as to EU law rights related to any of the foregoing matters.

2. The Monday List

(1). Save in cases of urgency or during a vacation, applications for leave to apply for judicial review ("applications for leave") shall first be made on a Monday in Term ("the Monday list") to the Judge in charge of the Asylum, Immigration and Citizenship List ("the Judge in charge of the List"). The legal representatives for the applicant in any such application shall, prior to 1 o'clock in the afternoon on the Friday before the relevant Monday List, send by email to the Registrar assigned to the Asylum, Immigration and Citizenship List ("the List Registrar") and to asylumsubmissions@courts.ie a copy in Word document format of (i) the Statement of Grounds and (ii) the written legal submissions of the applicant in accordance with this Practice Direction. Leave applications as so notified will appear in the Legal Diary in the Monday List. Any applications other than in cases where urgent stays or injunctions are sought that do not meet this deadline should be made in the next following Monday List.

(2). Save in cases of urgency, any motion or application intended to be moved in a proceeding to which this Practice Direction applies shall be made returnable for the Monday list. Unless otherwise directed by the Judge in charge of the List, any interlocutory application or leave application to which this Practice Direction applies that is mentioned to any other judge during term, shall be made returnable to the next suitable Monday list for hearing unless genuine and pressing urgency requires that it be heard sooner.

(3). The cases listed for hearing in the next following five weeks within the Term will be called over in the Monday list to confirm that they will proceed and that the requirements of this Practice Direction have been met. Practitioners for all parties are obliged to ensure attendance at this positive call over with adequate instructions to ensure the matters listed for hearing are ready to proceed and shall specifically inform the court if any such requirements have not been met or if the case is likely to require transfer to the Holding List.

(4). At 10.00 a.m. the List Registrar shall call over the Monday list in the following order:

- (i). Matters in the Directions List
- (ii). Any applications for consent orders in matters in the Settlement List;
- (iii). Call over of next five weeks' matters for hearing.

(5) Parties with matters listed in the Directions List or for hearing during the next five weeks' must attend the List Registrar's callover. The List Registrar may give directions including as to adjournment for filing and service of opposition papers or continuation of

orders made at leave stage in accordance with directions laid down from time to time by the Judge in charge of the List. Once opposition papers have been delivered the proceedings will be transferred to the Judge's List at 11.00 a.m.

(6) Any case in the settlement list may, once settled, be mentioned in the Registrar's list on the next convenient Monday to enable a consent order to be made subject to subparagraph (7) and to such directions as are laid down from time to time by the Judge in charge of the List.

(7) Any orders required for any purpose arising from the Registrar's list that are made in accordance with such directions will be perfected in the name of the Judge in charge of the List (or the judge taking the 11 o'clock list on the date in question, if different). Any subsequent application in relation to any such orders may be made to the Judge in charge of the List.

(8) Any matters requiring the attention of the Judge shall be transferred to the Judge's Monday list at 11.00 a.m.

(9). Unless otherwise ordered, the order in which matters shall be taken in the Judge's Monday list is as follows:

- (a). Call over of next five weeks' hearing dates;
- (b). Matters listed in Advance Warning List;
- (c). Matters listed for mention (including for directions);
- (d). Ex parte applications;
- (e). Matters for hearing,

3. Parties

(1) The Minister for Justice and Equality shall be named as a respondent in any proceedings to which this Practice Direction applies.

(2) The International Protection Appeals Tribunal shall be named as a respondent in any proceedings challenging a decision or recommendation of an international protection officer (including the chief international protection officer) from which an appeal lies to the tribunal, where such right of appeal has been or is intended to be exercised.

4. Pleadings generally

(1). The attention of applicants is drawn to the following:

- (a). Order 84 rule 20(3), which provides that it shall not be sufficient for an applicant to give as any grounds of relief or interim relief an assertion in general terms of the ground concerned, but the applicant should state precisely each such ground, giving particulars where appropriate, and identify in respect of each ground the facts or matters relied upon as supporting that ground,
- (b). the judgment of the Supreme Court in *Babington v. the Minister for Justice, Equality and Law Reform & Ors.* [2012] IESC 65 which concerns compliance with that requirement, and

(c). the requirement that the relief sought must specify the nature of the decision challenged, for example "the decision of the Minister of ... (date) to (specify decision e.g., to refuse a residence card to the applicant)".

(2) Where proceedings are brought in breach of these requirements, practitioners should be aware that the court may decline to grant relief sought on generic or unparticularised grounds and/or may impose costs consequences.

(3). Practitioners are reminded of the following:

(a). Pleadings which claim an excessive number of reliefs and/or involve an excessive number of grounds may be held to be in breach of the duty to avoid waste of the court's time and any such breach may have costs consequences. Accordingly, statements of grounds should not claim declaratory relief that is in substance merely repetitive of the primary relief sought.

(b). Practitioners should have regard to the principle that duplicative relief is not normally granted, and that therefore, with limited exceptions, declarations are generally redundant if substantive relief by way of certiorari or mandamus is granted, and inappropriate if that substantive relief is refused. Declaratory relief should therefore normally only be claimed where it provides some distinct benefit to the applicant not encompassed by any order of certiorari or mandamus sought (for example, where the applicant seeks a declaration of unconstitutionality of a statute), or where the nature of the case is such that there is a prospect that the court might grant a declaration as an alternative to certiorari or mandamus.

