



Attorney General for Northern Ireland

Attorney General for Northern Ireland

Annual Report

2020/21

*Laid before the Northern Ireland Assembly
under section 26(3) of the Justice (Northern Ireland) Act 2002
by the First Minister and deputy First Minister*

on

3rd February 2022



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Attorney General for Northern Ireland

Preface by the Attorney General for Northern Ireland

This is my first report as Attorney General for Northern Ireland, prepared in accordance with section 26 of the Justice (Northern Ireland) Act 2002.

In July 2020 I was appointed by the First Minister and deputy First Minister pending a planned review of the role, functions and terms and conditions of the Attorney General for Northern Ireland.

It has been a great privilege and honour to serve the public, the Northern Ireland Executive and Ministers in a role which is of such significance in supporting the rule of law and sustaining devolution. This is a responsibility that I have willingly taken on, having spent most of my career in the field of public and constitutional law. I am grateful to the Rt. Hon. Arlene Foster MLA, and latterly Mr Paul Givan MLA, and Ms Michelle O'Neill MLA, as First Minister and deputy First Minister, for having placed their trust in me to allow me to serve the Executive and the citizens of Northern Ireland.

I would like to pay tribute to the previous Attorney General, John Larkin QC, who was initially appointed for four years and occupied the role of Attorney General for Northern Ireland for over ten years. This report covers three months of the reporting year when the previous Attorney was in post and nine months of my tenure.

John Larkin leaves a unique legacy, particularly in relation to the outreach work he pioneered with schools, academics and youth groups to underpin the rule of law. I wish him well in private practice and in his new role on the bench.

My time in post has been one of historic constitutional change and unprecedented challenge.

The 2020-2021 financial year began only weeks into the first national lockdown. A new Executive Committee had been in place for only two months before the emergence of the COVID-19 crisis. The Executive met on multiple occasions every week, and often several times a day, to deal with the emergency, in addition to managing the outcome of the United Kingdom's exit from the EU and maintaining the normal business of government. The pressures on Ministers over a prolonged period of time have been immense. Much of the work carried out by Ministers is unseen by the public. The Executive has had to make regulations and issue guidance to restrict a wide range of everyday activities with the aim of protecting public health, making the most difficult decisions imaginable, balancing health, individual rights and the economy. The restrictions imposed on our everyday lives have been significant and the degree to which citizens have complied with legal restrictions and guidance for the common good has been impressive. Many have lost their lives as a result of the pandemic, and I extend my deepest sympathy to the families of all those who have lost loved ones and my gratitude to all of those who have supported the Executive's efforts to protect public health.

The legal and constitutional effects of the United Kingdom's departure from the European Union have been profound, particularly for Northern Ireland. The uncertainty leading up to the time of departure and the ensuing Agreement between the United Kingdom and the European Union and the Ireland/Northern Ireland Protocol raised legal and legislative issues of unique and unprecedented complexity for the Northern Ireland Executive.

Much of my time is spent providing legal advice to the Executive and Ministers on a very wide range of issues, of which the two matters mentioned above are only examples. In addition to advising the Executive, I have a wide range of other functions, some of which may not be as readily understood or visible to the public. When I took up my role, one of my first actions was to compile a comprehensive list of the Attorney General's functions and responsibilities. This has been useful in setting direction and priorities for the office. It is attached as an annex

to this report and I hope it helps in giving the reader an overview of the full range of work undertaken by my office.

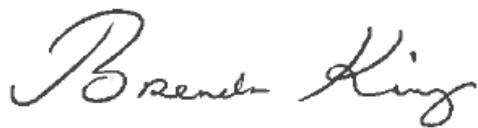
One relatively new area of work for my office arose in 2020 from the commencement of provisions of the Mental Capacity Act (Northern Ireland) 2016. These deal with the requirements for due process in relation to the detention of those who lack capacity to exercise their statutory right to apply to the Review Tribunal in relation to that detention. In 6 months alone, I received 2,083 deprivation of liberty notifications from the five Health and Social Care Trusts. In each case, I must decide whether a person is lawfully deprived of liberty and whether to exercise my power under section 47 of the 2016 Act to make a referral to the Review Tribunal for an independent review of the authorisation for detention. The volume of work in this area, for an office which has fewer lawyers than it had when the office was established but more work than ever before, has been overwhelming and has added significantly to the pressure on my office. When I took up office, the number of cases to be reviewed had risen from a steady trickle to between 20 and 45 cases a day, with a large proportion of the legal and administrative resource of the office occupied by this work. I quickly established new and efficient working methods and systems to deal with the rising number of cases effectively while minimising the impact of these pressures on other important areas of work within the office. This is a new and rapidly developing area of law. In addition to the day to day work on these cases, I am frequently asked to advise on the interpretation and application of the Act.

This report gives only an overview of the work done by my office during the reporting year. I could not, of course, perform my role without the talented and energetic staff, both legal and administrative, who support me. Leaving aside the work of the self-contained deprivation of liberty unit within my office, I currently have 4.6 (full time equivalent) lawyers to assist me in carrying out my many functions.

