

Judicial Review: A Practical Understanding of Judicial Review in Ireland for Decision Makers

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Agenda



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1. Nature of Judicial Review
2. Procedure
3. Grounds for judicial review
4. Remedies

Nature of judicial review



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*Chief Constable of the North Wales
Police v Evans* [1982] 1 WLR 1155
(Brightman LJ):

*"Judicial review is concerned, not
with the decision, but with the
decision-making process."*

Nature of judicial review



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What judicial review is:

- review of the lawfulness of a decision of a public authority (*Sweeney v Fahy* [2014] IESC 50).

What judicial review is not:

- An appeal
- A review of the merits of the decision

Legal basis



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The Irish Constitution

- Jurisdiction of the Superior Courts (Articles 34-37)
- Fundamental rights: Articles 40-44
- Rule of law

Common law

Rules of the Superior Courts

Statutory restrictions

ECHR

EU law

Key references



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Order 84 RSC Judicial Review and Orders Affecting Personal Liberty

Order 84A RSC Review of the Award of Public Contracts

Order 103 Planning and Environmental Proceedings

Practice Direction (NB HC79 and HC138 and see also, PDs for specialised lists HC 137 (Planning and Environment Court List) and HC140 (asylum, as of 3 June 2026))



Procedure

Time limits



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Ordinary rule: Order 84, r 21(1): 3 months from the date when grounds **first arose**.

Order 84, r 21(1A) clock stops when filed in Central Office.

Stricter time limits for certain decisions:

- S. 50 of the Planning and Development Act 2000: **8 weeks** from decision
- S. 5 Illegal Immigrants (Trafficking) Act 2000: **28 days** from notification



Time limits: Extension of time

Order 84 r 21(3) Application to extend time for application for leave for judicial review

1. Good and sufficient reason
2. The circumstances that resulted in the failure to make the application for leave within the period (i) were outside the control of the applicant or (ii) could not have reasonably been anticipated by the applicant for the extension.

Court can have regard to prejudice.

Affidavit should include an account of when relevant steps were taken **before and after** the expiration of the time.

Sufficient interest



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The applicant must have **sufficient interest** to bring judicial review proceedings.

***Cahill v Sutton* [1980] 1 IR 269** (standing in constitutional challenge to s. 11(2)(b) of the Statute of Limitations 1957): "Impact of the impugned law on his personal situation discloses an injury or prejudice which he has either actually suffered or is in imminent danger of suffering."

State (Lynch) v Cooney [1983] ILRM 89.

Public interest:

- *SPUC v Coogan* [1989] IR 734.
- Access to environmental justice.
- *Grace and Sweetman v ABP* [2020] 3 IR 286
- Environmental organisations (s. 50A(3)(b)(ii)).

Application for leave



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Filtering process

G v DPP [1994] 1 IR 374 "This preliminary process of leave to apply for judicial review is similar to the prior procedure of seeking conditional orders of the prerogative writs. The aim is similar - to effect a screening process of litigation against public authorities and officers. It is to prevent an abuse of the process, trivial or unstatable cases proceeding, and thus impeding public authorities unnecessarily."

Normally *ex parte* but can be on notice or telescoped.

Application for leave



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Ordinary standard: arguable grounds (*G v DPP* [1994] 1 IR 374):

“light burden”

(a) That he has a sufficient interest in the matter to which the application relates to comply with rule 20 (4).

(b) That the facts averred in the affidavit would be sufficient, if proved, to support a stateable ground for the form of relief sought by way of judicial review.

(c) That on those facts an arguable case in law can be made that the applicant is entitled to the relief which he seeks.

(d) That the application has been made promptly and in any event within the three months or six months time limits provided for in O. 84, r. 21 (1), or that the Court is satisfied that there is a good reason for extending the time limit. The Court, in my view, in considering this particular aspect of an application for liberty to institute proceedings by way of judicial review should, if possible, on the ex parte application, satisfy itself as to whether the requirement of promptness and of the time limit have been complied with, and if they have not been complied with, unless it is satisfied that it should extend the time, should refuse the application. If, however, an order refusing the application would not be appropriate unless the facts relied on to prove compliance with r. 21 (1) were subsequently not established, the Court should grant liberty to institute the proceedings if all other conditions are complied with, but should leave as a specific issue to the hearing, upon notice to the respondent, the question of compliance with the requirements of promptness and of the time limits.