(c). An applicant may however in any case, in addition to substantive relief by way of certiorari or mandamus, seek as a sole declaratory relief "Such declaration(s) of the legal rights and/or legal position of the applicant and/or persons similarly situated as the court considers appropriate", or a relief to the like effect. The precise terms of any such declaration sought can then be addressed by way of legal submissions within the confines of the legal grounds pleaded in the statement of grounds.

(4). The grounds advanced as to the entitlement in law to the reliefs claimed should not be confused with a statement of the relevant facts which should be confined to a distinct and separately numbered section of the Statement of Grounds entitled "Relevant Facts".

(5). Statements of grounds and statements of opposition must state the names of any counsel who settled such documents.

(6). In the event of a minor applicant coming of age during the currency of the proceedings, the applicant must promptly apply to the Central Office in accordance with Order 15 rule 16 for a certificate enabling the applicant to proceed in his or her own name, which certificate should be included in the book of pleadings.

5. Affidavits generally

(1). Every ex parte application must be supported by an affidavit of each and every adult applicant who appears on the pleadings, sworn prior to moving the application, or as soon as possible thereafter, unless otherwise specifically ordered by the Court. Such affidavit must set out all material facts relevant to the issue before the court. An application to dispense with this requirement must be accompanied by an affidavit setting out why the swearing of such an affidavit is not possible and confirming that the applicant's solicitors remain instructed by any such adult applicant.

(2). Unless already exhibited in the proceedings, the affidavit grounding any form of ex parte application must exhibit a full copy of the following material (“all relevant material”):

- (a). the document initiating the process such as any proposal by a respondent or other public body or office-holder to make a decision or any application form or notice of appeal completed by or on behalf of an applicant;
- (b). all submissions made by or on behalf of an applicant and any other material submitted, including where applicable notes of any interview with the applicant;
- (c). the text of any relevant decision;
- (d). the document notifying the applicant and/or his or her legal representatives of any such decision;

in respect of each and every decision impugned in or relevant to the proceedings and each and every prior immigration or protection decision related to each applicant.

(3). All documents exhibited on behalf of an applicant that are prepared in any language other than Irish or English must be translated into Irish or English by a qualified translator and the document and translation exhibited to an affidavit sworn by such translator.

(4). Practitioners are reminded that a deponent may swear an affidavit in English or Irish only if he or she has a sufficient knowledge of such language to fully understand the affidavit and all exhibits thereto. If the applicant does not have such a sufficient knowledge, he or she shall, in accordance with Order 40 rule 13A(1), swear the affidavit in a language that he or she understands. In accordance with Order 40 rule 13A(2) and (3) respectively, that affidavit shall be translated into one of the official languages of the State by a suitably qualified translator, and an affidavit of the translator exhibiting (a) a copy of the foreign language affidavit as sworn and (b) the original translation of that affidavit into English or Irish confirmed as accurate by the translator, shall be filed.

6. Opposition papers generally

(1). The attention of respondents is drawn to Order 84 rule 22(4), which provides that the statement of opposition and verifying affidavit shall be filed within three weeks of the service of the originating notice of motion on the respondent. On the first mention date, unless strict compliance with the foregoing sub-rule is required or unless otherwise ordered in the circumstances of the case, the proceedings will be adjourned for six weeks, peremptorily, for lodgement of the statement of opposition and (if required) verifying affidavit, or for seven weeks if the applicant was in default of the requirement to serve papers on the respondent by the Friday of the week in which leave was granted.

(2). A statement of opposition does not need to be supported by an affidavit if it consists only of one or more of the following:

- (a). a traverse of any or all of the matters alleged in the statement of grounds;
- (b). a legal plea arising from facts put forward by, or documents exhibited by, an applicant;
- (c). a legal plea arising from facts otherwise on the court record (such as an objection as to time arising from the date of filing of pleadings).

(3). A statement of opposition that contains a positive plea that is based on evidential matters not otherwise before the court must be supported by an affidavit.

(4) The attention of respondents is drawn to Order 84 rule 22(5), which provides that it shall not be sufficient for a respondent in a statement of opposition to deny generally the grounds alleged by the statement grounding the application, but the respondent should state precisely each ground of opposition, giving particulars where appropriate, identify in respect of each such ground the facts or matters relied upon as supporting that ground, and deal specifically with each fact or matter relied upon in the statement grounding the application of which he does not admit the truth.

(5) In giving effect to the foregoing requirement it is however unnecessary for a statement of opposition to contain a denial of the allegations of fact or law in a statement of grounds individually, issue by issue or paragraph by paragraph, or to assert that the applicant is not entitled to relief or costs, or that the respondent(s) are entitled to costs. It is sufficient for a statement of opposition to contain only the following:

- (a). a statement that the allegations of fact and law in the statement of grounds are denied save (if applicable) that specified matters in the statement of grounds are admitted and/or that the applicant is put on strict proof of specified matters, and/or a statement that the matters of fact relied on by the applicant do not give rise to legal grounds for the relief claimed; and
- (b). a statement of any specific matters of fact or law positively relied on by the respondent(s), for example that specified facts or circumstances preclude the grant of relief, that the proceedings are out of time or are an impermissible collateral challenge to a specified previous unchallenged decision, or that relief should be refused due to failure by the applicant to disclose specified facts or matters when obtaining leave, by reason of a specified alternative remedy, or in the discretion of the court having regard to specified facts and circumstances.