Like many others, my staff have been working almost exclusively from home over this period. They have dealt with all the challenges this presented with impressive energy and

commitment. It has not been easy to take up a new role during a pandemic but my staff have worked effortlessly to make the transition as seamless as possible. I am very grateful to them all.

I hope that this report will be widely read on its publication by the First Minister and deputy First Minister. I welcome any comments or suggestions in relation to the work of the Office of the Attorney General for Northern Ireland at any time.

A handwritten signature in black ink that reads "Brenda King". The signature is written in a cursive, flowing style.

Dame Brenda King
Attorney General for Northern Ireland

Introduction

1. The Justice (Northern Ireland) Act 2002 establishes the Attorney General for Northern Ireland as a statutory and independent office holder within the devolved administration of Northern Ireland. The functions and responsibilities of the Attorney General comprise both statutory duties and common law duties. A summary of the Attorney General's functions is set out in the annex to this report. The role of the Attorney General for Northern Ireland is similar to that of other law officers in these islands but differs from those roles in some important respects. Although politicians appoint the Attorney General, the Attorney is not a politician but works closely with Executive Ministers in her role as the Executive's chief legal adviser. The Attorney General is independent in the sense that he or she is not subject to control or direction by any political party.

2. Guardianship of the rule of law is central to, and governs the discharge of, the Attorney General's specific duties. The range of work covered by the Attorney General reflects all of the areas which fall within the Executive's remit. The most significant of the Attorney General's duties include:
 - Serving as chief legal adviser to the Northern Ireland Executive in relation to any matter that falls within the devolved powers of the Northern Ireland Assembly;
 - Analysing and scrutinising bills passed by the Northern Ireland Assembly (both Executive bills and Private Members' bills initiated by individual MLAs) to determine whether the provisions of those bills are within the legislative competence of the Assembly and, if the Attorney is of the opinion that they are not, referring those bills to the Supreme Court for a decision on compatibility;
 - Advising the Executive, Ministers and departments on other devolution issues, that is the other matters set out in paragraph 1 of Schedule 10 to the Northern Ireland Act 1998 -
 - (a) a question whether any provision of an Act of the Assembly is within the legislative competence of the Assembly;

- (b) a question whether a purported or proposed exercise of a function by a Minister or Northern Ireland department is, or would be, invalid by reason of section 24 of the 1998 Act;
 - (c) a question whether a Minister or Northern Ireland department has failed to comply with any of the Convention rights; or
 - (d) any question arising under the 1998 Act about excepted or reserved matters.
- Protecting the public interest in the courts where appropriate. This can include the initiation of proceedings as well as participating in proceedings to assist the court. In addition, the Attorney General may participate in proceedings when served with a devolution notice or an incompatibility notice under the relevant court rules, pursuant to the provisions of the Northern Ireland Act 1998;
 - Deciding whether or not to direct a coroner to hold an inquest under section 14 of the Coroners Act (Northern Ireland) 1959;
 - The discharge of statutory and historic functions to protect the public interest in matters relating to charities;
 - Discharging functions under the Mental Capacity (Northern Ireland) Act 2016; this includes the review of authorisations to deprive persons of their liberty and the referral of relevant authorisations to the Review Tribunal on behalf of those who lack capacity to do this for themselves;
 - The examination of cases of contempt of court; the Attorney General can take legal action in the public interest if certain types of contempt of court have been committed;
 - Producing guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards;
 - Dealing with vexatious litigants; the Attorney General can apply to the High Court to have a person declared a vexatious litigant by applying to the court for an order to prevent that person from issuing further proceedings without leave of the High Court;
 - The appointment of the Director of Public Prosecutions and the Deputy Director when vacancies arise.

3. By virtue of section 22(5) of the Justice (Northern Ireland) Act 2002 the Attorney General's functions are exercised independently of any other person. The Attorney General is statutorily independent of the First Minister and deputy First Minister, the Northern Ireland Executive and the Northern Ireland Departments.
4. The Attorney General has no formal role to play in relation to non-devolved matters. Legal advice in relation to those is the responsibility of the Advocate General for Northern Ireland, the Rt Hon Suella Braverman QC MP who is also the Attorney General for England and Wales.
5. The Attorney General may, in accordance with section 22(4) of the Justice (Northern Ireland) Act 2002, appoint staff to assist her in carrying out her functions, subject to the approval of the First Minister and deputy First Minister.
6. The exercise of the functions carried out by the Attorney General for Northern Ireland during the reporting year described in this report reflect the continuing importance of the rule of law to the devolved government of Northern Ireland.

