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IMMIGRATION DIRECTORATES' INSTRUCTIONS

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CHAPTER 27
SECTION 5**JUDICIAL REVIEW**
- NATIONALITY CASES**I PROCEDURE FOR HANDLING APPLICATIONS FOR JUDICIAL REVIEW****1. General**

- 1.1. Under **s.44 (2)** of the British Nationality Act 1981, a decision to grant or refuse any application is not subject to appeal or review in any court if the decision is at the Secretary of State's discretion. The courts will not, however, regard **s.44 (2)** as a barrier to examining whether the Secretary of State has acted illegally, unreasonably or has made procedural errors in reaching his decision (did he, for example, fetter his discretion in an individual case by ruling out a general class of applicants?). In such circumstances the courts may:
- quash the decision (an order of certiorari), and/or
 - direct the Secretary of State to reconsider the application (an order of mandamus)
- 1.2. Where an application for judicial review has been made, or is in prospect, of a nationality decision, it is important to be clear about the respective roles of the Judicial Review Monitoring Unit, Treasury Solicitor's Department, the Senior Caseworker, INPD(L), Legal Adviser's Branch and FSD.
- 1.3. The **Judicial Review Monitoring Unit (JRMU)** is located within the Removals Group (ICD). The Unit is responsible for tracking, co-ordinating and monitoring all judicial review cases. It can also give advice on the procedural aspects of judicial review work (see Section 1 paragraph 1.8 above for more details).
- 1.4. The **Treasury Solicitor** acts as the Secretary of State's legal representative in any judicial review proceedings. His role, or, in practice, that of the nominated officer in his Department, is to conduct the litigation in accordance with the Senior Caseworker's instructions. The Treasury Solicitor's Department will also appoint a barrister, or 'counsel', to appear in court on our behalf, and to give advice on general points of law.
- 1.5. Once an application for judicial review has been lodged and the claim form has been served on the Treasury Solicitor, the caseworker will conduct the case in accordance with the timetable set out in the Bowman recommendations (see The Civil Procedure (Amendment No. 4) Rules 2000). He will liaise with the Treasury Solicitor to determine what further correspondence, if any, may be required and what information needs to be provided upon which to base our preliminary defence.

- 1.6. The **Senior Caseworker** is responsible for deciding, with assistance from **INPD(L)** and/or **Legal Adviser's Branch** as necessary, whether or not the application for judicial review should be opposed, and for instructing the Treasury Solicitor (who may also have a view) accordingly. **This decision should be kept constantly under review as the case proceeds.** The factors which might be taken into account include:
- whether the contested decision, and the procedure followed in arriving at it, were sound
 - whether the outcome might have significant policy implications
 - whether the potential cost of resisting the application outweighs the benefits, or is in inverse proportion to the likelihood of, a successful outcome
- 1.7. The **Senior Caseworker** is also responsible for keeping JRMU informed of the progress in the case. Details of the role now played by the JRMU in the post-Bowman judicial review process are set out in Section 2 paragraph 6 above. Briefly, the JRMU will have received details of the claim from the Treasury Solicitor and passed them with a covering letter to a caseworker who **must** inform the JRMU
- If the case is to be conceded or reconsidered
 - If the Treasury Solicitor has not been in touch within 5 days
 - When information has been forwarded to the Treasury Solicitor for the summary grounds to be submitted within the 21 day deadline
 - As soon as he is informed of any permission hearings and their outcome
 - If permission to proceed has been granted
 - The outcome of the substantive judicial review hearing
- 1.8. The Treasury Solicitor's Department charges IND for the services it provides, and the Senior Caseworker may be asked by **FSD** (which receives the invoices and makes payments on behalf of ICD) to confirm that the services charged for have been provided.
- 1.9. **FSD** is also responsible for meeting costs to IND arising from out of court settlements, and should be notified in advance of proposed expenditure in such cases. **Authority to approve the payment of adverse costs up to £20000 was delegated to Senior Caseworkers on 9th September 1999 but is currently the subject of further consideration in this financial year (2001/2).**