(6) Where contrary to the foregoing a statement of opposition contains excessively repetitive traverses or fails to specify with precision the positive matters relied on, without prejudice to any other course of action that the court may adopt, the costs of such statement of opposition may be disallowed by the court.

(7) Where an applicant has failed to comply with the requirement to exhibit all relevant material, the respondent(s) may furnish a copy of any such material not so exhibited to the solicitors for the applicant, who shall to deliver a further affidavit within seven days of such material being furnished, exhibiting that material. If the applicant's solicitors fail to do so, the costs of any subsequent affidavit on behalf of the respondent(s) that is required to exhibit such material may be ordered to be paid by the applicant and/or his or her solicitors as directed by the court.

7. Ex parte applications

(1). In order to give effect to the duty of candour to the court resting on all legal representatives, every ex parte application to which this Practice Direction applies shall be accompanied by a written legal submission on behalf of the Applicant

(2). Inclusion of any matter (such as a previous civil or criminal proceeding) in a submission is without prejudice to the entitlement of an applicant to contend that such matter disclosed is not legally relevant to the grant or refusal of relief and save where otherwise stated by an applicant, the inclusion of any given matter in a written submission does not amount to a concession of such relevance by the applicant.

(3) The applicant's written legal submission shall contain the following sections:

A. List of legal questions/issues

Any legal question or issue required to be determined by the court shall be succinctly stated in a numbered list on the first page and presented in the form of an issue paper set out in this section.

B. Statement of relevant facts

This shall set out in chronological order the facts relevant to the legal issues and all facts necessary for the court to understand the full background, particularly in relation to the applicant's immigration history. Key facts proved by exhibits shall be accompanied by reference to the page number(s) in the papers where the exhibit appears. Where a fact is disputed this shall be indicated. This shall be in the body of the submission and not in an annex. This section shall include:

- (a). Full details of all protection or immigration applications made by each applicant, whether in the State or elsewhere, and outcomes and the dates of each.
- (b). Full details of the applicant's complete immigration history since leaving his or her country of origin (if applicable) and in particular identifying the total period of presence in the State and breaking down that period by reference to the precise dates during which such presence was lawful (identifying the legal basis and whether it was precarious, short-term or long term), or unlawful as the case may be, and identifying any periods during which the applicant(s) failed to comply with reporting requirements.
- (c). Details of the current immigration status of the applicant(s) and the factual basis for that status (e.g., left State voluntarily, deported, illegally present, present with permission and the basis of same).
- (d). If the applicant's current immigration status arises from a marriage to or civil partnership or alleged enduring relationship with an Irish or EU citizen, full particulars of the marriage, civil partnership or relationship and its duration.

C. Procedural history

This shall state in succinct form any relevant procedural history including the date of grant of leave, any stays, injunctions or undertakings and any other interlocutory applications or appeals.

This section shall include details of:

- (a). any previous proceedings involving any of the applicant(s) in the Asylum, Immigration and Citizenship List and
- (b). any other civil or criminal proceedings whether in the State or elsewhere involving any of the applicant(s) that could be potentially relevant to any of the issues or their factual background.

In the case of any proceedings required to be mentioned in this section, details shall be given of record numbers, the outcomes, and full citations and dates for any judgments or decisions given. In the event that there are any prior criminal proceedings potentially relevant as aforementioned, details must include any record no. of any appeal and be accompanied by a reference to where a transcript of the proceedings and the sentencing remarks of the trial judge, or a report of the proceedings, certified as to their accuracy, may be found, which shall be either exhibited or otherwise put before the Court or failing such, included as an appendix to the submission. This section must contain a positive statement either that the only other proceedings that could be potentially relevant to

any of the issues or their factual background are as indicated in the section, or that there are and have been no such other proceedings.

D. Legal arguments

Legal arguments must be grouped under headings that refer to the specific questions or issues in section A of the submissions. Each section shall also make reference to the particular ground(s) on which leave has been granted. Outline legal argument supporting the grounds sufficient to permit the respondent to prepare its response shall be presented. Substantial legal argument not addressed in the written legal submissions shall not be permitted at the trial of the action without special leave of the court.

E. Any other Matters Required to be Disclosed

The following shall apply to this section of the submission:

(a). This section must draw the court's specific attention to any significant matter of fact adverse to the applicant's case for relief. It shall not be sufficient to mention such adverse matters by way of affidavit or exhibit only, and those matters must be specifically highlighted in the submission furnished to the court under this paragraph. The submission shall also disclose all relevant authority of the Superior Courts, the Court of Justice of the European Union or the European Court of Human Rights and all relevant statutory provisions or secondary or European legislation, and in particular all such authority that is adverse to the application being made.

