



Department of
Justice

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Proposal to change the time limits for bringing a judicial review - consultation

Summary of Responses

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1. Introduction

- 1.1. This paper provides a summary of the responses received to the consultation paper '*Proposal to change the time limits for bringing a judicial review*' published by the Department on 22 June 2015. The paper set out the Department's proposal to remove the requirement to bring judicial review proceedings promptly and sought views on eight specific questions. The 12 week consultation period ended on 14 September 2015.
- 1.2. It should be noted that this paper does not include responses that have been received by way of ministerial correspondence.
- 1.3. Copies of this summary and the consultation document can be accessed at www.dojni.gov.uk. If you would like a copy of this summary in another format please contact;

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2. Responses to the consultation paper

- 2.1. Eight responses were received to the consultation from a range of stakeholders including those from the local government, voluntary and legal sectors. A full list of respondents is set out in section 5.
- 2.2. A response questionnaire was provided to consultees. This was completed by two respondents. Most respondents, however, preferred to provide a response by way of a written submission. The nature of these submissions varied. The majority, however, provided comments which broadly correlated to the subject of the questions posed in the consultation. Some provided more detailed discussion on those proposals that were of particular interest to them.
- 2.3. The total number of respondents to each question varied. Therefore, where a reference is made in the summary to a particular quantity of respondents (e.g. 'majority/most/some'), it should be read as a reference to the respondents to the particular question concerned rather than the respondents to the consultation generally.
- 2.4. All of the responses were recorded in a database and analysed carefully. Both quantitative and qualitative analysis techniques were employed. Some comments required interpretation in order to ensure that as many of the respondents' submissions as possible were considered in the analysis.
- 2.5. This document aims to summarise as many of the points raised as possible. It is not, however, possible to give details of all specific points made by individual respondents within the confines of this summary.

3. Key findings and next steps

3.1. There was a general consensus amongst respondents that the proposal would provide greater certainty, simplicity, openness and transparency to all involved in judicial review proceedings.

3.2. The key findings from the responses received are that;

- all respondents that commented agreed that:
 - it was appropriate to remove the requirement to bring a judicial review promptly;
 - the power to extend the time limit in appropriate cases should be retained; and
 - it would be inappropriate to remove the promptitude requirement for applications made on EU grounds (and under the Aarhus Convention) but retain it for applications made on domestic grounds;
- most respondents that expressed a view did not consider that the proposal to remove the promptly requirement would have an adverse impact on any particular category of judicial review; and
- there were mixed views on whether a shorter time limit than three months might be appropriate in planning and procurement cases.

Next steps

3.3. As the proposal will impact on other Northern Ireland Departments, this matter will be referred to the Executive for approval. Following its consideration, the Department will invite the Court of Judicature Rules Committee (the body responsible for making the relevant court rules changes) to consider the matter.

4. Summary of responses to questions

THE PROPOSAL

Question 1 – Have you been deterred from bringing a judicial review because of uncertainty over the requirement to bring a case promptly? If so, please provide details?

- 2 respondents

4.1. Only two respondents answered this question. One of them, Housing Rights, indicated that it had been deterred from bringing a judicial review because of uncertainty over the ‘promptly’ requirement. It commented that the requirement has put additional pressure on its legal team and has, on occasion, caused it difficulty in dealing with vulnerable clients. The other respondent was Fermanagh and Omagh District Council. It confirmed that it had not been similarly deterred.

Question 2 – Do you agree that is appropriate to remove the requirement to bring a judicial review promptly as long as it is made within three months? Please give your reasons.

- 7 respondents
- 7 agreed [1 inferred]

4.2. All of the respondents who expressed a view on this question agreed that it was appropriate to remove the requirement to bring a judicial review promptly.

4.3. Respondents were generally of the opinion that the current system was ambiguous. Housing Rights commented that it leads to uncertainty as to whether leave for judicial review will be granted even when applied

for within the three month period. There was a general consensus that the proposal would provide greater certainty, simplicity, openness and transparency to all involved in judicial review proceedings.

4.4. The other benefits of the proposed change cited by respondents were that it would;

- eliminate the arbitrariness of the current position where different time requirements apply to different cases depending on the grounds for review;
- bring Northern Ireland into line with the position in Scotland and the Republic of Ireland;
- remove unnecessary challenges to applications on grounds of promptitude and the resulting delay to proceedings; and
- ensure continued compliance with obligations arising from EU Law.

4.5. Some respondents referred to the restrictions placed by the promptly requirement on the ability of applicants and their representatives to prepare a thorough and reasoned application. Fermanagh and Omagh District Council, Northern Ireland Local Government Association (NILGA), and the Law Society of Northern Ireland (the Law Society) gave the view that the proposed three month period provided sufficient scope for discussions and negotiations to take place prior to the initiation of proceedings.

Question 3 – What impact will the proposal to remove the requirement to bring a judicial review promptly have on you or your organisation?

- 2 respondents

4.6. Only one respondent, Housing Rights, directly answered this question. It did not anticipate that the removal of the requirement would have any significant adverse impact on its clients or work but felt that it would add to the clarity of the process. The other respondent to comment on

this question, Fermanagh and Omagh District Council, focused on the wider advantages to be gleaned from the proposal. It commented that it struck the right balance between the need for certainty in public affairs and for applicants to have sufficient time to prepare cases.

Question 4 – Do you agree with the proposal that the Court’s power to extend the time limit in appropriate cases should be retained? Please give reasons.

- 6 respondents
- 6 agreed [2 inferred]

4.7. All respondents to this question agreed with the Department’s proposal that the Court should retain the power to extend the time limit in appropriate cases. They accepted that there was a need to retain the flexibility within the current system.