Overview of Work in 2020/21

Chief Legal Adviser to the Executive

7. The Attorney General is the chief legal adviser to the Northern Ireland Executive and may attend Executive meetings. Papers for discussion and agreement by the Executive are sent to the Attorney at the same time as they are submitted by Ministers to other members of the Executive. The Attorney has an opportunity to raise and explore with Ministers those legal issues arising from the papers which have not previously been dealt with or otherwise require the Attorney's advice.
8. Advice from the Attorney General will be sought by Ministers on the most important and complex legal and constitutional matters facing the Executive, including those where there is disagreement between departments on legal issues or where a definitive legal opinion is sought on cross-cutting or significant issues. The practice to be adopted when seeking the Attorney's advice is set out in the Conduct of Executive Business document issued by the Executive Office in May 2016. It is open to Ministers to seek advice directly from the Attorney on particular issues. In such cases, the Attorney will advise that her advice should be shared with other relevant Executive Ministers.
9. The Attorney provided advice to the Executive and Ministers on a wide range of other matters throughout the reporting year. In accordance with the long standing constitutional convention that the Attorney's advice is not disclosed (nor that the Attorney's advice has been sought) it is not possible to give details of the matters advised on in this report.
10. During the current reporting year, the Executive has had to deal with unprecedented pressures resulting from the COVID-19 pandemic and the constitutional changes to the legal landscape as a result of the United Kingdom's exit from the European Union and in particular issues arising from the Ireland/Northern Ireland Protocol. The Attorney General provided advice to the Executive on a range of complex legal issues relating to

both these matters. The Executive met much more frequently than usual over the period covered by this report, on multiple occasions a week and often on multiple occasions on a single day to deal with COVID-19 and EU exit issues. The Attorney attended many of these meetings to provide oral advice as well as providing written advice and opinions on particular issues, including the interaction of the international treaties effecting the UK's exit from the EU and the subsequent UK domestic legislation on the devolution settlement.

Role in the Legislative Process and Scrutiny of Assembly Bills

11. Under section 11 (1) of the Northern Ireland Act 1998 the Attorney General may refer the question of whether any provision of a bill passed by the Assembly would be within the legislative competence of the Assembly to the Supreme Court for decision. The Attorney may make such a reference within the period of four weeks beginning with the passing of the bill or the approval of the bill subsequent to any reconsideration stage after it is passed. Accordingly, the Attorney General carries out a detailed analysis of all Assembly bills as they complete final stage to ensure that they are within competence. As a matter of good practice, and to ensure that if there are any doubts about competence that these can be addressed either by amending a bill before introduction in the Assembly or during its legislative passage through the Assembly, thus avoiding unnecessary references to the Supreme Court, Ministers share draft Executive bills with the Attorney before introduction. This gives the Attorney an opportunity to raise competence issues at an early stage and to work with Ministers and departmental officials to resolve these. The Attorney also scrutinises any amendments to the bill passed by the Assembly, drawing attention to these and any remedial action which may be needed if the amendments raise competence issues. Scrutiny of bills to ensure they are within the legislative competence of the Assembly requires the bill to be read, not simply as a free-standing entity but in the context of the hinterland of legislation which may be affected by it, which may not be obvious from the content of the bill itself, and the rules of statutory interpretation applied by the courts. It is also important to fully understand the practical effect of the bill which could itself result in the bill being outside the competence of the Assembly.

12. As the Assembly was not sitting for a large proportion of its mandate when there was no Executive in place, a backlog of bills had built up and a large number of bills fell to be considered on a pre-introduction basis by the Attorney during the reporting year.
13. The Attorney carried out pre-introduction scrutiny of 12 Executive bills which at the conclusion of the reporting year, were being progressed through the Assembly – the Adoption and Children Bill; the Justice (Sexual Offences & Trafficking Victims) Bill; the Private Tenancies Bill; the Charities Bill; the Parental Bereavement (Leave & Pay) Bill; the Health and Social Care Bill; the Damages (Return on Investment) Bill; the Protection from Stalking Bill; the Criminal Justice (Committal Reform) Bill; the Licensing & Registration of Clubs (Amendment) Bill; the Pension Schemes Bill; and the Horse Racing (Amendment) Bill.
14. The Attorney carried out pre-introduction scrutiny of 1 Executive Bill which at the conclusion of the reporting period had not yet been introduced to the Assembly – the Welfare Supplementary Payments (Loss of Universal Credit or Housing Benefit) Bill.
15. In addition to early scrutiny of Executive bills, the Attorney was asked by an MLA to carry out pre-legislative competence scrutiny of a Private Member’s bill which was later introduced in the Assembly. The Attorney welcomed this approach which should minimise the risk of unforeseen difficulties arising at a late stage in the legislative process.
16. During the period of this report the Attorney undertook final scrutiny of 9 Executive bills – the Private Tenancies (Coronavirus Modification) Bill; the Budget (No. 2) Bill; the Executive Committee (Functions) Bill; the Housing Amendment Bill; the Budget (No.3) Bill; the Harbours (Grants and Loans Limit) Bill; the Domestic Abuse and Civil Proceedings Bill and the Budget Bill. The Attorney also undertook final scrutiny of the single Private Member’s bill passed during this period - the Functioning of Government (Miscellaneous Provisions) Bill introduced by Mr Jim Allister QC MLA.