(e) That the only effective remedy, on the facts established by the applicant, which the applicant could obtain would be an order by way of judicial review or, if there be an alternative remedy, that the application by way of judicial review is, on all the facts of the case, a more appropriate method of procedure.

Application for leave



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Higher threshold: substantial grounds

McNamara v ABP [1995] 2 ILRM 125: reasonable, arguable weighty and not trivial or tenuous.

Pleading



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Statement of grounds should contain the **relief** sought and the **grounds** on which the applicant is entitled to that relief.

Pleadings define the dispute and set out the matters in issue (*Keegan v Garda Síochána Ombudsman Commission* [2015] IESC 68).

Legal and factual grounds for relief must be particularised. **084, r20(3)**: general assertion not sufficient. Applicant must 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.”

The parties are **confined** to their pleadings.

Pleading



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Reid v ABP [2024] IEHC 27: “Overall, the rules of pleading are well-established, clear and mandatory, and are of particular importance in a context of special complexity such as technical EU-heavy areas of planning law. While exact specification of every jot and tittle of a case is an impossible standard, an applicant can only be permitted to advance at a hearing a point that is acceptably clear from the express terms of the statement of grounds, subject to the grant of any order allowing an amendment.”

Cannot introduce new grounds (including grounds of opposition) by affidavit, must be sought by **amendment** (NB time limits).

Burden of proof in judicial review

Burden of proof is on the **applicant**.

Presumption of validity of administrative decisions.

Shifting of burden in limited circumstances: where applicant has established error, burden shifts to respondent to demonstrate it was harmless error/ relief would not provide a benefit to the applicant (*HA v Minister for Justice* [2022] IECA 166).

Evidence



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Obligation to raise point with the decision-maker and when can fresh evidence not before the decision-maker can be relied on in judicial review

Generally, the applicant should have raised the point they seek to rely on in judicial review with the decision-maker.

Exceptions for new arguments and fresh evidence (*Reid v ABP* (No 1) [2021] IEHC 230)

1. Jurisdictional
2. Applicant was not the applicant before the decision-maker
3. Where necessary where the complaint is or irrationality or disproportionality
4. Procedural unfairness that applicant could have reasonably expected decision-maker to comply with requirement.
5. Failure to give reasons
6. engages the principle of access to justice in EU law
7. error of fact

Evidence



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8. Applicant wishes to show what material was before the decision maker.
9. new evidence is necessary to explain technical terms or processes
10. new evidence is to show that a process of reasoning involved serious technical error
11. a decision-maker had an independent duty to inquire, and relevant information could reasonably have been available.
12. new evidence explains the context in which the issue arises or is produced for background information
13. the complaint relates to a disproportionate impact on constitutional or ECHR rights which might be assessed by reference to the overall fact-situation rather than just what was before the decision-maker (though this does not allow an applicant to complain that some identified constitutional or ECHR right wasn't considered at all when that right was never alluded to by the applicant before the decision-maker).

Evidence



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14. the complaint is one of misconduct by the decision-maker.

15. generally, the illegality is one that the applicant could not reasonably be expected to have addressed before the decision-make.

16. failure to raise the point during the process is otherwise explained satisfactorily.

Cross examination



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Where there is a **conflict of evidence** that is material to the determination of the proceedings cross-examination may be necessary.

Rare because JR concerned with lawfulness and not merits.

RAS Medical Ltd v The Royal College of Surgeons in Ireland [2019] 1 IR 63: "But it is frankly not appropriate for parties to enter into controversy as to the facts contained either in affidavit evidence or in documents which are admitted before the court without successful challenge, without exploring the necessity for at least some oral evidence. If it is suggested that there are facts which are material to the final determination of the proceeding and in respect of which there is potentially conflicting evidence to be found in such affidavits or documentation, then it is incumbent on the party who bears the onus of proof in establishing the contested facts in its favour to use appropriate procedural measures to ensure that the potentially conflicting evidence is challenged."

