



STATUTORY INSTRUMENTS.

S.I. No. 246 of 2025

RULES OF THE SUPERIOR COURTS (PLANNING & ENVIRONMENT)
2025

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We, the Superior Courts Rules Committee, by virtue of the powers conferred upon us by section 36 of the Courts of Justice Act 1924, section 68 of the Courts of Justice Act 1936 (as applied by section 48 of the Courts (Supplemental Provisions) Act 1961), section 14 of the Courts (Supplemental Provisions) Act 1961, and the European Communities (Rules of Court) Regulations 1972 (S.I. No. 320 of 1972), and with the concurrence of the Minister for Justice, Home Affairs and Migration, make the following Rules of Court.

Dated this 10th day of March, 2025.

Donal O'Donnell (Chairperson)

Caroline Costello

Yvonne McNamara

David Barniville

Gráinne Larkin

Elizabeth Dunne

Michele O'Boyle

Brian R. Murray

Áine Hynes

Mary Faherty

James Finn

Nuala Butler

Mary Cummins

Richard Humphreys

John Mahon

Siobhán Phelan

I concur in the making of the following Rules of Court.

Dated this 10th day of June, 2025.

Jim O'Callaghan
Minister for Justice, Home Affairs and Migration

S.I. No. 246 of 2025

**RULES OF THE SUPERIOR COURTS (PLANNING & ENVIRONMENT)
2025**

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Planning & Environment) 2025, shall come into operation on the 18th day of June, 2025.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2025.

2. These Rules shall apply in proceedings commenced both before and from the date on which these Rules come into operation.

3. The Rules of the Superior Courts are amended:

(i) by the substitution for the definition of “commercial proceedings” in rule 1 of Order 63A of the following definition:

““commercial proceedings” means:

(a) proceedings in respect of any claim or counterclaim, not being a claim or counterclaim for damages for personal injuries, arising from or relating to any one or more of the following:

(i) a business document, business contract or business dispute where the value of the claim or counterclaim is not less than €1,000,000;

(ii) the determination of any question of construction arising in respect of a business document or business contract where the value of the transaction the subject matter thereof is not less than €1,000,000;

(iii) the purchase or sale of commodities where the value of the claim or counterclaim is not less than €1,000,000;

(iv) the export or import of goods where the value of the claim or counterclaim is not less than €1,000,000;

(v) the carriage of goods by land, sea, air, or pipeline where the value of the claim or counterclaim is not less than €1,000,000;

(vi) the exploitation of oil or gas reserves or any other natural resource where the value of the

- claim or counterclaim is not less than €1,000,000;
- (vii) insurance or re-insurance where the value of the claim or counterclaim is not less than €1,000,000;
 - (viii) the provision of services (not including medical, quasi-medical or dental services or any service provided under a contract of employment) where the value of the claim or counterclaim is not less than €1,000,000;
 - (ix) the operation of markets or exchanges in stocks, shares or other financial or investment instruments, or in commodities where the value of the claim or counterclaim is not less than €1,000,000;
 - (x) the construction of any vehicle, vessel, or aircraft where the value of the claim or counterclaim is not less than €1,000,000;
 - (xi) business agency where the value of the claim or counterclaim is not less than €1,000,000;
- (b) proceedings in respect of any other claim or counterclaim which the Judge in charge of the Commercial List, having regard to the commercial and any other aspect thereof, considers appropriate for entry in the Commercial List;
- (c) any application or proceedings under the Arbitration Act 2010 (other than an application or request for an order under Article 8(1) of the Model Law or Article II.3 of the New York Convention (each within the meaning of section 2(1) of that Act)) where the value of the claim or any counterclaim is not less than €1,000,000;
- (d) any proceedings instituted, or any application or reference made, or appeal lodged, under the provisions of the Patents Act 1992, not including an application under section 108(4) of that Act;
- (e) any proceedings instituted, application made, or appeal lodged under:
- (i) the Trade Marks Act 1996;
 - (ii) the Copyright and Related Rights Act 2000;
 - (iii) the Industrial Designs Act 2001;
- (f) any proceedings instituted for relief in respect of passing off;

- (g) any appeal from, or application for judicial review of, a decision or determination made or a direction given by a person or body authorised by statute to make such decision or determination or give such direction, where the Judge in charge of the Commercial List considers that the appeal or application is, having regard to the commercial or any other aspect thereof, appropriate for entry in the Commercial List;
 - (h) any proceedings by or against the Registrar (within the meaning of Article 1 of the Cape Town Convention) in connection with any function exercised or exercisable by the Registrar under the Cape Town Convention or the Aircraft Protocol (each as defined in section 3 of the International Interests in Mobile Equipment (Cape Town Convention) Act 2005) or any regulations or procedures made thereunder;
- but do not include:
- (i) any claim or counterclaim for damages for personal injuries;
 - (ii) any proceedings which qualify for admission to, or are admitted to, the Competition List in accordance with Order 63B, or
 - (iii) any proceedings which qualify for admission to, or are admitted to, the Planning & Environment List in accordance with Order 103;”;
 - (ii) by the substitution for Order 103 of the Order set out in Schedule 1;
 - (iii) by the deletion of Orders 103A and 108; and
 - (iv) by the insertion in the appropriate sequence of the Appendix in Schedule 2 as Appendix NN.

Schedule 1
“Order 103
Planning & Environment Proceedings

I. General provisions

Definitions

1. (1) In this Order, unless the context or subject matter otherwise requires:

“2000 Act” means the Planning and Development Act 2000 (to the extent that Act is in force);

“2024 Act” means the Planning and Development Act 2024 (to the extent that Act is in force);

“Aarhus Convention” means the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus on 25 June 1998”;

“costs protection order” means an order, whether made by reference to section 50B of the 2000 Act, section 3 of the Environment (Miscellaneous Provisions) Act 2011, Chapter 2 of Part 9 of the 2024 Act, the principles of European Union law, or otherwise, declaring prospectively that by virtue of the application of a specified rule of law or legal provision to the proceedings, no order for costs will be made against the applicant or other particular party (the “costs-protected party”), irrespective of the outcome of the proceedings, save in circumstances set out in section 50B(3) of the 2000 Act, section 3(3) of the 2011 Act or section 293(3) of the 2024 Act, and that if such circumstances apply, no order for prohibitively expensive costs will be made against the costs-protected party;

“ECHR” means the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950, and referred to in section 1 of the European Convention on Human Rights Act 2003 as the “Convention”;

“environment” includes the built environment, the natural environment and all natural resources, including air, atmosphere, land, water and seas, and in particular includes without limitation environmental issues related to:

- (i) archaeological, historic and cultural structures;
- (ii) climate;
- (iii) environmental aspects of agriculture, aquaculture, fisheries, or minerals or other natural resources;
- (iv) environmental aspects of renewable and non-renewable energy;
- (v) flora and fauna;
- (vi) genetically modified organisms;
- (vii) habitats;
- (viii) international agreements of an environmental nature or with environmental characteristics or implications;

- (ix) land use;
- (x) landscape;
- (xi) pollution of air, atmosphere, land, water and seas;
- (xii) soil;
- (xiii) waste management;
- (xiv) wastewater;

“Judge in charge of the Planning & Environment List” means the Judge for the time being assigned by the President of the High Court to carry out the functions of Judge in charge of the Planning & Environment List, and the Judge in charge of the Planning & Environment List may direct that specified functions of that Judge be carried out in a particular case by another Judge;

“Judge” means any Judge of the High Court, including the Judge in charge of the Planning & Environment List, assigned for the time being by the President of the High Court to hear and determine proceedings, or any application in relation to proceedings, entered in the Planning & Environment List (and if no such Judge is available at a given time, including in vacation periods, means such Judge of the High Court as may be assigned to deal with the matter);

“List Registrar” means the registrar, for the time being assigned by the Principal Registrar of the High Court to carry out the functions of List Registrar conferred by this Order;

“measures of general application” includes:

