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## Judicial Review Procedural Update

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## Outline

### 1. Changes to CPR Part 54

- Claim forms
- Pleadings and Amendments
- Electronic Bundles
- Skeletons
- Urgent applications and interim relief
- Regional Venues

### 2. JR Parliamentary Bill

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## Changes to CPR Part 54

Changes take effect from 31 May 2021

Existing Part 54 Practice Directions to be replaced by:

- PD 54A: General (claim forms, bundles)
- PD 54B: Urgent apps and other apps for IR
- PD 54C: Venue
- PD 54D: Planning Court Claims (no substantive changes)

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## Objectives

(1) to make the process of bringing a claim for JR slightly more predictable, improving fairness of proceedings

(2) to encourage parties and reps to be as concise as possible to explaining claim and responses.

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## Claim Form / Statement of Facts and Grounds

- CF must set out “all material facts”; refer to statutory provisions and set out any alternative appeal mechanisms that exist/could have been used (4.1(2))
- CF must include “clear and concise” statement of the facts and grounds.
- Can be single document. No more than 40pgs.
- Identify each ground of challenge; identify relevant provision/principle of law said to have been breached; and provide sufficient detail of the alleged breach to enable the parties and Ct to identify the essential issues alleged to arise.
- State precisely what relief is sought.

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## Claim Form (r.4.4)

must be accompanied by— (r.4.4)

- (a) any written evidence in support of the claim.
- (b) any written evidence in support of any other app in CF;
- (c) a copy of any order that the claimant seeks to have quashed;
- (d) where the claim for JR relates to a decision of a court/tribunal, an approved copy of the reasons for that decision;
- (e) where claim is directed at PB decision, a copy of challenged decision;
- (f) copies of any documents on which C proposes to rely;
- (g) copies of any relevant statutory material; and
- (h) a list of essential documents for advance reading by the court (with pg refs to the passages relied on).

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## Acknowledgement of Service

- SGD must “succinctly” identify rel. facts, “brief summary” of reasoning underlying the measure, “succinctly explain” legal basis of response, “concise as possible”
- 30 pages max & usually “significantly shorter”



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## Renewed application for permission

- Purpose of request to reconsider is to “identify the scope of renewed app.”, “succinct” and should “address reasons given” by J refusing permission. (7.6)
- Standard hearing estimate 30 mins inc. judgment! (7.7)
- Any request longer listing should be included in app and provide agreed estimate 7 days before hearing (7.7)
- Neither D nor IP need attend unless directed. Will not generally get costs for doing so.



## Detailed Grounds

- can rely on SGD instead of filing DG... (9.1)
- DGs must be “concise” & “shall not exceed” 40 pages (9.1(2))
- Duty of candour: DGs should identify rel. facts and reasoning “in acc. w duty of candour” (10.1) (see Admin Ct Guide 14.1.6: “continuing duty on all parties”)



## Amending Grounds r.54.15

- Ct’s permission required to add grounds.
- C must apply for permission to amend in line with Pt 23 (notice, service 3 days before, apply to set aside etc.)
- App must be prompt and explain “need” for amendment and reason for “any delay” (11.2)
- When considering app, Ct will apply CPR r.17.1: once served, can only amend SOC w. parties’ written agreement or Ct’s permission and – CPR r.17.2: Ct may disallow amendment even where permission not req’d (if permission had been req’d for that amendment, would not have been granted, e.g. vexatious)
- Ct can then give directions for D to amend DGs etc. (11.4)



## Interveners (r.54.17)

- Permission required to intervene (app under Pt 23)
- App must “prompt”. Ct unlikely to accede to app if it would delay proceedings.
- App should explain who applicant is and why and in what form the applicant wants to participate in the hearing. App should include a summary of the representations the applicant proposes to make and seek permission for serving evidence.
- Where the court gives permission for a person to file evidence or make representations at the hearing of the claim for judicial review (whether orally or in writing), it may do so on conditions and may give case management directions.
- Seek consent of other parties to avoid further hearing.