Grounds for Judicial Review

Grounds for relief



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Rawson v Minister for Defence [2012] IESC 26

"It is trite law to say that judicial review is concerned with the lawfulness of decision making in the public field. Where a decision is made by a public person or body which has the force of law and which affects the rights and obligations of an individual then it hardly needs to be said that the courts have jurisdiction to consider whether the decision concerned is lawful. If it were not so then it is hard to see how such a situation would be consistent with the rule of law. For if decisions materially affecting the rights and obligations of individuals could be made in an unlawful fashion the rule of law would not be upheld.

While the circumstances in which a decision made by a public person or body may be found to be unlawful are varied, it is possible to give a non-exhaustive account of the principal bases by reference to which such a finding might be made. First, the decision must be within the power of the person or body concerned. Second, the process leading to the decision must comply both with fair procedures and with whatever procedural rules may be laid down by law for the making of the decision concerned. Third, the decision maker must address the correct question or questions which need to be answered in order to exercise the relevant power and in so doing must have regard to any necessary factors properly taken into account and must also exclude any considerations not permitted. Fourth, in answering the proper questions raised and in assessing all matters properly taken into account the decision maker must come to a rational decision in the sense in which that term is used in the jurisprudence.

There may, of course, be many variations or additions to that very broad description of the matters that need to be assessed in order to decide whether a decision affecting rights and obligations has been lawfully made.



Common grounds for judicial review

- Breach of statutory duty or statutory requirements
- Irrationality/ unreasonableness
- Breach of fair procedures
- Right to be heard
- Failure to give reasons/ adequate reasons
- Breach of EU law
- Failed to consider relevant matters/ took into account irrelevant matters

Other grounds

- Constitutionality (normally plenary)
- Contrary to the ECHR
- Breach of legitimate expectation
- Material error in fact

Irrationality/ unreasonableness



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Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223: so unreasonable that no reasonable decision-maker could have come to the decision.

State (Keegan) v Stardust Compensation Tribunal [1986] IR 642: flies in the face of fundamental reason and common sense.

O'Keefe v ABP [1993] 1 IR 39: decision-maker had no relevant material before it that would support its decision.

Proportionality

Curial deference



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Expert decision makers: special knowledge, skill or competence / in a technical area e.g. planning

Court is slow to intervene in expert decision-making body's reasoning.

Meadows v Minister for Justice [2010] 2 IR 701

Curial deference is **not** a “supercharged presumption of validity” and dependent on the body providing a properly reasoned decision. (*Stanberry Investments Ltd v Commissioner of Valuation* [2020] IECA 33 para 52)

Breach of fair procedures



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Natural and constitutional justice

McCormack v Garda Síochána Complaints Board [1997] 2 IR 489

"It is now established as part of our constitutional and administrative law that the constitutional presumption that a statute enacted by the Oireachtas intended that proceedings, procedures discretions and adjudications permitted, provided for, or prescribed by Acts of the Oireachtas are to be conducted in accordance with the principles of constitutional justice (see East-Donegal Co-Operative Ltd. -v- Attorney General 1970 I.R. 317,341). It follows therefore that an administrative decision taken in breach of the principles of constitutional justice will be an ultra vires one and may be the subject of an order of certiorari. Constitutional justice imposes a constitutional duty on a decision-making authority to apply fair procedures in the exercise of its statutory powers and functions."

Breach of fair procedures



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Right to be heard

Right to material before the decision-maker (*State (Williams) v Army Pensions Board* [1983] IR 308)

Bias - objective bias (reasonable apprehension of bias by a reasonable person) and actual/ subjective bias.

Reasons



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Adequacy of reasons: *Connelly v An Bord Pleanála* [2021] 2 IR 752

“First, any person affected by a decision is at least entitled to know in general terms why the decision was made. This requirement derives from the obligation to be fair to individuals affected by binding decisions and also contributes to transparency. Second, a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or to bring judicial review of a decision. Closely related to this latter requirement, it also appears from the case law that the reasons provided must be such as to allow a court hearing an appeal from or reviewing a decision to actually engage properly in such an appeal or review.”

Reasons



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***Balz and Heubach v ABP* [2023] 3 IR 751: “little more than administrative throat-clearing”**

Para 57: “It is a basic element of any decision-making affecting the public that relevant submissions should be addressed and an explanation given why they are not accepted, if indeed that is the case. This is fundamental not just to the law, but also to the trust which members of the public are required to have in decision making institutions if the individuals concerned, and the public more generally, are to be expected to accept decisions with which, in some cases, they may profoundly disagree, and with whose consequences they may have to live.”