- (i) enactments within the meaning of the Interpretation Act 2005;
- (ii) insofar as they would not otherwise constitute such enactments, instruments having general effect in the nature of development frameworks or plans, policy documents, programmes, or other like documents, whether made under an enactment or not;

“opposing party” means respondent or notice party opposing an application;

“Part 9 judicial review” shall be construed in accordance with section 279 of the 2024 Act;

“party”, without prejudice to Order 125, includes any member, director, officer, servant or agent of a party, or other persons that can reasonably be seen as acting in concert with any such person;

“Planning & Environment List” means the list in which proceedings have been entered in accordance with rule 19 or rule 20;

“Planning & Environment proceedings” has the meaning assigned by sub-rule (2);

“the proper officer” means the officer for the time being managing the Central Office;

“satellite litigation” means proceedings of any kind that relate to or arise from the legal or factual matters to which particular substantive litigation relates, and

includes (without limitation) actions in defamation, anti-suit or similar injunctions, allegations regarding maintenance and champerty, actions alleging extortion or other improper conduct by participants in a development consent process or seeking return of monies paid as a result of such conduct, or actions to obtain information;

“Statement of Grounds” means the statement required by rule 14(1);

“Statement of Opposition” means the statement required by rule 28;

“substantive litigation” means any proceedings in the Planning & Environment List, other than satellite litigation.

(2) “Planning & Environment proceedings”, subject to sub-rule (3), comprise:

(a) (i) proceedings related to decisions or other acts and omissions coming within the scope of Article 9(1) to (3) of the Aarhus Convention or involving any of the following European Union legislation, including proceedings related to the adequacy of transposition of, or validity of legislation purporting to transpose, such EU legislation:

- I the Urban Waste Water Treatment Directive, 91/271/EEC;
- II the Nitrates Directive, 91/676/EEC;
- III the Habitats Directive, 92/43/EEC;
- IV the Aarhus Convention 1998 as an element of EU law;
- V the Water Framework Directive, 2000/60/EC;
- VI the SEA Directive, 2001/42/EC;
- VII the National Emissions Ceiling Directive, 2016/2284;
- VIII the Environmental Noise Directive, 2002/49/EC;
- IX the Directive on access to information on the environment (AIE), 2003/4/EC;
- X the Environmental Liability Directive, 2004/35/EC;
- XI the Bathing Water Directive, 2006/7/EC;
- XII the Groundwater Directive, 2006/118/EC;
- XIII the Clean Air For Europe Directive, 2008/50/EC;
- XIV the Marine Strategy Framework Directive, 2008/56/EC;
- XV the Waste Framework Directive, 2008/98/EC;
- XVI the Birds Directive, 2009/147/EC;

- XVII the Industrial Emissions Directive, 2010/75/EU;
- XVIII the Environmental Impact Assessment (EIA) Directive, 2011/92/EU as amended by 2014/52/EU;
- XIX the Maritime Spatial Planning Directive, 2014/89/EU;
- XX the Renewable Energy Directive, (EU) 2018/2001 as amended by Directive (EU) 2023/2413;
- XXI the Drinking Water Directive, (EU) 2020/2184;
- XXII any other EU directive, regulation or other instrument relating to any other aspect of, or otherwise relating to, the environment,

and includes proceedings related to decisions or other acts and omissions involving any European Union legislation amending or replacing (or which was replaced by) any legislation referred to at items I to XXII inclusive;

- (ii) proceedings related to decisions or other acts and omissions under any of the following legislation, including challenges to the validity of, or compatibility with ECHR provisions of, such legislation or the adequacy of transposition of European Union law therein:

- I the Foreshore Act 1933;
- II the Local Government (Water Pollution) Act 1977;
- III the Environmental Protection Agency Act 1992;
- IV the Roads Act 1993;
- V the Waste Management Act 1996;
- VI the 2000 Act or the 2024 Act (to the extent in force);
- VII the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007);
- VIII the European Communities (Birds and Natural Habitats) Regulations 2011;
- IX the Forestry Act 2014;
- X the Climate Action and Low Carbon Development Act 2015;
- XI the Minerals Development Act 2017;
- XII the Maritime Area Planning Act 2021;

- XIII statutory provisions referred to in section 4(4) of the Environment (Miscellaneous Provisions) Act 2011 or any other legislation providing for the grant of development consent or environmental licensing, including non-exhaustively legislation providing procedures for consent for infrastructure projects;
- XIV any other legislation relating to the environment or giving effect to the directives referred to in paragraph (i) or to international legal instruments relating to matters which are the subject of the legislation set out in paragraphs (i) and (ii);
- (b) any case not falling within paragraph (a) that in the opinion of the Judge in charge of the Planning & Environment List, having regard to the subject-matter of the dispute,
- (i) is of a planning or environmental nature, or
 - (ii) has planning or environmental aspects that render it appropriate for admission to the Planning & Environment List, or
 - (iii) relates to an element of a project that is linked to or consequential on a decision to which proceedings in the Planning & Environment List relate in such a way as to make it just and convenient to hear the proceedings in the Planning & Environment List, and
- (c) satellite litigation and the determination of questions as to whether any proceedings constitute satellite litigation.

(3) For the avoidance of doubt, proceedings by way of substantive appeal from the Circuit Court and applications to the Court by way of appeal from a refusal of the Circuit Court to transfer the case to the Court, or appeals or judicial review proceedings relating to legal costs adjudication or taxation, fall within paragraph (a), (b), or (c) (as the case may be) of sub-rule (2), where the subject-matter of the substantive proceedings falls within paragraph (a), (b), or (c).

(4) Proceedings that are not of a planning or environmental nature that arise under EU or domestic enactments referred to in sub-rule (2) (including without limitation, tax-related decisions or compulsory purchase decisions not linked to a live challenge to a planning permission or similar environmental consent) shall not be Planning & Environment proceedings unless admitted under rule 19 or rule 20.

Application of this Order

2. (1) Save where otherwise expressly provided by this Order:
- (a) in the event that any conflict shall arise between the provision of any rule of this Order and any other provision of these Rules, the provision of the rule of this Order shall, in respect of any

proceedings entered in the Planning & Environment List, prevail, and

- (b) unless the context otherwise requires, any provision of these Rules not inconsistent with this Order shall apply to proceedings entered in the Planning & Environment List.

(2) This Order applies subject to any contrary provision in the 2000 Act, the 2024 Act or any enactment other than these Rules.

Order 84 to apply with modifications in Planning & Environment proceedings

3. (1) Order 84 shall apply to any Planning & Environment proceedings which are judicial review proceedings, with and subject to the modifications set out in this Order.

(2) In this Order, “originating motion” means a motion brought for the purposes of seeking leave to apply for judicial review on notice.

(3) Order 84 shall apply to Part 9 judicial review, subject to the 2024 Act and to the modifications set out in this Order.

Title of proceedings

4. All Planning & Environment proceedings and all applications made to the Judge in charge of the Planning & Environment List for the entry of proceedings in the Planning & Environment List, and all proceedings therein shall be entitled:

“THE HIGH COURT
PLANNING & ENVIRONMENT”.

Conduct of proceedings in the Planning & Environment List

5. The purposes and objectives of this Order include the specialised, just and expeditious processing of litigation in the planning and environmental field, and the promotion of specific strategies to the effect to be set out in any relevant Practice Direction, with particular regard to the constitutional, EU and ECHR right to a hearing within a reasonable time and the heightened obligation in that regard in particular contexts such as the EU law obligation of expedition in relation to renewable energy projects.

Practice Direction concerning procedural requirements

6. The President may make provision by Practice Direction for procedural requirements for the Planning & Environment List including for the physical or electronic management of papers, the issuing of information and guidance or for template forms to record information required to manage proceedings in the Planning & Environment List.

II. Commencement of proceedings

Commencement of proceedings in the Planning & Environment List

7. (1) Proceedings shall be commenced in the Planning & Environment List by the filing of the appropriate initiating document as set out in these Rules or other enactment.

