

Ireland is a signatory of the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters. This is an international convention, which is implemented in the EU by two Directives;

Directive 2003/4/EC on Public Access to Information on Environmental Matters and;

Directive 2003/35/EC on Public Participation in respect of the Drawing up of Certain Plans and Programmes relating to the Environment

Under the provisions of Directive 2003/35/EC, members of the public are entitled to appeal relevant decisions of public bodies by way of judicial review.

Judicial Review Procedure

The High Court in Ireland has a power or "jurisdiction" called "judicial review". Judicial review is a way for the High Court to supervise the Oireachtas (Irish Parliament) to make sure that legislation does not conflict with the Constitution (or 'Basic Law' of Ireland). It is also a way for the High Court to supervise the lower courts, tribunals and other bodies to ensure that they make their decisions properly.

Judicial Review is divided into two main categories:

- (1) **Conventional judicial review.** Procedure governing conventional judicial review is to be found in Order 84 of the *Rules of the Superior Courts 1986*.
- (2) **Statutory Judicial Review:** Specialised statutory schemes of judicial review relating to specific areas of public decision-making which have been singled out by the Oireachtas as warranting specialised schemes because of the policy concerns involved. Statutory schemes and the procedure involved are covered by legislation specific to that area.

Judicial Review of Public Decisions

Public decisions may be judicially reviewed by the High Court to determine whether they are unconstitutional or illegal. Some examples of public decisions include:

- Decisions of the District and Circuit Courts
- Inquest verdicts
- Decisions of tribunals
- Deductions from army pensions
- Discharge of a member of the defence forces
- Disqualification from receiving social welfare payments
- Refusals of an Irish passport, marriage certificate, or visa
- Decisions to deport asylum-seekers
- Decisions of An Bord Pleanála relating to planning permission

- Decisions of Government bodies that require an Environmental Impact Assessment and/or an IPPC licence.
- Decisions of the Legal Aid Board and the Law Society.

The basic principles of public decision-making are:

- The decision-maker must have authority to make the decision that affects you. If the decision-maker has the authority to make the decision, it must not go beyond the limits of its authority.
- You are entitled to fair procedure in how the decision is reached. This means that the decision-maker must not be biased and the decision-maker must give you a fair hearing. You must be given an adequate opportunity to present your case. You must be informed of the matter and you must be given a chance to comment on the material put forward by the other side.

If the decision-maker does not have authority or does not give you fair procedure, you may bring judicial review proceedings in the High Court to challenge the decision. You must show that you have "sufficient interest" in the proceedings, i.e., that you were affected in some way by the decision you are challenging. You must also show that you have an arguable case, i.e., that your case has grounds.

The High Court will examine the decision and how it was reached and will decide whether or not it was unconstitutional or illegal. The High Court may then quash or cancel the decision.

Judicial Review Procedure

Judicial Review is primarily concerned with the procedural legality of the decision but does provide for a limited review of the merits of the decision. A decision of an administrative body may be set aside on the basis that it is unreasonable or irrational. The judicial review procedure is governed by Order 84 of the Rules of the Superior Courts as supplemented by specific procedural rules provided for in certain pieces of legislation (e.g. section 87(10) of the Environmental Protection Agency act 1992 (as inserted by section 15 of the Protection of the Environment Act 2003 and amended by section 107(e) of the Water Services Act 2007).

Leave Stage

Both conventional and statutory judicial review involve a mandatory "leave stage". An application for leave to bring judicial review proceedings must first be made. The leave stage is used to identify, at an early stage, claims which may be trivial or without merit. The application is made by application to the Court based on a Statement of Grounds. This statement should set out the reasons a judicial review is sought. It should be accompanied by an affidavit.

If leave to proceed is granted, the applicant may then bring judicial review proceedings. A notice of motion should be prepared and, along with the court order granting leave to proceed with the judicial review and both the Statement of Grounds and the affidavit prepared for the earlier stage, served on all persons directly affected by the application.

Statement of Opposition

A respondent who wishes to oppose an application for judicial review is required to file a Statement of Opposition, and may file a replying affidavit contesting the facts set out by the applicant. Once the pleadings have closed, the matter proceeds to a hearing.

Conventional Judicial Review

- **Waste Licensing**

Decisions of the Environmental Protection Agency in relation to waste licensing under the Waste Management Act 1996 and the Waste Management (Licensing) Regulations 2004 are subject to judicial review in accordance with the provisions of Order 84 of the Rules of the Superior Courts.

Statutory Judicial Review Procedure

- **Planning authorities**

A specific statutory procedure applies to application to judicial review of decisions made by the planning authorities. Sections 50 and s.50A of the Planning and development Act 2000 (as amended by the Planning and Development (Strategic infrastructure) Act 2006) set out this procedure, which differs from that provided for in Order 84 of the Rules of the Superior Courts.

- **IPPC licence Applications**

Applications for judicial review in respect of the Environmental Protection Agency in relation to IPPC licence applications are regulated by statute. Section 87(10) of the Environmental Protection Act 1992 (as amended by the Protection of the Environment Act 2003 and section 107(e) of the Water Services Act 2007), provides for judicial review or other legal proceedings to be initiated by any person, seeking to question the validity of a decision of the Agency to grant or refuse a licence or a revised licence, within a period of 8 weeks. This period may be extended, on application, by the High Court, where it considers that there is good and sufficient reason for doing so. There is no requirement on the person initiating these proceedings to demonstrate an interest or indicate a potential personal impact or having a sufficient interest.

Time Limits

The judicial review procedure provides for a timely manner of reviewing the decisions of administrative bodies. Order 84, Rule 21(1) of the *Rules of the Superior Courts 1986* lays down the requirements in relation to time limits in conventional judicial review proceedings. It provides that an application for leave to apply for judicial review must be made “promptly and within three months from the date when grounds for the application first arose, or six months if the relief sought is *certiorari*, unless the court considers that there is good reason for extending the period within which the application shall be made”.

While there have been very few examples of cases in which judicial review has been refused on grounds of lack of promptness even within the three or six month time periods

specified in the rules, this may happen. In its analysis as to whether good reason for an extension of time exists, the courts will look to the merits of the case at hand. To ensure consistency, the onus lies on the applicant to establish good reason to extend time.

Statutory schemes provide, in contrast to the general rules set out in Order 84, Rule 21(1) of the Rules of the Superior Courts 1986, for specific time limits to govern applications for leave to apply for judicial review, in their respective fields.

How to apply

If you wish to begin judicial review proceedings, you may want to contact a solicitor who will in turn brief a barrister to draft the papers for the case. It is also possible for you to represent yourself if you wish to keep your legal costs down.

Costs

There is **no fixed rate** of charges for legal fees in Ireland so you should obtain some quotes before deciding on legal representation. Your solicitor must advise you in writing of the fees you will be charged for his/her services. If it is not possible to give you a definite sum, he/she must estimate a sum or at the very least describe the basis upon which charges or fees will be calculated.

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