The Courts - Departmental Litigation

17. When issues of importance arise, the Attorney General may either initiate litigation or intervene in on-going litigation to protect important public interests.
18. This year, Mrs Justice Keegan (as she then was) invited the Attorney General and the Department of Education to make submissions in an appeal by way of case stated from a decision of the Special Education Needs and Disability Tribunal. One of the issues before the court was the role of the Tribunal as regards a potential deprivation of liberty.
19. Mrs Justice Keegan also sought assistance in the case of *PO & RD*. The Attorney General provided written submissions to assist the court in relation to a mental capacity issue which required detailed consideration of the interaction between the Mental Health (NI) Order 1986 and the Mental Capacity (NI) Act 2016.
20. Judgment was also given on 25 November 2020 in a long running judicial review in which the previous Attorney General had been involved. This arose from a request made for the disclosure of an inquest records file held by the Public Record Office of Northern Ireland ("PRONI"). Lord Justice Treacy held that Rule 38 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 applied to a request for the disclosure of an inquest file with the result that it is now a matter for the Presiding Coroner to deal with such requests rather than PRONI.

The Courts - Devolution and Incompatibility Notices

21. The Attorney General may intervene in litigation which gives rise to devolution issues. Section 79 of, and Schedule 10 to, the Northern Ireland Act 1998 make provision for the service of devolution notices on a number of persons including the Attorney General for Northern Ireland. In broad terms the purpose of a devolution notice is to ensure that a court dealing with issues central to the interests of the devolved administration receives all necessary assistance. To this end, in appropriate cases, the Attorney General will

enter an appearance in the proceedings and make submissions to the court. During the reporting year the Attorney General gave consideration to intervening in 13 cases in which devolution notices were issued by courts.

22. The Attorney General for Northern Ireland is also served with notices of incompatibility under the Human Rights Act 1998 in proceedings where a declaration of incompatibility is sought in respect of primary legislation or where the compatibility of subordinate legislation is being considered by the court. Again the Attorney General will fully consider such notices, participate in the proceedings, if appropriate, and make submissions where necessary. During the reporting year the Attorney General gave consideration to intervening in 6 cases in which incompatibility notices were issued by courts.

23. In general terms, the Attorney will intervene where –

- Ministers wish the Attorney to intervene on behalf of the Executive and instruct her to do so. This may arise where there is a substantive issue and would not necessarily be tied to a devolution or incompatibility issue;
- The issues have not, in the opinion of the Attorney, been adequately covered or understood correctly by the parties to the litigation;
- The issues relate to a particular responsibility of the Attorney.

24. The Attorney may also provide submissions to the courts, either on the Attorney's own initiative or at the request of the court. One example of this is set out in the paragraph below.

25. A judicial review application was brought by Lorraine Cox in relation to a decision by the Department for Communities not to award her a Personal Independence Payment and Universal Credit (Limited Capability for Work-Related Activity Element) on grounds of terminal illness. A Devolution Notice was issued by the High Court and a summary of the Attorney General's legal arguments was provided to the court and the parties pursuant to Order 120 of the Rules of the Court of Judicature. The main focus of this submission was on whether the impugned decisions engaged Article 8 or Article 1

Protocol 1 of the European Convention on Human Rights (the ECHR) or Article 14 taken with Article 8 or Article 1 Protocol 1 ECHR. In his judgment Mr Justice McAlinden found in favour of the applicant. This judgment is under appeal by the Department.

26. The former Attorney General intervened in proceedings in the Family Court in which issues arose on the question of parenthood when a child is conceived using assisted reproduction. Judgment was handed down this year. The Attorney made detailed submissions pursuant to a devolution notice as to whether Article 31B of the Matrimonial and Family Proceedings (NI) Order 1989 and sections 42 and 43 of the Human Fertilisation and Embryology Act 2008 were incompatible with Articles 8 and 14 ECHR. Mr Justice O'Hara gave judgment on 23 June 2020 and declined to make a declaration of parentage or to hold that any provisions of the 2008 Act were incompatible with Articles 8 and 14 ECHR. Mr Justice O'Hara's judgment was appealed and the appeal was heard on 23-24 March 2021. The Attorney General did not participate actively in the appeal but a watching brief was maintained on her behalf. Judgment has not yet been given by the Court of Appeal.
27. Mr Justice O'Hara also gave judgment in a similar case on 2 October 2020 in which the Attorney General had participated. The compatibility of the Human Fertilisation and Embryology Act 2008 was again a live issue. The Judge declined to find that any provision of the Act should be declared incompatible but did make an order that the subject child's birth certificate should be corrected in accordance with his findings on the factual issues that arose in the case.
28. Judgment was also given on 18 March 2021 by Mr Justice O'Hara in relation to the validity of a marriage in which the marriage ceremony was performed by a chaplain in hospital in circumstances where one of the parties was sadly dying as a result of a sudden decline in health. The Attorney instructed counsel for the hearing of the case. The ceremony did not comply with the statutory requirements of the Marriage (NI) Order 2003 and the Marriage Regulations (NI) 2003 due to the shortness of time and in these circumstances the Judge was unable to grant a declaration that the marriage was valid.