(2) Where the procedural or statutory requirements applicable to the proceedings are such that the proceedings may be commenced by originating notice of motion without leave of the Court, including by way of Part 9 judicial review, the applicant shall commence Planning & Environment proceedings by filing the originating notice of motion, together with a Statement of Grounds and such other documents as are required by this Order. The Central Office shall assign a return date for the motion, if practicable in consultation with the List Registrar.

(3) Where the procedural or statutory requirements applicable to the proceedings are such that the proceedings may be commenced otherwise than by originating notice of motion, but without leave of the Court, the applicant shall commence Planning & Environment proceedings by filing the appropriate initiating pleading and such other documents as are required by this Order. The Central Office shall assign a return date for the proceedings, if practicable in consultation with the List Registrar.

(4) Where the procedural or statutory requirements applicable to the proceedings are such that the application for leave to bring the proceedings requires to be made on notice, the applicant shall commence Planning & Environment proceedings by filing a Statement of Grounds and a notice of motion, together with such other documents as are required by this Order, and shall before or as soon as possible after issuing the proceedings apply to the List Registrar for a hearing date in the Planning & Environment List for that application and shall serve the other parties with the proceedings in due time as prescribed by these Rules in advance of that date.

(5) Where the procedural or statutory requirements applicable to the proceedings are such that the application for leave to bring the proceedings requires to be made *ex parte*, the applicant shall commence Planning & Environment proceedings by filing a Statement of Grounds, together with such other documents as are required by this Order, and shall before or as soon as possible after issuing the proceedings apply to the List Registrar for a hearing date in the Planning & Environment List for that application.

(6) A notice of motion required under this rule shall be served four clear days in advance of the hearing on all other parties.

(7) For the purposes of this Order, “filing” means the filing in the Office of the document concerned, or the first mention of the matter to the Court, whichever is earlier, on the basis that where a matter is mentioned to the Court prior to the filing of papers in the Office, the Court shall be deemed to have taken the papers as having been filed in Court that day, subject to formal filing in the Office as soon as convenient thereafter, unless expressly ordered otherwise by the Court.

(8) The initiating document and all other pleadings and affidavits shall be entitled in the manner specified in rule 4.

8. Where intended Planning & Environment proceedings are erroneously entitled otherwise than in accordance with rule 4, the Court may treat the proceedings as having been duly commenced in the List without the need for an application to transfer them, subject to the plaintiff or applicant, as the case may be, being required to amend the title to the proceedings appropriately.

Commencement of certain enforcement proceedings

9. An application for:

- (a) an order under section 50(1), 90 or section 160 of the 2000 Act;
- (b) an order under section 341, 351 or 379 of the 2024 Act;
- (c) an order under section 28 or section 28A of the Air Pollution Act 1987;
- (d) an order under section 11 of the Local Government (Water Pollution) Act 1977;
- (e) an order under section 57 of the Waste Management Act 1996; or
- (f) any other proceedings in which the primary relief is to restrain or redress damage to the environment,

shall be brought by originating notice of motion in accordance with the provisions of Order 84B entitled in the matter of the Act concerned and as between the person bringing the application as applicant and the person against whom relief is sought as respondent, and naming any other party having an interest in the matter as a notice party.

Time limits

10. (1) An application for an extension of time to bring Planning & Environment proceedings by way of judicial review, other than in Part 9 judicial review, may be made either by seeking an extension of time as a relief in the Statement of Grounds or by motion on notice. Any facts relied on shall be verified either in the grounding affidavit or another affidavit unless agreed to by the opposing parties.

(2) An application for an extension of time in Part 9 judicial review shall be brought by notice of motion in accordance with section 281(2) of the 2024 Act. Any facts relied on shall be verified either in the grounding affidavit or another affidavit unless agreed to by the opposing parties.

Conversion of proceedings

11. Notwithstanding Order 84, rule 27(5), where Planning & Environment proceedings are brought by way of application for judicial review and the Court, having heard the parties, considers that the relief sought should not be granted

on an application for judicial review but might have been granted if it had been sought in another form of action against any respondent or respondents at the time of making the application, the Court shall order the proceedings to continue as if they had been begun by another specified originating document, and shall make orders and give directions for the further conduct of the proceedings.

12. Where rule 11 applies, the other originating document by which the proceedings are deemed to have been begun shall be deemed to have been issued on the date on which the application for judicial review was made.

Directions as to leave on notice

13. (1) In any case where the application for leave is made *ex parte*, the Court may, either on reading the papers or at the *ex parte* hearing or subsequently, direct that the application for leave be made by notice of motion served on the opposing parties.

(2) Following such a direction, the return date for such a motion shall be notified to the applicant by the List Registrar or shall be directed by the Court.

(3) A notice of motion required under sub-rule (2) shall be served four clear days in advance of the hearing on all other parties.

Documents to accompany an application

14. (1) The documents required to be filed in order to commence the proceeding are:

- (a) a Statement of Grounds in Form No. 1 in Appendix NN containing:
 - (i) the name, address and description of the applicant;
 - (ii) a statement of:
 - (I) each relief sought;
 - (II) each core ground of relief;
 - (III) detailed particulars of the grounds upon which each such relief is sought;
 - (IV) grounds and factual particulars demonstrating how the application meets all necessary jurisdictional criteria;
 - (V) a chronological narrative of the factual grounds on which the application is based;
 - (iii) the name and registered place of business of the applicant's solicitors (if any);
 - (iv) the applicant's address and email for service, and
- (b) an affidavit, in Form No. 14 in Appendix T, sworn by or on behalf of the applicant, or each applicant, which sufficiently verifies the

facts relied on, which in the case of Part 9 judicial review shall comply with section 280(3)(c)(ii) (exhibiting of notifications to other parties) and, if applicable, section 286(4) (unincorporated bodies of persons) of the 2024 Act, and

- (c) in the case of an application to be brought by originating notice of motion, or an application for leave to seek judicial review that is required by an enactment to be made by motion on notice, a notice of motion or originating notice of motion.

(2) The Statement of Grounds shall comply with the following:

- (a) it shall positively disclose all facts relevant to the application insofar as they are known to the applicant, whether supporting or adverse, save where such facts are disclosed on affidavit, or are otherwise expressly identified in a document exhibited to the affidavit; and
- (b) it shall positively disclose -
 - (I) all statutory provisions that would significantly influence the grant or otherwise of relief on the particular application insofar as they are known to the applicant, whether supporting or adverse, and
 - (II) such other legal matters as the applicant proposes to rely on.

(3) It shall not be sufficient for an applicant to give as any of his or her grounds for the purposes of paragraphs (II) or (III) of sub-rule (1)(a)(ii) 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.

(4) Where any interim relief is sought, the originating notice of motion shall specify the orders sought by way of interim relief. It shall not be necessary to specify interlocutory reliefs which may be sought by notice of motion in the proceedings from time to time as such reliefs arise for consideration.

(5) The failure by an applicant to seek a particular relief in the Statement of Grounds (or, *mutatis mutandis*, other initiating document in proceedings other than judicial review) shall not preclude the Court from granting such relief, on the application of a party, provided that the Court considers that such relief ought, in all the circumstances, be granted and that the Court is satisfied that the relief falls within the scope of the pleaded grounds.

(6) The opposing parties shall be given notice of proceedings as follows:

- (a) in the case of Part 9 judicial review under the 2024 Act, the applicant shall comply with section 280(2) regarding advance notification of other parties, and
- (b) in the case of all other Planning & Environment proceedings, unless the moving party has served a letter of notification of the proceedings on all other parties prior to the institution of the proceedings that party shall do so as soon as possible thereafter,

and the Court may have regard to any failure to provide such notice in disposing of the costs of the proceedings.

(7) This rule shall apply with any necessary modifications to Planning & Environment proceedings commenced otherwise than by judicial review, and any originating or other document including an indorsement or statement of claim that is required to set out grounds shall, insofar as appropriate, correspond to the format of a Statement of Grounds in Planning & Environment proceedings. Any defence or other opposing document shall, insofar as appropriate, correspond to the format of a Statement of Opposition in Planning & Environment proceedings.

