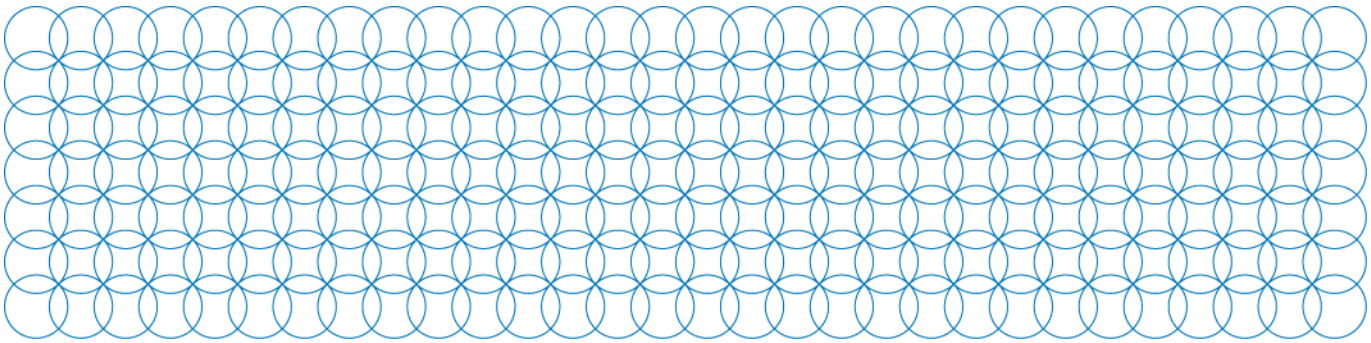
Ministry of JUSTICE

Cross-undertakings in damages in environmental judicial review claims

Consultation Paper CP17/10
This consultation begins on 24 November 2010
This consultation ends on 24 February 2011



Ministry of JUSTICE

Cross-undertakings in damages in environmental judicial review claims

A consultation produced by the Ministry of Justice. It is also available on the Ministry of Justice website at www.justice.gov.uk

About this consultation

To:	Seek views on proposals to set out factors to be taken into account by the court in deciding whether to grant an interim injunction in environmental judicial review claims without a cross-undertaking in damages in court rules or guidance.
Duration:	From 25/11/10 to 24/02/11
Enquiries (including requests for the paper in an alternative format) to:	Ghulam Chowdhury Ministry of Justice 102 Petty France London SW1H 9AJ Tel: 020 3334 3171 Email: ghulam.chowdhury1@justice.gsi.gov.uk
How to respond:	Please send your response by 24 February 2011 to: Ghulam Chowdhury Ministry of Justice 102 Petty France London SW1H 9AJ Tel: 020 3334 3171 Email: ghulam.chowdhury1@justice.gsi.gov.uk
Response paper:	A response to this consultation exercise is due to be published in Spring 2011 at: http://www.justice.gov.uk

Contents

Executive summary

1. The requirement that an applicant give a cross-undertaking in damages when seeking an interim injunction in civil proceedings, including judicial review, is a long standing feature of the justice system in England and Wales. It is open to a court not to require a cross-undertaking but the Government is aware of developing concerns that the circumstances in which the court will issue an interim injunction in the context of environmental judicial review proceedings without requiring a cross-undertaking in damages may be too limited. It is seeking views on possible means of addressing that concern.

2. The issue was raised, in particular, in the Report of the Working Group on Access to Environmental Justice, chaired by Lord Justice Sullivan ("the Sullivan Report") published in May 2008. This considered the implications for the law in England and Wales of the Aarhus Convention,[1] and its requirement that participating States should make available a review procedure for environmental decisions which is 'fair, equitable, timely and not prohibitively expensive'. The Working Group concluded that the requirement that proceedings should not be prohibitively expensive also applies to applications for interim relief and meant that a cross-undertaking in damages should not generally be required in support of an interim injunction in environmental judicial review claims.[2]

3. The issue has also been raised by the European Commission, which argued that the UK had failed to transpose fully and apply correctly Directive 2003/35/EC ("the Public Participation Directive") partly due to the requirement on applicants to provide a cross-undertaking on damages when seeking interim relief. In addition, following a recent complaint the Aarhus Compliance Committee adopted its findings on 18 October 2010 (http://www.unece.org/env/pp/compliance/C2008-33/Findings/C33_Findings.pdf), which indicated that:

> "A particular issue before the Committee are the costs associated with requests for injunctive relief. Under the law of E&W, courts may, and usually do, require claimants to give cross-undertakings in damages. As shown, for example, by the Sullivan Report, this may entail potential

---

[1] The UNECE *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*, (concluded at Aarhus in Denmark and accordingly referred to as the Aarhus Convention). It was signed on June 25, 1998. It entered into force on 30 October 2001.