29. The Attorney General made written submissions pursuant to a devolution notice in a judicial review application in which it was contended that the absence of a 'fitness to plead' procedure in the Magistrates' Court and the holding of a preliminary inquiry or investigation fell short of what is required by Article 6 ECHR. The Attorney General submitted that neither claim gave rise to a devolution issue in accordance with paragraph 1 of Schedule 10 to the Northern Ireland Act 1998. In particular, the Attorney General made the case that no question arises about a failure of the Justice Minister or Department to comply with Article 6 through failing to propose amendments to the law as there is no relevant 'unlawful act' in such an omission and that the judicial review application should be dismissed as, in the absence of an unlawful act by either, no relief under the Human Rights Act 1998 can be granted. The Attorney General also disagreed with the applicant's contention that these proceedings constitute a criminal cause or matter and therefore should be heard by a divisional court. In the event the matter was resolved without any adjudication on the devolution issue or whether the proceedings constituted a criminal cause or matter.
30. Following the Supreme Court decision that the Northern Ireland Human Rights Commission did not have the necessary standing to bring the proceedings in which it sought a declaration of incompatibility in relation to the legislation governing the termination of pregnancy, Sarah Ewart applied for judicial review focusing in her case on terminations in the case of pre-natal life-limiting diagnoses. The previous Attorney General participated in the devolution issues which arose and subsequently on the issue of relief. Mrs Justice Keegan found in favour of the applicant both in relation to standing and compatibility but declined, in her decision on relief in April 2020, to grant declarations of incompatibility in respect of sections 58 and 59 of the Offences against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945. Mrs Justice Keegan's reasons were that:
- The relevant provisions of the Offences against the Person Act 1861 had been repealed and there was no utility in making a declaration of incompatibility after the event;

- Given that the Abortion Regulations (NI) 2020 had come into being, it was not necessary to make any other declaration and in any event it was questionable whether section 25 of the 1945 Act has any real application to this category of case;
- So far as justice and clarity is concerned, the Supreme Court judgment spoke for itself and was a clear vindication of the human rights argument that was made;
- Finally, and critically, this issue is now firmly within the political arena, a legislative course having been taken.

Appointment of Amicus Curiae and Special Counsel

31. Another aspect of the Attorney General's role as guardian of the rule of law is her power to appoint an amicus curiae or a special counsel in order to assist the courts in appropriate cases.
32. An amicus curiae is a lawyer, usually a barrister, who is appointed to assist a court on matters of law connected with proceedings which are before the court. An amicus curiae is not a party to the proceedings but is appointed, at the invitation of the court, in order to assist the court by setting out the law impartially or by advancing relevant legal arguments which, due to the circumstances of the case, would not otherwise be made.
33. During the period covered by this report the Attorney General instructed an amicus to assist Madam Justice McBride in an application to the Court to appoint new trustees and vest certain church property – some held on charitable trusts and some not.

Inquests

34. Under section 14(1) of the Coroners Act (Northern Ireland) 1959 the Attorney General can direct a coroner to either hold an inquest into a death, if none has been held, or to hold a further inquest if one has already been held. At the core of the statutory test the Attorney General applies in considering whether to direct a coroner to hold an inquest

is a consideration of whether it is 'advisable' to do so. What is 'advisable' may vary considerably from case to case. The Attorney General will consider the contents of any application made to her that an inquest should be directed, what material was available to any previous inquest, the sufficiency of inquiry by the inquest, any irregularity or unfairness in the inquest proceedings, any new significant new evidence that may be available, whether the article 2 ECHR procedural obligation has been revived, what other investigations are ongoing (in particular whether the death is being investigated or ought to be investigated by the PSNI and any investigation by the Police Ombudsman), whether witnesses will be available to give evidence at a new inquest and the general utility of holding an inquest.

35. During 2020/21, the Attorney General directed the Presiding Coroner to hold an inquest in 6 cases (referenced in paragraph 37). In 7 cases the Attorney General determined a fresh inquest was not advisable. In total, 20 applications are still under consideration.

36. A number of decisions to refuse to direct inquests have been challenged in the courts. An application for judicial review by Dorothy Johnstone challenged the previous Attorney General's decision not to order an inquest into the death of her father, Mr Sean Eugene Dalton, in 1988. Leave to apply for judicial review was granted only in respect of the argument that a fresh inquest was necessary for the purpose of discharging the investigative obligation on the State under Article 2 of the European Convention on Human Rights and that the Attorney had misdirected himself on this issue and, if he had properly directed himself, would have directed a fresh inquest. At first instance Mr Justice Deeny dismissed that argument. The applicant appealed to the Court of Appeal but unfortunately she died before it could be heard. Another relative, Rosaleen Dalton, successfully applied to take on the appeal in her place. Judgment in the appeal was given on 4 May 2020. The Court of Appeal allowed the appeal and overturned the High Court's decision. The court made a declaration that there had not been an Article 2 compliant enquiry into the death of Mr Dalton. On 26 November 2020 the Attorney General applied to the UK Supreme Court for permission to appeal to it from the judgment of the Court of Appeal and the decision on this application is

awaited. A ruling by the Supreme Court would clarify the Attorney's role in relation to inquests.