Grounding affidavit

15. (1) The facts alleged in the Statement of Grounds must be verified by affidavit.

(2) All documents that, in the opinion of the applicant, are relevant to the issues raised by the Statement of Grounds must be exhibited to the applicant's grounding affidavit, insofar as such documents are in the possession of the applicant.

(3) Insofar as any document referred to in sub-rule (2) is not in the applicant's possession as of the date of swearing, reasonable steps should be taken to procure such document (insofar as may be practicable), and such document should be exhibited in due course when obtained, unless previously exhibited by another party to the proceedings.

(4) In accordance with Order 84, rule 21(1A)(ii), a grounding affidavit may be sworn by or on behalf of an applicant.

(5) This rule applies *mutatis mutandis* to Planning & Environment proceedings to be heard on affidavit other than by way of judicial review.

Affidavits generally

16. (1) In Planning & Environment proceedings to be heard on affidavit, including by way of judicial review, it is sufficient if at least one applicant or a person on his or her behalf swears any grounding affidavit on behalf of all moving parties, provided that the deponent avers to all of the moving parties having authorised and approved the content of that verifying affidavit and of the originating document.

(2) Where the moving party is a body corporate or unincorporated association, any person given the authority of the body corporate or unincorporated association to do so may swear any grounding affidavit or other affidavit on behalf of and with the authority of the body corporate or unincorporated association.

(3) It shall not be necessary for any party to exhibit on affidavit copies of any document of which the Court is entitled by law to take judicial notice.

Order on leave application

17. (1) This rule applies to Planning & Environment judicial review where leave is required.

(2) The Court may on hearing an application for leave, grant leave in whole or in part and if granting leave may do so with or without amendment. Where the Court makes an order granting leave it shall, unless it otherwise orders, include in the order any standard directions for the management of the proceedings that may be set out by the President by Practice Direction.

(3) Nothing in this rule shall operate to prevent any opposing party who has not objected to the grant of leave or has not applied to set aside leave from making any application to strike out any matter in any Statement of Grounds or affidavit, or from raising at the hearing of the substantive application for judicial review any objection which could have been taken to a leave application.

Service

18. Unless the Court otherwise orders, service *inter partes* for the purpose of Planning & Environment proceedings may be effected by email, and parties participating in the proceedings are required to furnish email addresses for that purpose. The Court may direct such further or other service as is appropriate.

III. Admission of proceedings to the Planning & Environment List

Admission to and removal from the Planning & Environment List

19. (1) In proceedings falling within paragraph (a) of the definition of “Planning & Environment proceedings” (which are automatically admitted to the Planning & Environment List), the applicant or other party bringing the proceedings shall issue the proceedings within the Planning & Environment List by entitling the proceedings as required by rule 4 and such proceedings shall be entered in the Planning & Environment List by the proper officer without the necessity for application by any party for admission to the Planning & Environment List, provided that any other party may apply under sub-rule (10) to remove the proceedings from the Planning & Environment List.

(2) In proceedings falling within paragraph (a) of the definition of “Planning & Environment proceedings”, where the applicant or other party bringing the proceedings does not issue the proceedings within the Planning & Environment List as required by sub-rule (1), any party may request the List Registrar administratively to transfer the proceedings to the Planning & Environment List, or in case of doubt may apply to the Judge in charge of the Planning & Environment List for entry of the proceedings in the Planning & Environment List, at any time after such party becomes aware of the proceedings, including prior to service upon that party. Such application shall be by motion on notice.

(3) In proceedings falling within paragraph (a) of the definition of “Planning & Environment proceedings”, no party may commence proceedings in, or apply for the admission of proceedings to, any other list of the Court. If in breach of this sub-rule a party does so, the proceedings shall be administratively transferred to the Planning & Environment List.

(4) In satellite litigation, where the substantive litigation concerned has been entered in or admitted to Planning & Environment List, the party bringing the proceedings shall issue the proceedings within the Planning & Environment List by entitling the proceedings as required by rule 4 and such proceedings shall be entered in the Planning & Environment List by the proper officer without the necessity for application by any party for admission to the Planning & Environment List, subject to the determination of any application which might be made under sub-rule (10) to remove the substantive litigation from the Planning & Environment List or for the determination under rule 21 of any question as to whether the proceedings constitute satellite litigation.

(5) In proceedings falling within paragraph (b) of the definition of “Planning & Environment proceedings”, any party may apply to admit the proceedings to the Planning & Environment List. Such application may be made by any party as soon as such party becomes aware of the proceedings, including prior to service of the proceedings upon that party.

(6) Any satellite litigation to which sub-rule (4) does not apply shall abide any order or direction of the Judge in charge of the Planning & Environment List as regards the substantive litigation concerned.

(7) No party may make any application in any satellite litigation to any Judge of the High Court other than to the Judge in charge of the Planning & Environment List, other than an application in vacation or out of hours, in which case the matter shall be adjourned to the Planning & Environment List at the next opportunity.

(8) Where proceedings are entered in the Planning & Environment List as of right, return dates and mention dates for the proceedings in any other list shall be administratively vacated.

(9) Where an application is made for an order admitting proceedings to the Planning & Environment List then, subject to any order of the Court to the contrary, return dates and mention dates for the proceedings in any other list shall be administratively vacated pending the determination of the application, provided that such return dates and mention dates shall be reinstated on the next convenient date if the application for entry into the Planning & Environment List is refused.

(10) Where a party considers that a matter listed in the Planning & Environment List either does not properly fall within the Planning & Environment List, or has only a peripheral or remote connection to the Planning & Environment List, such party may apply to the Court for an order removing the proceedings from the Planning & Environment List or transferring the proceedings to another list.

(11) The Judge in charge of the Planning & Environment List and the Judge assigned to manage any other relevant list may agree that a matter which has been administratively listed in the Planning & Environment List has only a peripheral or remote connection to the Planning & Environment List or should be transferred to that other list for any other reason, and such agreed transfer shall be effected administratively.

(12) Where a party considers that a matter not falling within the definition of Planning & Environment proceedings should nonetheless more properly in

the circumstances be admitted to the Planning & Environment List, such party may apply to the Court for an order admitting the proceedings to the Planning & Environment List.

(13) The Judge in charge of the Planning & Environment List and the Judge assigned to manage any other relevant list may agree that a matter which has been administratively entered in another list not falling within the definition of Planning & Environment proceedings should nonetheless more properly in the circumstances be transferred to the Planning & Environment List, and such agreed transfer shall be effected administratively.

Applications for admission to the Planning & Environment List

20. (1) An application for the admission of proceedings to the Planning & Environment List shall be by motion entitled as required by rule 4 on notice to every other party and grounded upon affidavit explaining how the case is a proper one for admission to the Planning & Environment List. The notice of motion shall be returnable before the Judge in charge of the Planning & Environment List.

(2) The application may be made at any time prior to the trial of the action. Prior to issuing the motion, the moving party shall notify the List Registrar to obtain a return date.

(3) Unless all parties participating in the proceedings consent to admission of the proceedings to the Planning & Environment List, copies of the notice of motion, grounding affidavit and any exhibits shall be served on all other parties at least four clear days before the date fixed for the hearing of the motion.

(4) Upon the hearing of the motion, the Judge in charge of the Planning & Environment List may direct that the proceedings be entered in the Planning & Environment List, in which event all further motions or applications in respect of such proceedings shall be made to a Judge.

Applications for determination of whether litigation is satellite litigation

21. Where parties to proceedings disagree about the question of whether the proceedings constitute satellite litigation:

- (a) if the proceedings have already been entered in the Planning & Environment List, any party wishing to transfer them to another list, and
- (b) if the proceedings have not been entered in the Planning & Environment List, any party wishing to so enter them,

shall forthwith apply by motion on notice seeking the appropriate directions in the Planning & Environment List on the next convenient occasion.