[2] In the UK, the relevant review procedure is by way of an application to the courts for judicial review although there are other methods of challenge – for example the public can report potential breaches of environmental legislation to the Environment Agency and make complaints regarding statutory nuisance to the local authority. Complaints may also be raised with the Information Commission and the Parliamentary Commissioner for Administration.

> liabilities of several thousands, if not several hundreds of thousands of pounds. This leads to the situation where injunctive relief is not pursued, because of the high costs at risk, where the claimant is legitimately pursuing environmental concerns that involve the public interest. Such effects would amount to prohibitively expensive procedures that are not in compliance with article 9, paragraph 4."

4. The Committee recommended that the UK review its system for allocating costs in environmental cases within the scope of the Convention and undertake practical and legislative measures to overcome the problems identified.

5. The Government is committed to the principles of access to justice set out in the Aarhus Convention and believes that the law in England and Wales relating to judicial review generally meets the requirements of both the Aarhus Convention and the Public Participation Directive[3] which, in part, implemented the Convention in the EU (amending the Environmental Impact Assessment Directive[4]). However, we continue to look for ways to improve access to justice and to provide fair and simple means of resolving disputes. The Government believes that a measure of judicial discretion on whether or not to require a cross-undertaking is important in ensuring that an appropriate balance can be struck between the interests of the claimant and defendant and, where appropriate, the general public interest in the circumstances of each particular case.

6. However, there is limited case law in this area and the Government considers that there may be benefits, particularly in cases involving the Aarhus Convention and the Public Participation Directive requirements, in clarifying the factors which the courts should take into account in deciding whether to require a cross-undertaking in damages. This would help ensure that the parties can better anticipate the decision of the court in any particular case and make their decisions accordingly. As these cases are relatively rare, it will also help the courts in taking a consistent approach.

7. However, before finalising its view, the Government needs to establish whether such clarification would be helpful and necessary and whether it can be done in a way that will do justice to all the interests involved. This consultation therefore seeks views on these issues and on how rules or guidance should be framed, if the proposal were to be implemented.

8. While it does not form part of this consultation, the Government has, separately, asked the Civil Procedure Rules Committee (CPRC) to take steps, building on the current case law as now developed by the courts, to codify the criteria and procedure for making Protective Costs Orders (PCOs) in environmental judicial review claims. This will ensure that claimants and defendants are as well informed as possible about the process and the factors that guide whether such an order will be made.

---

[3] Directive 85/337/EC.
[4] Directive 2003/35/EC.

9. The Government is also consulting separately[5] on whether, qualified one way costs shifting should be considered for all judicial review proceedings (as recommended by Lord Justice Jackson in his Review of Civil Litigation Costs).[6] We will consider in the light of that consultation what further action should be taken in this area.

[5] Proposals for Reform of Civil Litigation Funding and Costs in England & Wales Implementation of Lord Justice Jackson's Recommendations CP 13/10 www.justice.gov/consultations.

[6] Chapter 30. http://www.judiciary.gov.uk/about_judiciary/cost-review/reports.htm

Introduction

10. This paper sets out for consultation the Government's proposals on the factors to be taken into account by the court in deciding whether to require a cross-undertaking in damages to be given by an applicant seeking an interim injunction in an environmental judicial review case. It also seeks views on whether these should be set out in court rules or in guidance.

11. The consultation is aimed at primarily at those who may be involved in court proceedings in England and Wales relating to building and other developments which impact significantly on the environment.

12. This consultation is conducted in line with Code of Practice on Consultation and falls within the scope of the Code. The consultation criteria, which are set out on page 20, have been followed.