(b). In the case of adverse matters disclosed, the submission shall explain why such matters of fact or law may be contrary to the applicant's submission on the specific facts of the case (such matters shall be particularised to the facts and not set out in a generic manner). It shall explain the applicant's contention as to why such adverse matters should not defeat the applicant and explain how it is proposed to distinguish or overcome any adverse authority.

(4). The submission referred to in this paragraph shall be signed by the legal representatives responsible for settling its contents. Those legal representatives have a personal professional obligation of diligence to take all appropriate steps to ensure that they are aware of all relevant authority and statutory provisions or secondary or European legislation so that the court is not misled.

(5). The submission referred to in this paragraph shall be served on the other parties to the proceedings within the time specified in the leave order if leave is granted and within seven days if leave is refused.

(6). Where any form of ex parte application is made to the court, the following shall apply:

(a). such application must be verified by affidavit which complies with the requirements of paragraph 5(2) to exhibit all relevant material;

(b). accordingly the applicant's solicitor is personally under a professional obligation to take all due steps to ensure that he or she has the fullest possible information before drafting the application, and in particular all documents and facts relevant to the legal issues and all facts necessary for the court to understand the full background, particularly in relation to the applicant's immigration history. This duty of enquiry exists to ensure that the applicant's legal representatives can furnish the Court with the most accurate version of events possible and thereby avoid misleading the Judge.

- (c). if it is not possible for the applicant's solicitor to obtain full instructions, he or she, and any counsel instructed in the matter, have a duty of candour to ensure that the Court is made fully aware of the limitation of the evidence that is then placed before the Court. This is essential so that the Court can make a measured assessment of the probative value of the evidence. The applicant's solicitor is required personally to set out on affidavit exactly why no, or inadequate or unsuccessful, efforts have been taken to seek out and obtain the information referred to at sub-paragraph (b), when precisely instructions were received and when and in what form such efforts were made.

(7). Practitioners are reminded that the duties of diligence, enquiry and candour are professional duties and not merely procedural requirements and therefore apply to any form of ex parte application including an application under Article 40.4 of the Constitution.

(8). Any ex parte application shall, in addition to being grounded upon an affidavit of each adult applicant pursuant to paragraph 5(1), be grounded upon the following in respect of each such applicant:

(a) Each adult applicant shall swear averments to be either included in the grounding affidavit or a separate affidavit (referred to as "averments of verification") in which each such applicant shall swear as follows:

(i) that each and every statement or representation made by or on behalf of the applicant or any other member of the applicant's family, including by any solicitor for the applicant or any member of the applicant's family, to any immigration or protection body, whether in the State or elsewhere, including but not limited to the Department or Minister of Justice and Equality, an international protection officer (including the chief international protection officer) and the International Protection Appeals Tribunal, or any of their predecessor entities, has been disclosed in the grounding affidavit and exhibited thereto, or if not so disclosed, particularising the extent to which it has not been so disclosed, the content of the statement or representation not so disclosed insofar as known to the applicant and the steps taken to obtain and put before the court a copy of such statement or representation;

(ii) that each and every statement or representation made by or on behalf of the applicant or any other member of the applicant's family, including by any solicitor for the applicant or any member of the applicant's family, to any immigration or protection body, whether in the State or elsewhere, including but not limited to the Department or Minister of Justice and Equality, an international protection officer (including the chief international protection officer) and the International Protection Appeals Tribunal, or any of their predecessor entities, is the truth in every respect, or if not, particularising the extent to which any such statements or representations are untrue;

(iii) that each and every statement in the Statement of Grounds (in the case of a leave application) and each and every statement made by or on behalf of the applicant or any other member of the applicant's family, including by any solicitor for the applicant or any member of the applicant's family, in any affidavit in the proceedings or any document exhibited thereto, is the truth in every respect, or if not, particularising the extent to which any such statements or representations are untrue;

(iv) that the applicant is aware that it is an offence of perjury to make a statement in the grounding affidavit or (as the case may be) separate affidavit containing the

avermments of verification that is false or misleading in any material respect and that he or she knows to be false or misleading.

(v) identifying the applicant's religion (or if it be the case averring that he or she has no such religion or that the taking of oaths is contrary to such religion) and confirming that the grounding affidavit has been, and (where applicable) the separate affidavit containing the averments of verification is being, sworn in a specified manner, being the manner recognised by that religion (in particular, on the Tanakh (Hebrew Bible) where the religion is Judaism, the New Testament in the case of Christianity, or the Qur'an in the case of Islam, and likewise in respect of other religions, giving details in each case of the precise mode used).