37. Following pre action protocol correspondence from two firms of solicitors representing the families of a number of deceased persons, often referred to in the press as the New Lodge Six, the Attorney General conducted a review of the inquest papers, previous decisions of the former Attorney and consideration of further submissions, materials and information provided by the applicants' solicitors into the deaths of James McCann, James Sloan, Anthony Campbell, Brendan Maguire, John Loughran and Ambrose Hardy. The Attorney General directed a fresh inquest in February 2021.
38. Applications for leave to apply for judicial review of the Attorney's decision not to direct an inquest have been made in relation to four other legacy cases. Proceedings are ongoing but no adjudication has been made in any of these cases to date.

Charities

39. The Attorney General's responsibility for protecting the public interest extends specifically to the law of charities, an area in which, historically, the Attorney General has always had a central role. Where a matter is before the Charity Tribunal, the Attorney General is entitled to appear and is treated as a party for the purposes of any appeal from the Tribunal. The Attorney General will normally only appear (or appeal) when there is some larger public interest at stake. The papers in four appeals were considered this year but no intervention was considered necessary. The Attorney General can also defend the interests of charities in proceedings before the High Court and was placed on notice of one case this year in which it was anticipated that this might be necessary. The matter resolved without intervention.
40. The Charities Act (Northern Ireland) 2008 (s.184 and Schedule 9) repeals provisions of the earlier Charities Act (Northern Ireland) 1964 but not all of the provisions of the 2008 Act have yet been commenced. As certain provisions of the Charities Act (Northern Ireland) 1964 are still in operation, the Attorney General retains a consultative and

consent-giving role as regards some charity matters under that Act. These include section 29 of the 1964 Act as regards applications to the court where there is or is alleged to be a breach of any charitable trust or where the advice or order of the court is required in connection with the administration of any charitable trust. The Attorney General gave consent (or fiat) in relation to three applications to the High Court this year. A submission on jurisdiction was made in a fourth case. The Attorney General also has a consultative/consent role in relation to a number of provisions contained in the 2008 Act which have been commenced, including a consultative/directory role in the authorising of ex gratia payments by the Charity Commission and authorisation to take proceedings. Permission was granted to the Charity Commission to take legal proceedings in one case this year.

41. Following the Court of Appeal judgment in *McKee and others v the Charity Commission for Northern Ireland* in February 2020, the Attorney General worked closely with the Department for Communities in developing its response to the judgment, focusing on remedial legislation to deal with a number of decisions purportedly made by the Charity Commission that the Court of Appeal considered not to have legal effect.

Contempt of Court

42. The Attorney General may be asked to consider seeking an order from the High Court restraining a potential contempt of court or to consider bringing contempt proceedings against someone who may have engaged in actions which might amount to contempt. The Attorney General considered a number of matters potentially amounting to contempt during the reporting year. The Attorney General may also issue Media Advisory Notices in appropriate cases. No such notices were issued during this reporting year.
43. The Attorney General has continued with a long-running application to take proceedings to punish an individual in respect of a contempt of court certified by the Master sitting in the Judgments Enforcement Office. This arose from an application made to enforce a number of costs orders. When the individual who was the subject

of the costs orders attended before the Master to be examined as to his means he refused, having been sworn, to answer any questions about his employment, his income or to provide any financial information.

Declaration of Parentage

44. The Attorney General must be placed on notice of every application to the courts seeking a declaration of parentage. In 2020/21 there were 29 such applications. While it would be unusual for the Attorney General to seek to intervene in such cases, every application must be carefully considered in order to decide whether issues of wider concern arise which might merit intervention.

Vexatious Litigants

45. Under section 32 of the Judicature (Northern Ireland) Act 1978 the Attorney General may ask the High Court to make an order declaring someone to be a vexatious litigant which, if such an order is granted, precludes him or her from bringing further proceedings without the leave of the High Court. In 2020/21 the Attorney General considered 3 cases but made no applications to the High Court for orders.