13. An Impact Assessment is not required for this consultation because rules of court are not generally within the definition of regulation by reference to which the requirement for such an assessment is determined.[7]

    Copies of the consultation paper are being sent to:

    Environment Agency for England and Wales

    Law Society

    The Bar Council

    Civil Aviation Authority

    National ATS

    The Planning Inspectorate

    Planning and Environmental Bar Association

    RenewableUK

    UK Business Council for Sustainable Energy

    Confederation of British Industry

    Local Government Association

    Welsh Local Government Association

    UK Environmental Law Association

    The Association of British Insurers

---

[7] "a rule or guidance with which failure to comply would result in the regulated entity or person coming into conflict with the law or being ineligible for continued funding, grants and other applied for schemes. This can be summarised as all measures with legal force imposed by central government and other schemes operated by central government."

Federation of Small Businesses

British Chambers of Commerce

National Farmers Union

RSPB

Friends of the Earth

WWF-UK

Greenpeace

Environmental Law Foundation

Coalition for Access to Justice

Network Rail

Highways Agency

UK Major Ports Group

British Ports Association

Airport Operators association

British Air Transport Association

Planning Aid

The Master of the Rolls

The Head of the Administrative Court

14. However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

Scope

15. Although the judicial review jurisdiction covers a wide range of possible cases and there are a variety of cases in which a cross-undertaking in damages might be required, the Government is not aware that the requirement to give such an undertaking when applying for an interim injunction has been an issue other than in a limited number of judicial review claims. Furthermore, this issue has arisen solely in the context of the requirements of the Aarhus Convention and the Public Participation Directive to ensure that access to justice procedures provide adequate and effective remedies, including injunctive relief as appropriate and are fair, equitable, timely and not prohibitively expensive.

16. The proposals in this paper are accordingly confined to the factors that should be taken into account in deciding whether to require a cross-undertaking in environmental judicial review claims.

Environmental Judicial Review claims and interim injunctions

17. A typical environmental review claim which might lead to a request for an interim injunction might concern an alleged failure to comply with obligations to carry out an environmental impact assessment before a public authority gave consent for some form of development or activity e.g. the building of a waste development site/plant or a wind farm which it is alleged will cause environmental harm e.g. destruction of a wildlife habitat.

18. Whilst any judicial review claim will be against the public authority that made the permission decision, the action that it is alleged is likely to cause harm will be taken by the third party developer that has received that permission. In these cases, to prevent irreparable damage being done before the court can rule on the challenge, a claimant may apply for an interim injunction restraining development activity in the meantime.

19. When considering whether to grant an interim injunction, the court will have regard to the criteria set out by the House of Lords in the *American Cyanamid* case (see **Annex A**). However, the court will usually only grant such an injunction if there is a cross-undertaking in damages.

What is a cross-undertaking in damages?

20. A cross-undertaking in damages is an agreement by a claimant requesting an injunction to pay compensation to the party subject to the injunction (in the cases with which this paper is concerned, the developer) if the court subsequently decides that the injunction should not have been given and the party subject to the injunction suffers a quantifiable financial loss as a result of complying with that injunction.

When is a cross-undertaking in damages required?

21. In judicial review proceedings an application for an interim injunction should be made when seeking permission to apply for judicial review.[8] At this stage the court will not have all the evidence that will be available at the final hearing and does not know who the ultimate winner may be. As a result any interim injunction granted on the basis of evidence available at that stage, may not eventually be upheld at trial. In such cases, the third party developer will in the meantime have been restrained unjustly and may have suffered a financial loss as a result. The purpose of the cross-undertaking in damages is to ensure that the developer can be fairly compensated if that is the case.

22. Paragraph 5.1(1) of Practice Direction 25 to the CPR (**Annex B**) provides that any court order granting an injunction must contain a cross-undertaking in damages in favour of the defendant, **unless the judge specifically orders otherwise**. Clearly, therefore, a court does have discretion whether or not to require a cross-undertaking in damages. However, the presumption in the Practice Direction is that a cross-undertaking will be required.

23. A cross-undertaking to pay damages will also generally be required where, instead of an interim injunction being made, the third party developer gives a voluntary undertaking not to take any action pending the outcome of the case.

How often are interim injunctions granted in environmental claims?