(vi) that the contents and implications of the averments of verification, all statements in the statement of grounds (in the case of a leave application), and the details of all previous claims and representations made by or on behalf of the applicant or any member of his or her family, or any solicitor on behalf of any of them, have been fully explained to the applicant by his or her solicitor, and that the applicant fully understands same; and

(vii) specifying the language(s) that the applicant understands and confirming that the applicant fully understands the affidavit and its exhibits in the language in which it is sworn; and

(b) A separate affidavit, sworn after each affidavit containing the averments of verification has been sworn, by a practising solicitor (and not by a servant or agent of such solicitor) acting on behalf of each such applicant, in which the deponent shall swear as follows:

(i) that to the best of the solicitor's knowledge, information and belief, all papers required by this Practice Direction to be exhibited have been so exhibited, and in particular that each and every statement or representation made by or on behalf of the applicant or any other member of the applicant's family, including by any solicitor for the applicant or any member of the applicant's family, to any immigration or protection body, whether in the State or elsewhere, including but not limited to the Department or Minister of Justice and Equality, an international protection officer (including the chief international protection officer) and the International Protection Appeals Tribunal, or any of their predecessor entities, has been disclosed in the grounding affidavit and exhibited thereto, or if not so disclosed, particularising the extent to which it has not been so disclosed, the content of the statement or representation not so disclosed insofar as known to the deponent and the steps taken to obtain and put before the court a copy of such statement or representation;

(ii) that the contents and implications of the averments of verification, all statements in the statement of grounds (in the case of a leave application), and the details of all previous claims and representations made by or on behalf of the applicant or any member of his or her family, including by any solicitor on behalf of any of them, have been fully explained to the applicant by the deponent, and that to the best of the deponent's knowledge, information and belief, the applicant fully understands same, specifying with particularity the language(s) that the applicant understands, to the best of the solicitor's knowledge, information and belief; and

(iii) that the deponent has ensured that the applicant is aware that it is an offence of perjury to make a statement in this affidavit that is false or misleading in any material respect and that he or she knows to be false or misleading.

(iv) identifying to the best of the deponent's knowledge, information and belief the applicant's religion (or if it be the case averring that he or she has no such religion or that the taking of oaths is contrary to such religion) and confirming that the grounding affidavit and the affidavit containing the averments of verification were sworn in a specified manner, being the manner recognised by that religion (in particular, on the Tanakh (Hebrew Bible) where the religion is Judaism, the New Testament in the case of Christianity, or the Qur'an in the case of Islam, and likewise in respect of other religions, giving details in each case of the precise mode used) in the personal presence of the deponent.

(9). Where following the swearing of the averments of verification and solicitor's affidavit, further assertions, claims or representations are sworn to or exhibited on behalf of the applicant, or further assertions, claims or representations made by or on behalf of the applicant are evidenced in an affidavit on behalf of the respondent(s), the applicant shall be required to swear and file a further affidavit of verification together with a further solicitor's affidavit in respect of any such matters, and so on from time to time in respect of any new such material that is put before the court.

(10). Each adult applicant ordinarily resident in the State is required to attend in person at the date appointed for the hearing of the substantive application save where excused in advance by the court or by consent of the respondent(s), and may be required to orally confirm the averments of verification upon his or her oath (subject to the Oaths Act 1888). Each such applicant is required to arrange for translation if required and the costs of translation shall unless otherwise ordered be costs in the cause.

(11). To demonstrate compliance with this Practice Direction, parties may be required to complete and submit to the court in advance such checklists of the requirements set out in this Practice Direction as may be prepared by the Judge in charge of the List from time to time.

8. Order granting leave and service of proceedings

(1) Where an order granting leave is made –

- (a). if the statement of grounds is amended at leave stage, or if due to the fact that an urgent stay was sought, the statement of grounds was not previously e-mailed to the List Registrar, or if a registrar other than the List Registrar is sitting when leave is granted, the applicant or the applicant's solicitor shall e-mail the statement of grounds (in both its original form and, if an amendment at the leave stage is allowed, in amended form) in MS Word document format (not pdf) to the List Registrar and, if different, the registrar sitting with the court that makes the order giving leave, by close of business on the following court day;
- (b). unless the Court otherwise orders, the default terms of the order shall include provision that
 - (i). the applicant shall issue and serve the originating notice of motion within seven days of perfection of the order granting leave (in default of which any stay granted on giving leave shall lapse and the applicant's costs of the leave application shall not be recoverable);
 - (ii). the applicant shall serve the respondent(s) with a copy of the statement of grounds, all affidavits and exhibits that were before the court at the leave stage and the applicant's written legal submissions, by close of business on the Friday of the week in which leave was granted (or such longer period as may be specified in the order), and in default of such service the applicant's costs of the leave application shall not be recoverable;

- (iii). the originating notice of motion shall be returnable for the third Monday in Term after the granting of leave; and
- (iv). the costs of the application shall be reserved provided that the stipulations of paragraphs (i) and (ii) of this sub-paragraph are complied with.

(2) It should also be noted that where the relief in respect of which leave is sought includes a challenge relating to a decision under the Dublin system, the court has directed by way of a global order that the filing of any such application acts as a stay on the decision proposed to be challenged, until the final determination of the proceedings on that application including the substantive proceedings if leave is granted and any appeal therefrom, unless the court subsequently otherwise orders.

(3) Practitioners should note that formal service of any document in any proceedings against a respondent for whom the Chief State Solicitor has authority to act (for example, Ireland and the Attorney General, a Minister of the Government, the Garda Commissioner and members of the Garda Síochána, the governor of a prison or place of detention, the International Protection Appeals Tribunal, or an international protection officer (including the chief international protection officer)) should be effected on the Chief State Solicitor and not directly on such respondent. Service must in all cases be carried out strictly in accordance with rules of court, and the handing of papers in court to solicitors employed in the Chief State Solicitor's Office shall in no circumstances amount to sufficient service or be deemed good, and shall, in any case where such handing over occurs, be followed by formal service in accordance with the rules.