IV. Directions and interim and interlocutory orders

Directions and orders

22. (1) The Court may give such directions, or make such interim, interlocutory or consequential orders pursuant to these Rules, any other enactment or its inherent jurisdiction, as it considers appropriate, having regard to:

- (a) section 290 of the 2024 Act;
- (b) section 50A(10) of the 2000 Act;
- (c) the right to trial within a reasonable time under the Constitution and/or article 6(1) of the ECHR;
- (d) the requirement to apply the most expeditious procedure in national law to matters to which Article 16(6) of Directive (EU) 2018/2001 relates;
- (e) the requirement of an expeditious procedure under article 9(1) of the Aarhus Convention;
- (f) the minimisation of costs and expense;
- (g) the nature of the case;
- (h) the priority to be afforded to the proceedings by reason of their environmental, commercial or public law impact, and
- (i) all other relevant circumstances.

(2) Without prejudice to the generality of sub-rule (1), such directions or orders may include any directions determining what pre-trial or other procedural steps are required or determining whether such steps can be adjourned to the trial or fixing dates for such steps, or any order under Order 36 or an order that might be made under Orders 63A or 63C, applied *mutatis mutandis*, as if the proceedings were subject to those provisions.

Interim and interlocutory orders

23. (1) In Planning & Environment proceedings, the Court may, on the application of any party by motion on notice to the other parties, without prejudice to rule 22, pursuant to Order 50, Order 84 rule 18, any other enactment or its inherent jurisdiction, where it considers it just and appropriate to do so, make one or more of the following orders:

- (a) an order in the nature of an injunction or stay, prohibiting or restricting a person from carrying out an activity or development, causing damage to the environment, or otherwise taking an action or doing a thing;
- (b) a mandatory order requiring any person to remedy any activity or development or other act or omission, to carry out any works, including the restoration, reconstruction, removal, demolition or alteration of any structure or other feature, or to give specified notice in advance of undertaking any activity or development;

- (c) an order for the detention, preservation or inspection of any property or thing or authorising any sample to be taken or any observations, calculations or measurements to be made or experiment to be tried which it may consider necessary or expedient in the circumstances;
 - (d) an order authorising a person to enter upon or into any land or building for the purposes of any one or more of the foregoing orders; or
 - (e) such order as in the opinion of the Court is consequential on, or necessary to give effect to, any one or more of the foregoing orders.
- (2) Where the interests of justice so require, the Court may make an order referred to in sub-rule (1) as an interim order on an application made *ex parte* and may make such an order in the matter of an intended action prior to the commencement of the intended proceedings or prior to the making of a leave application in the case of an intended judicial review that requires the leave of the Court. In the case of intended proceedings, such an order may provide for the discharge of the interim order if the proceedings are not commenced or in the case of judicial review that requires the leave of the Court, the application for leave is not made, within such time as is provided in the Court's order, including such time as extended by the Court if applicable.
- (3) In Planning & Environment proceedings, including where section 160(4)(a) of the 2000 Act, section 351(4)(a) of the 2024 Act or any similar enactment or rule 9 applies, an order under this rule may be made against a person whose identity is unknown.

Amendment of decision

24. (1) Where the proceedings challenge the validity of a decision of a public law entity which that entity has legal power to amend, the bringing of the proceedings shall not preclude or constrain the exercise of such power unless the Court otherwise orders.
- (2) Where the entity concerned wishes to stay the proceedings for the purpose of exercising such power, it shall apply to the Court on notice. In the case of an application in relation to Part 9 Judicial Review under section 284 of the 2024 Act, such application shall be brought by notice of motion grounded on an affidavit verifying any facts relied on.
- (3) Where a decision the subject of proceedings is amended, the public law entity concerned shall forthwith inform the other parties of the amendment. Where any other party considers that the amended decision gives rise to a requirement to amend the proceedings, such party may apply for any amendment within the appropriate period from the making of the amended decision, and may apply to the Court on notice for an order staying the proceedings pending the bringing of the application for such an amendment.

Applications to set aside leave or to strike out proceedings

25. (1) In Planning & Environment judicial review where leave is required, an opposing party may, by notice of motion grounded on an affidavit verifying any facts relied on, apply to set aside leave, in whole or in part, on any legally appropriate basis.

(2) In Planning & Environment judicial review where leave is not required, an opposing party may, by notice of motion grounded on an affidavit verifying any facts relied on, apply to strike out the proceedings under section 283 of the 2024 Act or under this rule, in whole or in part, on any legally appropriate basis.

(3) If an application under this rule is upheld in part, the Court shall set aside the proceedings (or discharge leave) to such an extent, or by reference to such applicants, reliefs or grounds, as may be appropriate having regard to the legal requirements applicable in each case.

Amendments generally

26. Any application to amend pleadings shall be made on notice to all relevant parties (or, in the case of an application in Part 9 judicial review, all opposing parties in accordance with section 282(2) of the 2024 Act and all relevant applicants in the case of an amendment by an opposing party). The Court may direct such an application to be made by notice of motion. Where facts are relied on for the purpose of the amendment, such facts shall be verified by affidavit.

27. Any amended pleading shall, in accordance with Order 28, rule 9, be marked immediately below the title of the pleading, which shall be preceded by the words “Amended”, for example “Amended Statement of Grounds”) with the date of the order under which it is amended, and the date on which such amendment is made, as follows:

“Amended the day of pursuant to order of Mr. / Ms. Justice dated the day of”

V. Opposition to proceedings

Statement of Opposition

28. (1) In Planning & Environment proceedings that are judicial review proceedings, in lieu of Order 84, rule 22(5), a Statement of Opposition shall be required to be particularised to the extent set out in this rule.

(2) Insofar as concerns factual matters, the Statement of Opposition shall comply with the following:

- (i) it shall admit (or state no contest as to) any facts alleged that are not in dispute, but any such admission shall not be taken to involve an admission of any legal characterisation or implications of such facts as is alleged in the Statement of Grounds or at all;
- (ii) it shall positively disclose all facts relevant to the application insofar as they are known to the opposing party,

whether supporting or adverse, that are not otherwise before the Court; and

- (iii) where facts are positively stated in a Statement of Opposition, it shall not be sufficient for an opposing party to give an assertion in general terms of the fact concerned, but the party should state precisely each such fact and any necessary matters relied on in asserting such fact.

(3) Insofar as concerns legal matters, the Statement of Opposition shall comply with the following:

- (i) it shall admit (or state no contest as to) any legal matters alleged that are not in dispute, but any such admission shall not be taken to involve an admission of any legal characterisation or implications of such matters as is alleged in the Statement of Grounds or at all;
- (ii) it shall positively disclose -
 - (I) all statutory provisions that would significantly influence the grant or otherwise of relief on the particular application insofar as they are known to the opposing party, whether supporting or adverse, that are not otherwise before the Court, and
 - (II) such other legal matters as the opposing party proposes to rely on,

and where legal matters are positively stated in a Statement of Opposition, it shall not be sufficient for an opposing party to give an assertion in general terms of the matter concerned, but the party should state precisely each such matter and any necessary facts or other matters relied on in so asserting.

(4) The failure by an opposing party to plead a particular ground of opposition in its Statement of Opposition (or, *mutatis mutandis*, other opposing document in proceedings other than judicial review) shall not preclude the Court from refusing relief in the discretion of the Court, if the Court considers that such relief ought, in all the circumstances, not be granted.

(5) The Statement of Opposition need only be verified on affidavit where it includes distinct pleas as to fact other than agreement with or no contest as to facts pleaded in the Statement of Grounds, in accordance with sub-rule (2).

(6) Nothing in this rule removes or reduces the obligation of the decision-maker to ensure that all relevant information and material, including a full account of the decision-making process where relevant, is brought to the attention of the Court, whether exhibited by it or by another party or otherwise put before the Court.

(7) This rule applies *mutatis mutandis* to Planning & Environment proceedings that are not judicial review proceedings.

Security for costs and undertaking as to damages

29. (1) An order for security for costs shall not be made against a costs-protected applicant:

- (a) in proceedings where section 293(5)(a) of the 2024 Act applies, or
- (b) in other proceedings save at a level that is not prohibitively expensive,

and for the avoidance of doubt shall not be made against an opposing party that is not counter-claiming.