24. The Ministry of Justice does not have data on the numbers of claims in which an interim injunction was sought, or on the number of such claims where a cross-undertaking in damages was required. Anecdotally, it appears that it is rare for commercial reasons for a developer to take any action while a judicial review is pending, such as would need to be restrained, and that interim injunctions and cross-undertakings are accordingly rarely required.

25. In the context of considering this issue, defendant representatives working in this area have previously asked for examples of cases where a cross-undertaking has been required, but no such examples have been identified.

Q1: Are you aware of specific examples of environmental judicial reviews where an interim injunction was requested? Where requested, was this subject to a cross-undertaking in damages? Please give details of any cases and their outcomes.

---

[8] *Practice Statement: Administrative Courts: The Procedure for Urgent Applications to the Administrative Court – published in February 2002 Listing and Urgent Cases.* The court will decide, on the basis of the draft order and statement of the grounds for seeking an injunction, whether to make an immediate interim order or to direct and oral hearing on notice.

The problem

26. Where an interim injunction is not subsequently upheld, the court has a wide discretion as to whether or not to enforce a cross-undertaking. In deciding whether or not to do so, the court will consider *'the circumstances in which the cross-undertaking was obtained, the success or otherwise of the plaintiff at trial, the subsequent conduct of the defendant and all the other circumstances of the case*'.[9]

27. However, there is no clarity as to when and in what circumstances the court will decide not to enforce the cross-undertaking. In particular, whilst some specific exceptions can be derived from case law, none refer specifically to factors of particular relevance in environmental judicial review proceedings; there may therefore be a risk that uncertainty about cross-undertakings could impact on claimant behaviour, and the European Commission has argued that this is problematic in terms of Public Participation Directive compliance.

Reason for action

28. The Government recognises that the precise behavioural impact of the current position is unclear and accepts that there is no empirical evidence to suggest that the existence of a wide and un-codified discretion to make such an order leads to particular difficulties in practice. The Government's own litigation experience tends to suggest that developers have been willing to wait for the outcome of a judicial review application before commencing or continuing work, without the need for a cross-undertaking. However, the Government remains concerned that the lack of clear guidelines means that the parties may find it difficult to anticipate when they would be successful in obtaining an interim injunction without a cross-undertaking in damages.

29. The loss suffered by a developer as a result of an interim injunction in an environmental judicial review could be quite substantial, particularly if the conclusion of the case is significantly delayed. Given the lack of certainty over the extent of any potential liability, a claimant with insufficient resources to provide a cross-undertaking may proceed without an injunction with the result that, even if their challenge is ultimately successful, it could be frustrated if the developer has proceeded with the development and, for example, destroyed a fragile species habitat by making changes to the character of the land.

30. Some Non Government Organisations involved in environmental issues have suggested that the lack of clarity could have a "chilling effect" which may deter potential interim injunction applications in appropriate cases or conceivably, in extreme cases, deter claimants from pursuing a judicial review altogether due to that risk.

---

[9] Per Lloyd LJ in *Financiera Avenida SA v Shibliq*, The Times, January 14 1991, cited in Dadourian *Group International Inc v Simms* [2009] EWCA Civ 169 at [184].

31. If this were the case, unlike other types of judicial review, environmental cases would be a particular problem. In these cases, there may well be a significant public interest in the outcome of the proceedings but the claimant (who must bear the burden of any cross-undertaking in damages) may have little or no personal financial interest.

Q2: Are you aware of specific examples of environmental judicial reviews where a claimant has been deterred from applying for either an interim injunction or a judicial review due to the potential requirement to give a cross-undertaking in damages? Please give details of any examples and their outcomes.

32. Any measures to provide greater certainty around the issue of cross-undertakings will, of course have to take account of the rights of the third party developer who may be affected by the injunction in relation to Article 1, Protocol 1[10] and Article 6[11] of the European Convention on Human Rights. However, on balance, the Government believes that it would be helpful to codify the factors which the court will consider in requiring a cross-undertaking in damages in support of an interim injunction in these claims.

Q3: Do you agree that the factors to be taken into account by the courts in deciding whether to issue an interim injunction in environmental judicial review proceedings without a cross-undertaking in damages should be clarified? Please give reasons for your answer.

Rules or guidance

33. If this consultation confirms a general view that clarification would be helpful, the Government would welcome views on the most effective mechanism for achieving this.