(4) The affidavit required by Order 84 rule 22(6) of the Rules of the Superior Courts proving service on all respondents (and, as the case may be, on the Attorney General or the Irish Human Rights and Equality Commission where directed to be served with notice of the application for leave under Order 84 rule 24 or where required to be served with notice under Order 60A) shall be filed by the applicant four clear days in advance of the first return date for the notice of motion following the grant of leave, unless the court otherwise orders. Such affidavit shall also expressly state whether or not the stipulations as to service in the order granting leave were complied with.

9. Interim, interlocutory or procedural applications

(1) Where a party proposes to make an interim, interlocutory or procedural application in the Asylum, Immigration and Citizenship List (including but not limited to an application to amend pleadings, to extend time, for an interlocutory stay or injunctive relief, for leave to appeal or for costs), the following shall apply:

(a) the party making such an application is not required to have sought such relief in the Statement of Grounds (which should be confined to the relief to be sought at the substantive hearing) or, in the case of applications by respondents, in the Statement of Opposition.

(b) It shall not be necessary to serve a formal notice of motion in making such an application; save as to discovery in which case a notice of motion is required, or where the court in a particular case directs that a motion be brought.

(c) Save as otherwise provided in this Practice Direction or ordered by the court, it shall not be necessary to deliver written submissions in relation to interim, interlocutory or procedural applications, other than applications for leave to seek judicial review and applications for leave to appeal, but any party in any other matter may apply to the court for directions in that regard.

(d) Such an application does not require to be grounded upon a separate affidavit where the factual matters relied on are already averred to in the Grounding Affidavit or otherwise, or where the application is dependent on legal submission rather than factual contention.

(e) Save in relation to any matter specifically dealt with in another provision of this Practice Direction, an interlocutory application shall be made in the Monday List by giving notice by correspondence to the other party/parties equivalent to that which would be required in the case of a formal notice of motion.

(2) In view of the fact that enforcement of deportation orders, transfer orders, removal orders, exclusion orders and similar instruments is a matter for the Garda Commissioner, where a stay or injunction is granted by the court which restrains the enforcement of any such instrument, the onus of notifying the Garda Commissioner of any such stay or injunction in such manner as the court directs (for example by telephone) rests exclusively on the applicant, such notification to be made directly to the Garda Commissioner and copied for information to the Chief State Solicitor.

(3) The requirement at paragraph (2) does not relieve the applicant of the obligation to effect formal service of proceedings including the formal order when perfected upon the Chief State Solicitor.

10. Amendment of pleadings or orders

(1). Any pleading which has been amended shall, in accordance with Order 28 rule 9, Rules of the Superior Courts, be marked with the date of the order under which the same is amended, and the day on which such amendment is made, as follows:
"Amended the day of pursuant to order of Mr. / Ms. Justice dated the day of"

(2). Where it is intended to apply for leave to amend of a statement of grounds or statement of opposition, the applicant or (as the case may be) respondent must prepare and make available to the court and the other party or parties a draft of the statement containing, marked appropriately, the amendments intended, before moving any such application. Similarly if a party wishes to seek an amendment of an order of the court under the slip rule or otherwise, a copy of the draft order as amended must be likewise furnished in writing in advance.

11. Sub-Lists within the Asylum List

(1) The Asylum List is broken down into the following sub-lists:

- (a) a holding list, for cases that cannot be heard immediately as they are awaiting an outcome in a lead case,
- (b) a Settlement List, for cases under active settlement,
- (c) the List to Fix Dates,
- (d) the Directions List, which is called over every Monday.
- (e) the Advance Warning List.

(2) Where any particular live proceeding is not listed in any of these lists and is not actively within the seisin of a particular judge, parties must immediately bring the case

to the attention of the Judge in charge of the List so that it can be reinstated in the appropriate list.

12. The Holding List

(1) Where a case is transferred to the Holding List to await the outcome of another proceeding (the "lead case"):

- (a). the legal representatives of both parties are obliged to notify the court as soon as possible after any judgment has been given in the lead case, and
- (b). where the case is resolved, or resolved save as to costs, or for any other good and sufficient reason, a party may at any time mention the case on notice with a view to having the case taken out of the Holding List.

(2) Where final judgment is given in a lead case against the respondent(s), the following arrangements shall apply unless the court otherwise orders:

- (a). the matter shall be listed peremptorily for the first Monday in Term that is six weeks after delivery of the judgment; and prior to that listing the respondent(s) shall issue proposals to any applicants in relevant cases in the Holding List or file and serve opposition papers in any cases which it is intended to defend the proceedings notwithstanding such a judgment;
- (b). if the number of relevant cases intended to be defended exceeds 20, only opposition papers for the first 20 of such proceedings by record number need be delivered in the six week period referred to in paragraph (a) of this subparagraph, and the respondent(s) shall have an additional week to deliver opposition in the next 10 cases by record number, and so on; and
- (c). dates shall then be assigned or the case(s) shall be transferred to the List to Fix Dates.