(2) An undertaking as to damages shall not be required by a costs-protected applicant:

- (a) in proceedings where section 293(5)(b) of the 2024 Act applies, or
- (b) in other proceedings save at a level that is not prohibitively expensive.

VI. Trial of proceedings

Written submissions

30. (1) In Planning & Environment proceedings, written submissions shall be filed and delivered or exchanged in such format and at such time or times as are specified in any applicable Practice Direction, or otherwise as directed by the Court.

(2) For the avoidance of doubt, the requirement of Order 84, rule 22(7), as regards the timing of the delivery of written submissions does not apply to Planning & Environment proceedings.

31. Submissions shall be in such format, and subject to such general word limits, as are determined in any relevant Practice Direction or order in a particular case. The Court may on application by the parties or any of them permit a different format or longer submissions than the limit fixed in a Practice Direction, or may in an appropriate case permit a written submission without specification of a maximum limit.

Case management and list management directions and directions and orders regarding trial

32. (1) In this Order, “priority procedure” means the written, issues, urgent or expedited procedure.

(2) The Court may give directions and make orders for the management of the Planning & Environment List and the case management of proceedings in the Planning & Environment List, including without limitation for determining the date, duration and mode of trial of proceedings including interim, interlocutory and consequential hearings.

(3) Pursuant to sub-rule (2), the Court may have regard to standard directions set out in any relevant Practice Direction of the President, may encourage co-operation between parties with a view to maximising agreement on specified matters, with a view to promoting the processing of the matter without unreasonable expense to the parties or any of them.

(4) Pursuant to sub-rule (2), and without prejudice to such individual consideration of proceedings as the Court may afford, the Court may:

- (a) make provision for eligibility to apply for a date on the basis of certification of readiness, application by a specified deadline, or other matters it considers appropriate;
- (b) give priority to the fixing of trial dates on such basis as it considers appropriate, including by having regard to:
 - (i) the desirability of the early facilitation of trials of short duration;
 - (ii) the observance of any EU or domestic legal requirements as to expedition in particular categories of cases including in matters to which Article 16(6) of Directive (EU) 2018/2001 relates;
 - (iii) the nature of the proceedings or matters at issue in any given case;
 - (iv) the state of readiness of the proceedings; and
 - (v) the period of time elapsed since the commencement of the proceedings concerned;
- (c) make provision as to:
 - (i) whether and to what extent issues will be modularised, bearing in mind the presumption in favour of a unitary trial in the absence of significant reason to the contrary, subject to the desirability of addressing the validity or ECHR compatibility of measures of general application only if the disposition of other grounds renders this necessary, and of not addressing questions that are under specific consideration by appellate courts or the Court of Justice of the EU;
 - (ii) whether and to what extent the hearing is to be remote or physical;
 - (iii) the number, sequence, length and format of written submissions (including replying submissions);
 - (iv) whether the Court would identify, in accordance with Order 84 rule 22(8) or rule 24(2)(II), issues on which it would invite specific submissions at the hearing (the “issues procedure”, and for this purpose, the provisions of Order 84, rule 22(8) and rule 24(2)(II) shall apply *mutatis mutandis* to all Planning & Environment proceedings whether by way of judicial review or otherwise);

- (v) whether, to what extent and by what date any such issues or questions will be circulated in writing in advance; and
- (vi) if the parties so consent, whether the matter can be dealt with on the papers (the “written procedure”);
- (d) make provision for a specified time limit for the hearing (save where oral evidence is required, in which case a time estimate shall be specified (the “oral evidence procedure”)); and/or
- (e) make provision as to whether the matter should be heard in or after a Monday list on the basis of such time limit as the Court may fix (the “urgent procedure”), within a single court day on the basis of such time limit as the Court may fix (the “expedited procedure”), or over two (or if necessary, more) court days on the basis of such time limit as the Court may fix (the “standard procedure”).

(5) Subject to any order of the Court to another effect in any individual case, the default mode of hearing shall be as follows:

- (a) the urgent procedure shall apply as a default to planning and environmental enforcement injunctive relief;
- (b) the expedited procedure shall apply as a default to the following proceedings, provided that no application has been made to cross-examine the deponent to any affidavit, or any such application has been refused by the Court, and that the hearing in question would not otherwise require oral evidence:
 - (i) matters to which Article 16(6) of Directive (EU) 2018/2001 (renewable energy) relates; and
 - (ii) challenges to development consents on which the carrying out of any development to which paragraph (i) relates depend;
- (c) the oral evidence procedure shall be the default in any plenary proceedings and in any proceedings on affidavit in which cross-examination has been ordered;
- (d) the standard procedure shall be the default method for all other Planning & Environment proceedings.

(6) An order providing for a priority procedure may be made at any time, including at the stage of an intended action or in the case of a judicial review, prior to the grant of leave. Such an order will normally be made on notice, but if made otherwise than on notice, it will be subject to the right of any other party to apply. For the avoidance of doubt, such an order is not limited to the List to Fix Dates.

(7) Where a priority procedure applies, all issues will as a default be addressed in a unitary manner against all opposing parties, unless the Court otherwise orders on application by any party.

(8) Any party may apply that any given proceedings be afforded a procedure other than the default procedure applying to such proceedings.

(9) Where the parties (or if applicable the parties participating in the relevant module or hearing) agree on a particular mode of trial, the Court shall make such order, unless it is impracticable to do so. If the Court does not make such an agreed order it shall direct the next most expeditious mode of trial that is practicable.

(10) Where the parties (or if applicable the parties participating in the relevant module or hearing) disagree on the mode of trial, the Court shall normally provide for the mode of trial that is the most expeditious of the options proposed, save in respect of the written procedure, and subject to the interests of justice, including the requirement to apply the most expeditious procedure in national law to matters to which Article 16(6) of Directive (EU) 2018/2001 relates. If the Court does not make an order in terms of the most expeditious option proposed, it shall direct the next most expeditious mode of trial that is practicable.

(11) Unless the Court otherwise directs, in the case of modularised proceedings, any order disposing of a particular module shall not be perfected until the making of the final order.

Oral evidence

33. For the avoidance of doubt, oral evidence shall not be received in Planning & Environment proceedings in the absence of an order of the Court, unless such proceedings are plenary proceedings.

34. (1) In the case of plenary proceedings, or where the Court orders that oral evidence be heard whether by way of production of deponents for cross-examination or otherwise as specified in the order of the Court, and subject to the terms of any such order, the following provisions of this rule shall apply.

(2) Unless the Judge in charge of the Planning & Environment List otherwise orders, and without prejudice to any application to call additional evidence from a witness or from an additional witness, or to serve an additional statement, a party to Planning & Environment proceedings intending to rely upon the oral evidence of a witness as to fact or of an expert at trial shall sequentially serve upon the other party or parties and file:

- (a) in the case of a witness as to fact, a witness statement, and
- (b) in the case of an expert, a written report (in this rule referred to as an “expert report”),

consisting of a signed and dated statement of the evidence to be given by that witness or expert, as the case may be. Unless otherwise ordered, such statement or report shall be put for confirmation by the witness or expert on oath or affirmation, and shall then stand as his or her evidence-in-chief, unless the Court otherwise orders.

(3) The time limits for such service and filing shall be as set out in any relevant Practice Direction or order of the Court in a particular case.

VII. Judgments and orders

Directions in or following judgments

35. Where the Court delivers a judgment on any matter, the Court may either in the judgment or as soon as may be thereafter:

- (a) indicate that in the absence of application to the contrary in a specified manner (such as on foot of a written legal submission) within a specified time, the order on foot of the judgment will be perfected on the basis of a specified provisional or default costs order, or other consequential order, or both;
- (b) provide as part of any such default order for any stay on execution as opposed to adjudication of interlocutory costs, until the determination of the proceedings.