4.8. The Bar Council pointed out that there are some cases where an application can genuinely take longer than three months to submit. Housing Rights suggested that this could be the case in applications brought by vulnerable applicants who may not seek or receive adequate advice and assistance until a late stage in the process. It stressed the importance of retaining the current discretion to protect access to justice for these applicants.

4.9. Two local government respondents, Fermanagh and Omagh District Council and NILGA, commented that judicial discretion to extend the time limit should be exercised in exceptional cases. The Superintendents’ Association of Northern Ireland suggested that the circumstances in which the court can extend the time limit should be defined in any amendment made. In contrast, the Bar Council welcomed the Department’s decision not to constrain the courts by prescribing specific scenarios where applicants could potentially exceed the three month time limit.

OTHER REFORM OPTIONS

Question 5 – Do you agree that it would be inappropriate to remove the promptitude requirement for applications made on EU grounds (and under the Aarhus Convention) but retain it for applications made on domestic grounds? Please give reasons for your answer.

- 6 respondents
- 6 agreed [3 inferred]

4.10. Respondents to this question unanimously agreed that it would be inappropriate to remove the promptly requirement for applications made on EU or Aarhus Convention grounds but retain it for applications made on domestic grounds. The Law Society and Bar Council shared concerns that a twin-track system could lead to inconsistency and injustice. This was echoed by NILGA which felt that a dual approach could potentially give rise to a system that is more complex and confusing than that currently in place. Housing Rights suggested that the confusion likely to arise from any such approach could lead to actions not being initiated on time.

Question 6 – Do you think the proposal to remove the promptly requirement will have an adverse impact on any particular categories of judicial review? If so, please explain your answer.

- 3 respondents
- 2 answered 'no'
- 1 answered 'yes'

4.11. Only three respondents answered this question. Two of them did not consider that the proposal would have an adverse impact on any particular category of judicial review. This view was expressed by Fermanagh and Omagh District Council. Likewise, Housing Rights did

not envisage that it would impact negatively on its work or the ability of its clients to access the judicial review procedure.

4.12. The Bar Council, on the other hand, suggested that the proposal to remove the promptitude requirement could potentially have undesirable consequences in certain categories of case. It cited reviews of planning decisions as a particular category which could be adversely affected; it considered that, in these cases, the change could result in delays that might have significant financial ramifications for commercial developers and other interested third parties (i.e. they might be inclined to refrain from planned development until the time period for bringing a judicial review has lapsed). It suggested that the Department consider making legislative provision to expressly allow the courts to refuse relief on the ground that a challenge should have been brought in a more timely fashion similar to provision that applies in England and Wales.

Question 7 – Are there any types of case in which you consider a time limit shorter than three months might be appropriate? If so, please explain your answer.

- 5 respondents commented

4.13. Two local government respondents (NILGA and Fermanagh and Omagh District Council) suggested that a shorter time limit might be appropriate in planning and procurement cases. They felt that it would be preferable for the time limit to be harmonised with that for other statutory appeals in these cases as these time limits were generally familiar to appellants, would allow for certainty in decision-making and protect commercial interests.

4.14. In contrast, other respondents cautioned against any attempt to shorten the time limits in planning or procurement cases. The Law Society, for example, argued that this would potentially;

- lead to more premature applications and a resulting increase in the workload of the relevant respondent public authorities and applications for extensions of time;
- render it more difficult for some challenges being made; and
- be counterproductive to achieving greater certainty in judicial review proceedings.

4.15. It suggested that the complexity of the information and documentation involved in judicial review proceedings renders the time limit for statutory appeals an inappropriate comparator. It also pointed out that, as well as affecting economic development, planning and procurement decisions can engage important environmental rights which must be sufficiently protected.

4.16. Carson and McDowell LLP was also strongly opposed to any shortening of the time limit in respect of planning judicial reviews. It pointed out that three months is already an onerous time limit within which to obtain and consider the relevant material in these cases and that any shortening of that time frame would have a detrimental impact on access to justice. It suggested that any such change would lead to the initial grounds for review being subsequently withdrawn or extensively amended.

4.17. The Law Society pointed out that some parties taking part in the judicial review of planning decisions may not have been involved in the earlier appeal proceedings and, as such, require time to prepare their case adequately. Likewise, Carson McDowell LLP suggested that, unlike in planning appeals where the applicant is the applicant for planning permission, an applicant in a judicial review of planning decision may not be as familiar with the relevant material and needs appropriate time to consider it fully. Housing Rights was concerned a shorter time limit could affect the ability of people in vulnerable situations to give timely and sufficient instructions and would reduce their access to justice.

Question 8 – If a shorter time limit than three months were introduced for certain cases, would the Court’s power to allow an extension of time to bring an application be sufficient to ensure that access to justice was protected?

- 3 respondents
- 2 agreed
- 1 disagreed

4.18. Only three respondents answered this question. Two respondents, NILGA and Fermanagh and Omagh District Council, agreed that if a shorter time limit than three months were introduced, the court’s discretion to extend time would be sufficient to protect access to justice. Both respondents, however, stressed the importance of the discretion applying solely to exceptional cases. Housing Rights disagreed and commented that, although access to the discretion of the court to extend the time limit can be beneficial in certain circumstances, it should not lead to a reduction in the time limit.

5. List of respondents (alphabetical)

Antrim and Newtownabbey Borough Council

Bar Council of Northern Ireland

Carson McDowell LLP

Fermanagh and Omagh District Council

Housing Rights

Law Society of Northern Ireland

Northern Ireland Local Government Association

Superintendents' Association of Northern Ireland