(3) Where final judgment is given in a lead case in favour of the respondent(s), the following arrangements shall apply unless the court otherwise orders:

- (a). the matter shall be listed peremptorily for the first Monday in term, that is, eight weeks after the judgment and prior to that listing the respondent(s) shall have one week to request the applicant(s) to indicate if each case is still pursued in the light of the judgment;
- (b). the applicant(s) shall have one week to reply substantively and to make proposals in that regard; and in the case of any matter that is being pursued;
- (c). the respondent(s) shall have six weeks to file and serve opposition papers in any cases which are being prosecuted notwithstanding such a judgment; if the number of relevant cases intended to be pursued exceeds more than 20, only opposition papers for the first 20 of such cases by record number need be delivered by the end of the eight week period aforesaid, and the respondent(s) shall have an additional week to deliver opposition papers in the next 10 cases by record number, and so on; and
- (d). dates shall then be assigned or the case(s) shall be transferred to the List to Fix Dates.

(4) If a party fails to take steps required by this paragraph, the other party shall within two weeks peremptorily mention the matter to the Judge in charge of the List for appropriate directions and may apply for the costs of so doing.

(5). No matter may be put into the Holding List unless the List Registrar or Judge as the case may be is informed of details of which lead case is awaited, so that these details can be recorded on behalf of the Principal Registrar.

13. The List to Fix Dates

(1). Applications to have a case transferred to the List to Fix Dates must be made to the Judge in charge of the List.

(2). If a party considers that the case will require hearing time additional to that specified in this Direction, the party must inform the Judge in charge of the List at the time the case is put into the List to Fix Dates.

(3). Practitioners are requested to note that, given the possibility of custody cases or other urgent cases coming into the list without notice, hearing dates assigned are subject to change in the event of a date for a custody case or an urgent case being required.

14. Written legal submissions generally

(1). In the context of written legal submissions the terms of paragraph 5.19 of the Code of Conduct of the Bar of Ireland are recalled:

“In a civil case barristers must, at the appropriate time in the proceedings, inform the court of any relevant decision on a point of law and, in particular, of any binding authority or of any applicable legislation of which they are aware and which the barrister believes to be on point whether it be for or against their contention.”

(2). The following shall apply in relation to the preparation of written submissions unless otherwise ordered:

(a). The applicant shall, within two weeks after the proceedings have been transferred to the List to Fix Dates, send his or her legal submissions to the respondent(s) and send by email in word document format (not pdf) to asylumsubmissions@courts.ie for the attention of the Court.

(b). Within two weeks of service on the respondent(s) of the applicant’s legal submissions, the respondent(s) shall serve on the applicant and send by email in word document format (not pdf) to asylumsubmissions@courts.ie for the attention of the Court, the respondent(s)’ legal submissions

(3). Any order for costs made in proceedings shall be taken not to include the costs of a submission delivered in breach of any deadline set by a Practice Direction or an order of the court, unless the court expressly so orders when allowing costs.

(4). The applicant’s written legal submissions shall contain the sections and follow the format set out above for leave submissions.

(5). Save where otherwise specially ordered, the respondent shall not be required to deliver submissions until after receipt of the applicant’s submissions. The respondent’s written legal submissions shall contain the following sections:

A. Additional/Alternative List of legal questions/issues

a list of the additional or alternative legal questions or issues to those presented by the applicant which the respondent considers necessary.

B. Additional/Alternative statement of relevant facts

an additional or alternative statement of facts shall be set out in chronological order setting out the amendments required to the applicant's statement of facts. This shall be in the body of the submission and not in an annex.

C. Additional/Alternative statement of procedural history

an additional or alternative statement of procedural history shall be set out in chronological order setting out the amendments required to the applicant's statement of procedural history.

D. Legal arguments

The respondent's legal arguments shall be by way of reply to and shall, to the maximum extent possible, follow the headings and sequence of the applicant's arguments.

(6). All legal submissions shall be signed by the counsel who settled such submissions.

(7). References to case and statute law written legal submissions must be hyperlinked to a publicly accessible version if possible e.g. www.irishstatutebook.ie, www.courts.ie, www.bailii.org

(8). The subject line of all emails to asylumsubmissions@courts.ie must follow the following format: title of case, record number (in the form year (space) number (space) JR (or other appropriate code)), date and nature of hearing (if already fixed), the party on whose behalf the submissions are being lodged and the nature of the document being lodged; for example "Smith v. IPAT 2018 1001 JR - For substantive hearing 1 December 2018 - Applicant's written legal submissions" .

15. Lodgement of papers for substantive hearings

(1). All papers lodged for the attention of the Judge in charge of the List shall be accompanied by a covering letter outlining the reason why such papers are being lodged (e.g., for the purpose of a pending substantive hearing on a named date).

(2). The applicant's solicitor shall lodge in the Central Office for the List Registrar:

- (a). a full bound set of pleadings;
- (b). a hard copy of written legal submissions of each of the parties, individually stapled, separate from the book of pleadings and not bound within it; and
- (c). an agreed bound book of authorities

no later than 12 noon on the Thursday of the week preceding the week in which the case is listed for substantive hearing. This requirement does not apply to interim, interlocutory or procedural applications in the Monday list.