Mental Capacity Act (NI) 2016

46. The Mental Capacity Act (NI) 2016 provides a statutory framework for people who lack capacity to make a decision for themselves, and for those who now have capacity but wish to make preparations for a time in the future when they lack capacity. The provisions of the Act dealing with deprivation of liberty (to address risks to the person who lacks capacity or others) were commenced on 2 December 2019. The 2016 Act is key to the safeguarding of the rights under Article 5 ECHR for many citizens, for example those with dementia or with significant learning disability.
47. A Health & Social Care Trust must notify the Attorney General where it appears that a person in respect of whom it has authorised a deprivation of liberty lacks capacity in

relation to whether an application should be made to a Review Tribunal for an independent review of that authorisation. The Attorney General has a power under section 47 of the 2016 Act to refer to the Review Tribunal the question of whether the authorisation in a particular case is appropriate. In deciding whether to exercise that power, it is necessary for the Attorney General to review, in relation to each case notified to her, the evidence on which it is said that the person is lawfully deprived of liberty. The Attorney General also needs to consider if the person, if he or she had capacity, would ask for the restrictive care arrangements to be reviewed by a Tribunal. A number of complex legal issues have arisen in this new area of law which have required the Attorney General's advice and the Article 5 jurisprudence has been, and will continue to be, dynamic. The Attorney General engaged with the Health and Social Care Trusts on the challenges in this area during the pandemic and considered and advised on emerging legal issues such as remote assessment and family contact.

48. During the period of this report, the Attorney General received 3,018 notifications from the five Health and Social Care Trusts. In 1,202 cases the Attorney General referred the question of whether the authorisation is appropriate to the Review Tribunal. In 1,816 cases the Attorney General did not make a reference. A Principal Legal Officer from the Office of the Attorney General represents the Attorney General at, and co-chairs, the regional multi-agency Mental Capacity Act Implementation Group which meets monthly. This provides an effective forum for partnership working, bringing together the Health and Social Care Trusts, the Department of Health, the Northern Ireland Courts and Tribunal Service, the Regulation and Quality Improvement Authority and the Directorate of Legal Services.
49. The implementation of these safeguards for persons deprived of liberty through care arrangements has been an important and demanding new area of work this year which has put significant additional pressure on the Attorney General's limited staffing resource. The Attorney General is grateful to colleagues in the Department of Health, the Health and Social Care Trusts and the Review Tribunal for their helpful engagement in ensuring these safeguards work effectively to protect the rights of those who lack capacity to make decisions for themselves.

Human Rights Guidance

50. Under section 8 of the Justice (Northern Ireland) Act 2004, the Attorney General is required to produce guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. The Attorney General is also responsible for amending, by order, from time to time, the list of organisations that are subject to the section 8 guidance.
51. This year the Attorney issued guidance to the PSNI and PPS to assist consideration of (1) investigations into or (2) prosecutions for, the offence of failing to report a serious sexual offence under section 5 of the Criminal Law Act (Northern Ireland) 1967. There are currently 15 sets of guidance in operation.

Criminal Justice

52. The Attorney General's Office participated in the Recovering the Justice System project led by the Department of Justice. This brought together the key criminal justice organisations to enable a co-ordinated and strategic response to the challenges and opportunities presented by the pandemic. The Attorney General was also represented on the Criminal Justice Programme Delivery Group/Criminal Justice Improvement Group throughout the year by one of her senior lawyers. A senior lawyer also represents the Attorney General on the Crown Court Rules Committee.

Relations with the Departmental Solicitor and Crown Solicitor

53. During the period covered by this report the Attorney General has sought to maintain and improve working relationships between her office, the Departmental Solicitor's Office ("DSO") and the Crown Solicitor's Office. The Attorney General holds monthly formal meetings with the Departmental Solicitor, Mr Hugh Widdis, and the Crown Solicitor, Mrs Jennifer Bell, to supplement the more informal and ad hoc discussions which take place on a daily or weekly basis. The Attorney General enjoys a good working relationship with both. The Solicitor to the Attorney General also engages with both the

Director of Litigation in the DSO, Mrs Mona McRoberts, and the Departmental Solicitor to discuss litigation and other matters of mutual interest. The Solicitor to the Attorney General also enjoys a good working relationship with the Crown Solicitor and has formal meetings with an Assistant Crown Solicitor and the DSO Director of Litigation to review current litigation and trends. In addition, the Solicitor to the Attorney General attended quarterly meetings of the Northern Ireland Civil Service Legal Profession Steering Group in an observer capacity to discuss staffing and other matters. The secondment of a lawyer from DSO to the Office of the Attorney General, when a lawyer from the office of the AGNI left the office to take up an appointment as a coroner, was of benefit to both offices. The Attorney is grateful to the Departmental Solicitor for facilitating this. Early engagement on advisory, litigation and legislative matters is crucial to facilitate good government and maximise efficiency. The Attorney is grateful for all of the work done by the Departmental Solicitor and the Crown Solicitor in helping to achieve this.

Public Prosecution Service

54. It is the Attorney General's statutory responsibility under section 30 of the Justice (Northern Ireland) Act 2002 to appoint the Director and Deputy Director of Public Prosecutions (and to convene a tribunal in relation to dismissal if necessary) when such appointments are required. The Attorney General's other main responsibilities in relation to the Public Prosecution Service are as a statutory consultee of the Director of Public Prosecutions for Northern Ireland on his annual report (and arranging for publication of that report) and on any amendments to the Code for Prosecutors. The Attorney reviewed proposed amendments to the Code for Prosecutors and reviewed and arranged for the publication of the Director's annual report.
55. Section 42(3) of the Justice (Northern Ireland) Act 2002 sets out that the Attorney General and the Director may consult each other from time to time on any matter for which the Attorney is accountable to the Assembly. With the exception of the matters set out in the paragraph above, there are no matters relating to the Public Prosecution Service for which the Attorney General is accountable to the Assembly.