Final orders

36. (1) In Planning & Environment proceedings, where the Court makes a final order remitting a matter to a respondent for reconsideration:

- (a) the Court may, having heard the parties, specify the stage of the procedure to which the matter shall be remitted, with liberty to apply;
- (b) in the case of an order remitting a matter for reconsideration under Directive 2003/4/EC, the Court, having heard the parties, shall issue such directions for the timely, adequate and effective resolution of the matter as are appropriate in the circumstances, including directions resolving any legal or procedural questions likely to arise on the remitted consideration, or a direction that the matter be prioritised on the basis of the original date of the request for information rather than the date of remittal.

(2) Where a consent order involves the striking out, dismissal or withdrawal (whether unilaterally prior to service, or on consent following service) of the proceedings, the order must be dealt with in open court and shall be accompanied by a written declaration by each applicant (subject to any form prescribed under section 588(5) of the Act of 2024) that the termination of the proceedings is not for the sole or improper purpose of securing the payment of any consideration to, or the doing of any other thing for the benefit of, any person.

VIII. Costs

Application for costs protection order

37. (1) Where a party asserts that he or she is entitled to a costs protection order, such party shall give notice to the other parties to the proceedings. If no other party participating in the proceedings (or in any module of the proceedings being dealt with by the Court at that time) objects to the making of such an order, the Court may make a costs protection order in favour of the party applying, in respect of the proceedings or a module of the proceedings as the case may be.

(2) In the event of an objection, the party asserting entitlement to a costs protection order may apply by motion on notice to the other parties for a costs protection order. In the event of giving notice that it will do so, no further steps in the proceedings likely to incur costs shall be entered into by the parties or the Court until the question of costs protection is determined, unless:

- (a) all affected parties consent, or
- (b) the Court for exceptional reasons specified in the order so determines.

(3) The notice of motion shall specify the precise provision or rule of law which it is asserted entitles the moving party to a costs protection order and shall be supported by an affidavit which sets out and verifies any facts relied on as establishing that the circumstances exist in which a costs protection order is appropriate.

(4) Unless the Court determines that the application is frivolous and vexatious, no order for costs shall be made against the moving party on the determination of an application for a costs protection order. If the Court so determines, any costs awarded against the moving party shall be awarded or measured at a level determined by the Court that is not prohibitively expensive insofar as concerns the particular party against whom the order for costs is made.

Costs of interim and interlocutory matters

38. (1) Unless the Court for special reasons to be specified in the Court's order otherwise provides, and subject to the terms of the applicable costs protection order made by the Court and the provisions of section 50B(2A) of the 2000 Act, Chapter 2 of Part 9 of the 2024 Act, and in particular to section 298(7) of that Act, sections 168 and 169 of the Legal Services Regulation Act 2015, and any other statutory provision, irrespective of whether a costs protection order applies, and subject to rule 39(2):

- (a) the costs of any *ex parte* or interim application, or of any listing for directions or mention, shall be reserved;
- (b) the Court shall make no order in respect of the costs of any interlocutory application that
 - (i) is rendered moot otherwise than by an act of the party against whom costs are sought, or
 - (ii) otherwise did not result in a decision in favour of either the applying party or any party opposing the application;
- (c) where a party having the benefit of a costs protection order is unsuccessful in any interlocutory application, the Court, upon determining such interlocutory application, shall make no order as to the costs of that party (and any supporting parties) and of any party that did not actively participate in the application, and shall reserve the costs of any party that opposed the application; and

- (d) where a party having the benefit of a costs protection order is successful in any interlocutory application, the Court, upon determining such interlocutory application, shall reserve the costs of the successful party (and any supporting parties) and shall make no order as to the costs of any other party or parties.
- (2) An application under section 296(3) of the 2024 Act to the effect that an applicant may not benefit from the environmental legal costs financial assistance mechanism by reason of that paragraph shall be brought by notice of motion served on all other parties to the proceedings and on the Minister for Environment, Climate and Communications (if not a party or the moving party), to be issued within eight weeks of the perfection of the order constituting the final determination of the proceedings. Such notice of motion shall be issued in the High Court irrespective of the court which orders the determination of the proceedings.

Costs of substantive proceedings

39. (1) Unless the Court for special reasons to be specified in the Court's order otherwise provides, and subject to the terms of the applicable costs protection order made by the Court and the provisions of section 50B(2A) of the 2000 Act, Chapter 2 of Part 9 of the 2024 Act, and in particular to section 298(7) of that Act, sections 168 and 169 of the Legal Services Regulation Act 2015 and any other statutory provision, irrespective of whether a costs protection order applies, and subject to sub-rule (2):

- (a) where a party having the benefit of a costs protection order is unsuccessful at the substantive stage of the proceedings, the Court shall make no order as to the costs of any party in relation to any element of the proceedings;
- (b) where a party having the benefit of a costs protection order is wholly successful at the substantive stage of the proceedings, the Court shall award that party the costs of the proceedings and the reserved costs of such applications in respect of which that party was successful, against such party or parties as may be determined having regard to sub-rule (3), section 50B(2A) of the 2000 Act, the Environment (Miscellaneous Provisions) Act 2011, Chapter 2 of Part 9 of the 2024 Act, section 169 of the Legal Services Regulation Act 2015 or another statutory provision, and
- (c) where a party having the benefit of a costs protection order is partly successful at the substantive stage of the proceedings, the Court shall award that party the costs of the proceedings limited to the costs that would have been incurred had the party confined his or her proceedings to the issue on which he or she prevailed, and the reserved costs of such applications related to that issue in respect of which that party was successful, against such party or parties as may be determined having regard to sub-rule (3), section 50B(2A) of the 2000 Act, the Environment (Miscellaneous Provisions) Act 2011, Chapter 2 of Part 9 of the 2024 Act, section 169 of the Legal Services Regulation Act 2015,

or another statutory provision, and any issue as to the extent of the costs that would have arisen in that circumstance shall be determined, in default of agreement, in the legal costs adjudication process.

- (2) (a) Where grounds to award costs against a costs-protected party exist under section 50B(3) of the 2000 Act, section 293(3) of the 2024 Act, or otherwise, the Court may at the conclusion of the proceedings award such costs against such a party but shall ensure that the order as to costs, whether it relates to interlocutory, substantive and/or consequential matters, shall be at a level that is not prohibitively expensive within the meaning of EU law and the Aarhus Convention (in this Order referred to as “NPE costs”).
 - (b) Where an award of costs has been or is to be made in favour of any party (“the first-mentioned party”) against another party (“the other party”) in respect of an element of the proceedings, but such other party has been successful in any other element of the proceedings including any distinct issue raised in the proceedings or any distinct interlocutory or consequential matter, being an element or matter on which the first-mentioned party was unsuccessful and that added significantly to the costs incurred by the other party, the Court shall subject to any order to the contrary for specified reasons, provide in the final order for the set-off of any costs that ought to be awarded in favour of the other party against any costs awarded to the first-mentioned party. The costs to be awarded by way of set off shall unless otherwise ordered be on a normal costs scale rather than on the basis of NPE costs, but on the basis that, if the principle prohibiting costs in excess of NPE costs applies to the proceedings in favour of the first-mentioned party, such costs shall apply only up to the level of set-off and not so as to create a costs liability for a costs-protected party, unless paragraph (a) applies in which case the costs liability shall not exceed the level of NPE costs.
 - (c) Where the Court proposes to make an order for NPE costs, it may require the parties to provide such information as to the costs of the matter as it considers appropriate, and may require the costs-protected party to provide such evidence of that party’s means as the Court considers appropriate. Having determined the level of costs that would qualify as NPE costs, the Court shall either measure the costs at an amount less than or equal to that level, or direct that the costs be adjudicated in default of agreement but with a maximum cap at that specified level.
 - (3) Unless the Court for special reasons to be specified in the Court’s order otherwise provides, and subject to the provisions of section 50B(2A) of the 2000 Act, the Environment (Miscellaneous Provisions) Act 2011, Chapter 2 of Part 9 of the 2024 Act, section 169 of the Legal Services Regulation Act 2015 or another statutory provision, where both an opposing party subject to public law and an opposing party not subject to public law have been unsuccessful in Planning & Environment proceedings, and where the public law opposing party

does not apply for apportionment of costs as between the opposing parties by reference to section 50B(2A) of the 2000 Act or Chapter 2 of Part 9 of the 2024 Act or otherwise, or for some other order as to costs, the costs of the successful party shall normally be ordered against the public law opposing party only.