***Balscadden Road SAA Residents Association Ltd v ABP* [2020] IEHC 586**

Obligation is to make a reasoned decision. No requirement to provide *discursive* analysis of all submissions.

Planning context: “reasons must be judged from the standpoint of an intelligent person who has participated in the relevant proceedings and is appraised of the broad issues involved, and should not be read in isolation.”

Material errors in fact



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Extremely rare (*Ryanair Ltd v Flynn* [2000] 3 IR 240)

L v Refugee Appeals Tribunal [2010] IEHC 362 "...mistake of fact which is so material to the substantive analysis and consideration in the Contested Decision as to vitiate its validity."

Fact must be uncontentious and objectively verifiable (*Voyage Property Ltd v Limerick City and County Council* [2025] IEHC 696.

Remedies in Judicial Review

Remedies



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Certiorari quashes the decision of the public body

Declaration of legal rights or duties

Mandamus compels the public body to perform a duty (must have been a demand and refusal)

Injunction

Damages

Prohibition prohibits a body from taking an action, prevents a body from acting in excess of jurisdiction (e.g. prevent a criminal trial).

Quo warranto by what authority?



Declaratory and injunctive relief

Order 84, rule 18(2)

An application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to—

(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition, certiorari, or quo warranto,

(b) the nature of the persons and bodies against whom relief may be granted by way of such order, and

(c) all the circumstances of the case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

Declaration



O'Donnell v Dun Laoghaire Corporation [1991] ILRM 301 "A declaratory judgment is one which declares the rights of the parties and because defendants, and in particular public bodies, respect and obey such judgments they have the same legal consequences as if the court were to make orders quashing the impugned orders and decisions."

Omega Leisure Ltd v Superintendent Barry [2012] IEHC 23. Court must be satisfied that:

1. There is a good reason for so doing.
2. There is a real and substantial, and not merely a theoretical, question to be tried.
3. The party with carriage of the proceedings must have sufficient interest to raise that question and
4. That party must be opposed by a proper contradictor.

Damages



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Order 84, r 25 RSC

(1) On an application for judicial review the Court may, subject to sub-rule (2), award damages to the applicant if—

(a) he has included in the statement in support of his application for leave under rule 20 a claim for damages arising from any matter to which the application relates, and

(b) the Court is satisfied that, if the claim had been made in a civil action against any respondent or respondents begun by the applicant at the time of making his application, he would have been awarded damages.

(2) Order 19, rules 5 and 7, shall apply to a statement relating to a claim for damages as it applies to a pleading.

Remedies in judicial review

Remedies are **discretionary**

What can influence discretion (non-exhaustive)?

- Conduct of the applicant
- Alternative remedies
- Delay/ acquiescence/ waiver
- Limited practical value of the remedy
- Proportionality – triviality
- Seriousness of the error

Recap:



***Reilly v An Coimisiún Pleanála* [2025] IEHC 659: “eight-fold path to obtaining relief by way of judicial review:**

“(i) the applicant complies with jurisdictional requirements (e.g. time or standing to bring the proceedings at all (as opposed to standing for particular issues within a case that the applicant can bring at a general level));

(ii) the applicant's point is legally correct and workable;

(iii) the applicant's point is properly pleaded with the requisite specificity;

(iv) the specific point is one that the applicant has standing to make (bearing in mind that while the requirement for standing can preclude raising issues which are a ius tertii for example, it does not generally require prior participation in the process insofar as there is an EU/Aarhus convention dimension);

(v) material capable of sustaining the point was properly before the decision-taker at the relevant time such as to give rise to a duty to consider it (subject to exceptions primarily related to failure by the decision-taker to fulfil autonomous obligations);

(vi) the applicant has discharged the onus of proof to evidentially establish all facts necessary for relief;

(vii) any error must transcend the harmless, the non-material and the purely technical and must have real-world consequences, bearing in mind that if error is demonstrated, then the onus shifts to the opposing parties to show harmlessness; and

(viii) a consideration of the court's discretion properly favours the making of the order (such as weighing the proportionality of the order sought), bearing in mind that discretion is more limited in an EU law context than in relation to a domestic law issue.

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Thank you

Questions??