2. The ‘permission’ stage

- 2.1. In order to obtain a judicial review, the applicant must first satisfy the court that he or she has an arguable case. This is known as applying for permission to proceed.
- 2.2. The application for permission is made by lodging a claim form together with supporting documentation, and stating the remedy which is being sought, with the Administrative Office (Crown Office) of the Royal Courts of Justice. The Civil Procedure (Amendment No. 4) Rules 2000 provide that the claim form must be filed promptly and in any event not later than three months after the grounds to make the claim first arose.
- 2.3. Most applications will be decided on the papers, i.e. by a single judge working privately in chambers: oral hearings are unusual in the first instance. It is open to an applicant who is refused on the papers to renew his application at an oral hearing. **An applicant who is refused leave at an oral hearing may no longer renew the application for leave to the Court of Appeal.** However, the applicant may apply within 7 days of the High Court’s refusal to the Court of Appeal for permission to appeal. The Court of Appeal can give permission to apply for judicial review and the case will proceed in the High Court unless the Court of Appeal orders otherwise.
- 2.4. Before the Bowman recommendations, applications for leave were made ‘ex parte’ - that is by one party alone – and there was no requirement for formal notice to be given to the respondent. However, from 2nd October 2000 the applicant is required to serve the claim form (with supporting documentation) on the defendant within 7 days after the claim is filed.
- 2.5. This means that the Secretary of State is always a party to the judicial review application, but only after it has been lodged. There may, however, be opportunities to intervene earlier if prior warning of the application is given.
 - If we are aware that an application for leave is planned, a letter may be sent to the applicant’s representative either:
 - i. defending our decision in the light of the evidence and any argument which might be put before the court, and inviting reconsideration of the proposed application; or
 - ii. if it now appears that our original decision was unsound, exploring the possibility of an out of court settlement.
- 2.6. The potential benefits attaching to intervention at this preliminary stage are considerable. Each case must, however, be considered on its merits. The final decision rests with the senior caseworker, although it is usual to defer to the Treasury Solicitor on such matters.

3. Procedure where permission to proceed has been granted

- 3.1. The court will serve the order giving (or refusing) permission, and any directions, on the claimant and the defendant (i.e. The Secretary of State). The Treasury Solicitor will notify the JRMU of the grant and fax a copy of the order to the caseworker.
- 3.2. If the defendant wishes to contest the claim, he must file and serve detailed grounds and any written evidence within 35 days after service. In effect, this gives the caseworker 30 days to make the necessary preparations, in consultation with the Treasury Solicitor, so that there will be adequate time at the end of the process for the Treasury Solicitor to finalise their action. (The JRMU should be notified when this has been done.)
- 3.3. This is a suitable point at which to consider again (in consultation with a SCW and the Treasury Solicitor's Department who will, in the event of an oral permission hearing, have obtained preliminary advice from counsel concerning the merits of opposing the claim), this time in the light of any reasons which the court may have given for granting permission, whether you wish to continue to contest the case.
- 3.5. A copy of the eventual judgment will be sent either directly to the Senior Caseworker or via JRMU.

4. Position after the decision of the Divisional Court

- 4.1 Substantive consideration is given to judicial review applications by the appropriate Divisional Court (usually the Queen's Bench Division) of the High Court. From there either party may appeal, with leave, to the Civil Division of the Court of Appeal and thence to the House of Lords. Any court in the United Kingdom may, if it considers the case raises issues of European Community law, refer such matters to the European Court of Justice for a preliminary ruling.
- 4.2 It will fall to the Senior Caseworker to consider, with the assistance of the Treasury Solicitor, INPD(L) and LAB as appropriate, and having regard to the matters listed in paragraph 1.5 above, whether at each stage it would be more appropriate to contest or to concede the case.
- 4.3 All judgements should be copied to INPD(L) for noting purposes.

II REQUESTS FROM A COURT FOR HOME OFFICE VIEWS

Any request originating from a Court for a letter setting out Home Office views on a matter before the Court or giving an account of Home Office policy as it would apply if certain decisions were taken by the Court, should be answered by INPD(L), referring to Legal Adviser's Branch as necessary.