Guidance

34. Any guidance must, of course, respect judicial independence and the Government is not able to issue guidance to the judiciary. Given the current lack of guidance in this area, one possible option would be for the Administrative Court to develop the law in this area and include appropriate procedural directions in a relevant case.[12] However, this approach would be highly dependant on an appropriate case being found and the court taking the view that such directions should be made. Therefore, there would be no guarantee when or if this could be done.

---

[10] Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

[11] Right to a fair trial.

[12] See *Bovale Ltd v Secretary of State for Communities and Local Government and another* [2009] EWCA Civ 171; [2009] WLR (D) 94.

35. The only definitive mechanisms for communicating binding criteria to the courts are either by a decision from the Supreme Court or Court of Appeal or a Practice Direction issued by the Master of the Rolls. The former would require a test case to be taken forward and could take several years to reach a conclusion. However, the latter could be taken forward, depending on its precise content and relationship to rules of court, as part of one of the regular updates to the CPR, or as a free-standing direction.

Civil Procedure Rules

36. An alternative to guidance would be to seek to clarify the factors that a court will take into account by way of an amendment to the CPR. Such a change would arguably carry more authority and greater certainty for claimants. The CPR, and amendments to them, are made by the Civil Procedure Rule Committee, and require the making and laying of a Statutory Instrument.

37. The nature of the process is likely to mean that it would take longer to introduce these changes than if introduced by means of Practice Direction. However, this is not in the Government's view a determinative factor, since there does not appear to be urgency of a degree which would require extreme expedition, and urgent changes can be made relatively quickly if it becomes apparent that swift action is needed.

Q4: If you agree that the factors should be clarified, should they be set out in either the Civil Procedure Rules or a Practice Direction issued by the Master of the Rolls? Please give reasons.

Factors to be considered by the court

38. As noted above, the case law in this area does not provide detailed guidance on the way the court currently approaches its discretion in this area. However, we have considered the case law that is available, the general principles applicable to the granting of an interim injunction, the judicial review process itself and the recommendations of the Working Group on Access to Justice to Environmental Justice[13] on the issue of cross-undertakings.

39. Taking these into account, we suggest that the court should, if the application meets the other criteria for granting an interim injunction, grant an interim injunction in judicial review proceedings without a cross-undertaking for damages (or alternatively accept an undertaking to refrain from action from the defendant without a cross-undertaking for damages from the claimant) where:

    - the Environmental Impact Assessment Directive (85/337), as amended by the Public Participation Directive (2003/35), is engaged and,

[13] Paragraph 82 of the report *Ensuring access to environmental justice in England and Wales*, published in May 2008.

- if an injunction were not granted:
  - a final judgment in the matter would be impossible to enforce because the factual basis of the proceedings will have been eroded and bringing the case on quickly for trial would not resolve the problem;
  - significant environmental damage would be caused; and
  - the claimant would probably and reasonably discontinue proceedings or the application for an interim injunction if a cross-undertaking in damages was required.

Q5: Are these the right factors? If not, how should they be amended and why?

40. We also suggest that, where an interim injunction has been granted without a cross-undertaking in damages, the court should make a final determination as a matter of priority so as to limit any impact on the defendant or interested party for whose benefit a cross-undertaking would have been given.

41. Where an interim injunction has been granted with a cross-undertaking, the court should also consider whether to direct that the matter be considered as a matter of priority in circumstances where the financial resources of the claimant mean that the claimant would probably and reasonably discontinue the proceedings or the injunction because of the increased loss accruing to the defendant or interested party as a result of any delay.

42. The expedition of cases can ameliorate the disadvantage caused to either party of granting or refusing a cross-undertaking but may not resolve them entirely. The Government is keen to ensure that providing clarity and transparency in the circumstances in which a cross-undertaking will be required, does not have disproportionate or unforeseen consequences. So for example, greater clarity might complicate future case handling and increase costs if it encouraged tactical applications for injunctions. It is therefore prepared to take mitigating actions if these prove to be necessary but is keen to seek views on what risks might exist and whether there are any specific measures that it should put in place to address those risks at the outset.

Q6: Do you consider that providing greater clarity and transparency increase downstream risks? If so, please set out what these are.

Q7: If you consider that greater transparency will lead to additional problems, are there steps that could be taken by which these risks might be mitigated? If so, please set out what these are.