## Skeletons

- Purpose of a skeleton argument is to assist the court by setting out as concisely as practicable the arguments upon which a party intends to rely.
- 25-page limit
- Skeletons should “define and confine” the issues, be cross-referenced & “self-contained”, not quote extensively, clearly identify authorities (no long lists: say why if more than 1 per proposition) (14.2)
- May be returned if non-compliant and costs disallowed.
- 21 days before hearing for C. 14 days for D.



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## Bundles

- Parties shall agree & lodge hearing bundle, paginated and indexed, containing all relevant docs (or extracts) req. for hearing, 21 days before hearing (same day as C's skele & before D's skele), emphasising need to front-load prep and facts (15.1 & 15.3)
- Core bundle req if main hearing bundle 400+ pages;
- Sols for all parties must certify that bundle meets requirements (15.1)
- 7 days before hearing, parties must agree and lodge authorities bundle, agreed list of issues, chronology, essential reading list and time estimates (used to be in skeletons)
- Req. for hard copy + e-bundle (in Div Ct, one set for each judge)

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## Agree Final Order (16.1)

- If, prior to J, parties agree terms of a final order, C must shall file 3 copies of draft order + "short, agreed statement" of reasons and any legal materials relied on.
- Draft order and the agreed statement must be signed by all parties to the claim (16.2)
- Ct will make the order if satisfied that the order should be made. If not hearing will be set.

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## PD54B – Urgent Applications and Interim Relief

- In Admin Court Monday – Friday 10am – 4.30pm (Otherwise direct to QBD out of hours judge).
- Use N463. Must give reasons for why urgent application necessary, why the application was not made sooner, and a timetable for consideration. Must be verified by statement of truth and if immediate consideration requested signed by a barrister.
- Must prepare an indexed paginated bundle containing N463 and any other material required including relevant inter partes correspondence

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## Interim Relief (PD54B 2.1-2.4)

- If interim relief is sought the grounds for seeking such relief must be set out clearly and concisely and include draft order
- Must take reasonable steps to investigate matters material to the application. Must be supported by evidence and include no more than is necessary for the purposes of the application.
- Since the court may determine *ex parte* the applicant must identify all matters relevant to whether or not the interim relief sought should be granted

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## Expedition and Other Applications (PD54B 3.1-4.1)

- Applications for expedition must include a clear and concise explanation of the reasons why expedition is necessary. Must explain the position of the defendant and any IP, or the steps taken to contact them.
- Other applications may be included in the Claim Form or made by filing an application notice (using Form N244)

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## Venue of hearing PD 54C

- Continuing emphasis regionalisation of Admin Court
- General expectation is that proceedings will be administered in region “with which the CLAIM is most closely connected”, having regard to the subject matter of the claim, the location of C or D.

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## How are things currently working

- Slight slowdown in permission paper decisions because of the need to redeploy judges to deal with the criminal court backlog.
- Subject to lockdown easing, there will be a move to a significantly greater proportion of hearings in person.
- Judge led decision but may invite parties for their views in advance.

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## The JR Bill – “Targeted Incremental Change”

- Reversing Cart JR
- Suspended Quashing Orders “on an application for Judicial Review the High Court may suspend any quashing order that it makes, and provide that the order will not take effect if certain conditions specified by the High Court are satisfied within a certain time period.”

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## The JR Bill – “Targeted Incremental Change”

- Nullity: Only lack of competence, power, or jurisdiction leads to the power being null and void; presumption against use of nullity; legislating to state which issues can be considered as going outside the scope of executive power
- Ouster Clauses “Ouster clauses are not a way of avoiding scrutiny. Rather, the Government considers that there are some instances where accountability through collaborative and conciliatory political means are more appropriate, as opposed to the zero-sum, adversarial means of the courts. In this regard, ouster clauses are a reassertion of Parliamentary Sovereignty, acting as a tool for Parliament to determine areas which are better for political rather than legal accountability.”

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## Procedural Reform

- Time Limits – recommendation to remove promptitude requirement under CPR 54.5(1)(a)
- Agreed extensions of time to encourage pre-action resolution (consultations thinks undesirable)
- ‘track’ system?
- Interveners – require parties to identify wider groups which may assist
- Reply as a formal step pre-permission
- No requirement for SGR if PAP Followed; and 56 days for DGR

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Thanks for listening...



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