(3). Before lodging books of pleadings or authorities for the attention of the Court, each party must deliver to the other in advance a full paginated copy of any book of pleadings or authorities it intends to lodge or give to the court.

(4). Books and papers for use by the Court should be presented and organised as follows:

- (a). Each book of pleadings and/or exhibits should be bound and fully paginated;
 - (b). Each book should identify on its cover the party by whom it is lodged;
 - (c). Each book should contain a contents page and, where possible, be tabbed with a document number corresponding to the document number in the index. All exhibits should be identified in the contents page by reference to the exhibit number, the page number where it is to be found and a description of the item (e.g., "Exhibit AB1, Deportation order dated (date)" not "Exhibit AB1");
 - (d). Any individual volume of papers shall not contain more than 150 pages each; where papers exceed this length multiple volumes should be used;
 - (e). The parties shall deliver copies of legal authorities /case law referred to in the written legal submissions in bound books (not exceeding 150 pages in any one volume), tabulated by reference to a table of contents in the form of an agreed book of authorities.
- (5). Parties should note that in accordance with s. 65(3) of the Courts and Court Officers Act 1926 any papers delivered to the court may be retained by the court and will normally be confidentially disposed of following the conclusion of proceedings. Hence original documents should not normally be given to the court as any documents submitted may not be returned.

16. Time limits on oral submissions at hearings

The following time limits shall, unless the Court otherwise orders, apply to hearings:

- (a). at any hearing of any interlocutory or procedural application, including for leave to appeal or as to costs: 10 minutes per party (the applicant may reserve some of his or her time, to be specified at the outset, for a reply);
- (b). at any substantive hearing: 30 minutes per party (the applicant may reserve some of his or her time, to be specified at the outset, for a reply).

17. Practitioners' general obligations

Practitioners are reminded of the following:

- (a). a solicitor has an obligation to be and remain in effective contact with his or her client, and in the event of ceasing to be so in contact, a solicitor must apply to the Court to come off record promptly;
- (b). practitioners are under a duty to personally check whether or not any amendments have been made to any statute cited and to ensure that these are brought to attention of the Court;
- (c). where practitioners become aware of an error in a judgment or order (whether the judgment is approved or unapproved) that would come within slip rule, they are under an obligation to bring the matter immediately to the Court's attention; this should be done -
 - (i) in the case of uncontentious corrections sought to be made to an order, by email to the registrar and copied to the other side,
 - (ii) in the case of uncontentious corrections sought to be made to a judgment, by email to the judge's judicial assistant and copied to the other side

and

(iii) in any other case by bringing the matter to the Court's attention in open court as soon as possible;

- (d). if practitioners (whether barristers or solicitors) wish to be added to the email circulation list for general notices maintained by the List Registrar, it is their responsibility to communicate their up to date email address to the Registrar.

18. Transmission of papers where possible illegality disclosed

Where a judge dealing with proceedings to which this Practice Direction applies, or any other High Court proceedings, is of the view that the papers give grounds to suspect that any marriage entered into by a non-Irish national is one of convenience, that is, may have been entered into primarily for immigration advantage, or that any immigration-related offence has been committed, or that any deponent or witness in proceedings to which this Practice Direction applies has deposed to a matter or given evidence that is intentionally false or misleading, the judge may without prejudice to any other power to do so, direct the other party, or the Principal Registrar, to transmit the papers in the proceedings and any judgment of the court to the Garda Síochána.

19. Leave to appeal

Applications for leave to appeal pursuant to s. 5(6) of the Illegal Immigrants (Trafficking) Act 2000 (as amended by s. 34 of the Employment Permits (Amendment) Act 2014) shall be made in the Monday list on notice to the respondent within 28 days of the oral pronouncement of the decision concerned and shall be supported by written legal submissions setting out the precise text of the proposed point(s) of law of exceptional public importance arising and explaining how the application complies with the criteria for the grant of leave to appeal. Such submissions shall be served on the respondent at least seven days prior to the date on which it is proposed to seek such leave to appeal, and the respondent may reply to such submissions within that seven day period.

20. Non-compliance with this Practice Direction

In cases of failure to comply with this Practice Direction, the court may make such order as it considers appropriate including any order as to costs against a defaulting party, and/or an order as to costs against a defaulting solicitor under Order 99 rule 6, and/or an order disallowing costs as between a solicitor and his or her client under Order 99 rule 7, and/or an order disallowing the costs of an otherwise successful party as against the other party.

21. Commencement

(1). This Practice Direction shall come into operation on 1st January, 2019.

(2). Subject to sub-paragraph (3), this Practice Direction applies to proceedings whether commenced before or after the date referred to in sub-paragraph (1).

(3). Where leave has been granted in any proceedings prior to 1st January, 2019, the applicant(s) shall be required to deliver the affidavits referred to in paragraph 7(8), on or before Friday 18th January, 2019.

22. Previous Practice Directions

(1). Practice Direction No. HC68 of the 22nd September 2016, save for paragraphs 3(d), 4 and 6 thereof, shall, subject to this Practice Direction, continue to apply.

(2). Practice Direction No. HC78 of the 11th May, 2018 is revoked on the coming into operation of this Practice Direction.

Peter Kelly
President of the High Court
Dated this 17th day of December 2018.