Annex A – Factors to be taken into account by the court in deciding whether to grant an interim injunction

The court has the statutory power to grant in interim injunction where it is just and convenient to do so[14]. In deciding whether to grant an injunction the courts will consider all the facts of the case and will also have regard to the guidelines set out in the leading case of *American Cyanamid*[15] which are that:

- There is a serious question to be tried (however where an action is against a public authority, an interim injunction will not usually be granted until the claimant has shown a real prospect that his claim for a permanent injunction will succeed at trial – rather than the usual test of there being a serious issue to be tried – and the public interest in the outcome of the application will be taken into account[16]).
- Damages would not be an adequate remedy for either party for the loss sustained by action being taken in the interim.
- The court must decide where the balance of convenience lies – so that if there will be some disadvantage to either side whether an injunction is granted or not, the question is the extent of the 'uncompensatable' disadvantage either way.
- Where other factors appear evenly balanced the court will look to preserve the status quo.

[14] S. 37(1) of the Senior Courts Act 1981 and s. 38 of the County Courts Act 1984.
[15] *American Cyanamid Co v Ethicon Ltd* [1975] A. C. 396.
[16] *Smith v ILEA* [1978] 1AER 411.

Annex B – Practice Direction 25A: Interim Injunctions Paragraph 5.1: Orders for Injunctions

Orders for injunctions

5.1
Any order for an injunction, unless the court orders otherwise, must contain:

(1) an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay.

(2) if made without notice to any other party, an undertaking by the applicant to the court to serve on the respondent the application notice, evidence in support and any order made as soon as practicable,

(3) if made without notice to any other party, a return date for a further hearing at which the other party can be present,

(4) if made before filing the application notice, an undertaking to file and pay the appropriate fee on the same or next working day, and

(5) if made before issue of a claim form –

(a) an undertaking to issue and pay the appropriate fee on the same or next working day, or

(b) directions for the commencement of the claim.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Q1: Are you aware of specific examples of environmental judicial reviews where an interim injunction was requested? Where requested, was this subject to a cross-undertaking in damages? Please give details of any cases and their outcomes.

Q2: Are you aware of specific examples of environmental judicial reviews where a claimant has been deterred from applying for either an interim injunction or a judicial review due to the potential to give a cross-undertaking in damages? Please give details of any examples and their outcomes.

Q3: Do you agree that the factors to be taken into account by the courts in deciding whether to issue an interim injunction in environmental judicial review proceedings without a cross-undertaking in damages should be clarified? Please give reasons for your answer.

Q4: If you agree that the factors should be clarified, should they be set out in either the Civil Procedure Rules or a Practice Direction issued by the Master of the Rolls? Please give reasons.

Q5: Are these the right factors? If not how should they be amended and why?

Q6: Do you consider that providing greater clarity and transparency increase downstream risks? If so, please set out what these are.

Q7: If you consider that greater transparency will lead to additional problems, are there steps that could be taken by which these risks might be mitigated? If so, please set out what these are.

Thank you for participating in this consultation exercise.

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	☐ (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details/How to respond

Please send your response by 24 February 2011 to:

Ghulam Chowdhury
Ministry of Justice
Civil Justice and Legal Aid Division
4.22, 102 Petty France
London SW1H 9AJ

Tel:020 3334 3171
Email: ghulam.chowdhury1@justice.gsi.gov.uk

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at http://www.justice.gov.uk/index.htm.

Alternative format versions of this publication can be requested from ghulam.chowdhury1@justice.gsi.gov.uk, telephone 020 3334 3171

Publication of response

A paper summarising the responses to this consultation will be published in Spring 2011. The response paper will be available on-line at http://www.justice.gov.uk/index.htm.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic

confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.

2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

Responses to the consultation must go to the named contact under the How to Respond section.

However, if you have any complaints or comments about the consultation **process** you should contact the Ministry of Justice consultation co-ordinator at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

Ministry of Justice Consultation Co-ordinator
Legal Policy Team, Legal Directorate
6.37, 6th Floor
102 Petty France
London SW1H 9AJ

Produced by the Ministry of Justice

Alternative format versions of this report are available on request from ghulam.chowdhury1@justice.gsi.gov.uk, telephone 020 3334 3171.