Costs of consequential applications

40. (1) Unless the Court otherwise orders, and subject to rule 39(2), in relation to the costs of an application for leave to appeal by any party (the “proposed appellant”):

- (a) if the application is granted, the costs of an application for leave to appeal shall be costs in the appeal;
- (b) if the application is refused, and no order for costs has been made in favour of the proposed appellant in the proceedings, there shall be no order as to the costs of the leave to appeal application, subject to the application of sub-rule (2);
- (c) if the application is refused, and an order for costs has been made in favour of proposed appellant in the proceedings, rule 39(2) shall apply, subject to the application of sub-rule (2).

(2) It shall be a condition of any order under sub-rule (1)(b) or (c) that if leave to appeal is subsequently granted by the Supreme Court, the costs of the leave to appeal application shall be costs in that appeal notwithstanding the foregoing.

(3) The costs of any other application consequential on the substantive judgment shall generally be dealt with on the basis of rule 39(1) with any necessary modifications, subject to the application of rule 39(2).

(4) In delivering any written judgment, the Court shall, unless it is not possible to do so, indicate a provisional view on the proper order for costs which ought to follow from the Court’s judgment and no separate hearing on costs shall be held unless a party contends that the provisionally indicated costs order ought not properly to be made. Where a party unsuccessfully contests any such order, or any other order provisionally indicated in a judgment, then:

- (i) if the party that is so unsuccessful is not entitled to costs protection, a costs order for all or part of the costs of the application may be made against that party, if appropriate, or
- (ii) if the party that is so unsuccessful is entitled to costs protection, and has benefitted from an order for all or part of the costs of the proceedings prior to the application concerned, the Court may set off an award of costs of the application in favour of another party to the application against any costs in the proceedings awarded to the costs-protected party, subject to compliance with the requirement that proceedings not be prohibitively expensive in any case in which that principle applies.

(5) In making any order as to interim, interlocutory, substantive or consequential costs or otherwise, the Court shall not make provision by order to certify for representation at any particular level or number of legal practitioners, without prejudice to any determination in the legal costs adjudication process or appeal to the Court therefrom as to the appropriate level of representation.

Order 99 to apply with modifications in Planning & Environment proceedings

41. Order 99 shall apply to Planning & Environment proceedings, with and subject to the modifications set out in this Part.”

Schedule 2

Appendix NN

No. 1

THE HIGH COURT

PLANNING & ENVIRONMENT

STATEMENT OF GROUNDS

(APPLICATION FOR JUDICIAL REVIEW)

[Title]

A. Name, address and description of the applicant

B. Reliefs sought

C. Grounds of Relief

Part 1 - Core grounds of relief [*Note: the core grounds should be succinct and should be in the following format. Where a discrete ground covers more than one heading that cannot be distinguished without undue repetition, the ground may be inserted under the most appropriate heading having regard to any Practice Direction issued by the President in that regard*]

(1) DOMESTIC LAW GROUNDS

1. The [define the decision] (“the impugned decision”) is invalid in that it contravenes Article X of the Constitution by failing to [indicate broad heading of the infirmity], further particulars of which are set out in Part 2 below.
2. The impugned decision is invalid in that it contravenes s. X of the Act or reg. Y of [regulations] Z by failing to [indicate broad heading of the infirmity], further particulars of which are set out in Part 2 below.
3. The impugned decision is invalid in that it is [unreasonable/ disproportionate/ lacks reasons etc.] insofar as it [indicate broad heading of the administrative law infirmity], further particulars of which are set out in Part 2 below.
4. The impugned decision is invalid in that it is incompatible with the State’s obligations under art X of the ECHR, a Convention provision for the purposes of s. 3 of the European Convention on Human Rights Act 2003, by failing to [indicate broad heading of the infirmity], further particulars of which are set out in Part 2 below.

(2) EU LAW GROUNDS

Validity of the decision

5. The impugned decision is invalid in that it contravenes art. X of directive Y being a provision that is [transposed by s. X of the Act and/or (as appropriate) directly effective against the State and its

emanations], by failing to [indicate broad heading of the infirmity], further particulars of which are set out in Part 2 below.

Non-transposition (giving rise to declaratory relief)

6. The [State respondents] have wholly failed to transpose art. X of directive Y by failing to [indicate broad heading of the infirmity – for example, specify any conservation objectives in respect of species Z at European Site A, or because art. X [or a specified part of it] of directive Y has not been transposed into law], further particulars of which are set out in Part 2 below.
7. The [State respondents] have failed adequately to transpose art. X of directive Y by [indicate broad heading of the infirmity – for example, that the purported transposition set out in section B of Act C does not achieve the objective required by art. X of the directive because], further particulars of which are set out in Part 2 below.

(3) GROUNDS REGARDING MEASURES OF GENERAL APPLICATION

Consequential invalidity of impugned decision

8. The impugned decision is invalid by reason of having been made under or by reference to an invalid enactment, further particulars of which are set out in the following core ground(s) and the associated further particulars in Part 2 below.

Ultra vires

9. Regulation of the [name of instrument] (S.I. No.) and/or paragraph of the Guidelines is *ultra vires* and invalid in that it contravenes s. X of the Act, by providing/ failing to provide ... [indicate broad heading of the infirmity], further particulars of which are set out in Part 2 below.

Unconstitutionality

10. Section of the Act.... and/or regulation of the [name of instrument] (S.I. No.) and/or paragraph of the Guidelines is invalid in that it contravenes Article X of the Constitution by providing/ failing to provide ... [indicate broad heading of the infirmity], further particulars of which are set out in Part 2 below.

Invalidity by reference to EU law

11. Section of the Act.... and/or regulation of the [name of instrument] (S.I. No.) and/or paragraph of the Guidelines is invalid in that it contravenes art. X of directive Y being a provision that is [transposed by s. X of the Act and/or (as appropriate) directly effective against the State and its emanations], by providing/ failing to provide ... [indicate broad heading of the infirmity], further particulars of which are set out in Part 2 below.

Invalidity by reference to s. 3(1) of the European Convention on Human Rights Act 2003

12. Paragraph of the Guidelines (or other general instrument not subject to s. 5(1) of the European Convention on Human Rights Act 2003) is incompatible with the State's obligations under art. X of the ECHR, a Convention provision for the purposes of s. 3(1) of the European Convention on Human Rights Act 2003, by providing/ failing to provide ... [indicate broad heading of the infirmity], further particulars of which are set out in Part 2 below.

ECHR-compatibility (giving rise to declaratory relief)

13. Section of the Act.... and/or regulation of the [name of instrument] (S.I. No.) (or other general instrument subject to declaration of incompatibility under s. 5 of the European Convention on Human Rights Act 2003) is incompatible with the State's obligations under art. X of the ECHR, a Convention provision for the purposes of s. 5 of the European Convention on Human Rights Act 2003, by providing/ failing to provide ... [indicate broad heading of the infirmity], further particulars of which are set out in Part 2 below.

Part 2 – Detailed particulars of the grounds upon which each relief is sought:
[Note: 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.]

D. Grounds and factual particulars demonstrating how the application meets all necessary jurisdictional criteria

E. Chronological narrative of the factual grounds on which the application is based

F. Name and registered place of business of the applicant's solicitor (if any):
[Note: leave this section blank if not applicable] or Applicant's address for service within the jurisdiction (if acting in person)

G. Email address for applicant's solicitor (if any) or for applicant (if acting in person)

H. Word Count:

Dated this day of 20.....

(Signed)

Solicitor for Applicant

[or Applicant (if acting in person)]

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These rules set out the procedures relating to applications to the Planning & Environment List of the High Court.

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