56. It is worth emphasising that the Attorney General does not have responsibility for referring unduly lenient sentences to the Court of Appeal, though the Attorney frequently receives correspondence on this. Neither does the Attorney General have a role with respect to any prosecutorial decision to accept a plea of guilty to a lesser charge than that originally preferred.

Office of the Legislative Counsel

57. A good working relationship between the Attorney General and the Office of the Legislative Counsel (OLC) facilitates rigorous and timely scrutiny of Assembly bills. The Attorney endeavours to raise issues which arise on bills at the earliest stage possible and she is grateful to acting First Legislative Counsel, Mr Alex Gordon, and his team of legislative counsel for facilitating early engagement and discussion on bills. The quality of primary legislation in Northern Ireland has always been highly regarded by those in other jurisdictions and the Attorney recognises the work done by Mr Gordon and his team to maintain high standards. The quality of legislation, and the public's ability to have access to clear, accessible, up-to-date legislation plays a crucial role in maintaining the rule of law. The Attorney is also grateful to the Statutory Publications Office, which is part of the OLC directorate, for the work that office does in publishing up-to-date legislation online to make it accessible to the public. The Attorney hopes to work with OLC and the Assembly, in the incoming mandate, to progress a programme of statute law consolidation and repeals to further improve the accessibility of statute law.

Criminal Justice Inspectorate for Northern Ireland

58. In accordance with section 47 of the Justice (Northern Ireland) Act 2002, the Chief Inspector of Criminal Justice in Northern Ireland must consult the Attorney General about her programme of inspections of the following organisations:
- the Police Service of Northern Ireland and the Police Service of Northern Ireland Reserve;
 - the National Crime Agency;

- Forensic Science Northern Ireland;
- The State Pathologist's Department;
- The Public Prosecution Service for Northern Ireland;
- The Probation Board for Northern Ireland;
- The Parole Commissioners for Northern Ireland;
- The Northern Ireland Prison Service;
- The Youth Justice Agency;
- Anybody or person with whom the Department of Justice has made arrangements for the provision of juvenile justice centres or attendance centres;
- The Department of Justice in so far as it is concerned with the operation of the criminal courts;
- The Legal Services Agency Northern Ireland;
- Health and Social Services Boards and Health and Social Services Trusts;
- The Central Investigation Service within the Department of Agriculture, the Environment and Rural Affairs;
- The Veterinary Service Enforcement Branch within that Department;
- The Child Maintenance and Enforcement Division of the Department for Communities;
- The Department for the Economy;
- The Department for Infrastructure;
- The Health and Safety Executive for Northern Ireland;
- The Northern Ireland Tourist Board;
- The Police Ombudsman for Northern Ireland;
- The Royal Mail Group plc;
- The Northern Ireland Social Security Agency;
- Belfast International Airport Limited;
- Belfast Harbour Commissioners; and
- Larne Harbour Limited.

59. The Attorney General met with the Chief Inspector of Criminal Justice on a number of occasions to discuss and provide input to her programme of work.

Living Law Programme

60. The Living Law Programme was initiated by the previous Attorney General and is aimed at raising knowledge about the importance of law, as well as generating an interest in and appreciation for the law generally. At its core, Living Law is an enrichment programme for students from non-grammar schools with A-Level classes who may be interested in studying law or learning more about how the law operates in society. The premise of the programme is that protection by the law is our common birth right and that no young citizen should consider herself or himself excluded from learning about the law and considering law as a career. Past participants in this element of the programme are now studying law at universities throughout the United Kingdom, and Ireland. Some past participants have qualified, or are in the process of qualifying, as solicitors or barristers. The Attorney would have liked to continue this valuable programme initiated by the previous Attorney this year. Unfortunately, the Covid-19 restrictions combined with the disruption to schools meant that it was not possible to run the programme in 2020/21.

'It's Your Law' programme

61. 'It's Your Law' is another outreach programme established by the previous Attorney General which promotes the rule of law, including support for the justice system and promotion of active citizenship. Supported by funding under the Executive action plan on 'Tackling Paramilitarism, Criminality and Organised Crime' until the end of March 2021, when funding ceased, the Attorney General delivered the programme in partnership with The Prince's Trust. The programme is aimed at young people who are not in employment or education and those in school who are at risk of exclusion and are educationally under-achieving – with a focus on those young people who are perceived to be at risk of influence from paramilitary / organised crime. The Attorney General was pleased to be able to continue this important programme throughout the year using both online and small group delivery. The Attorney is grateful for the enthusiastic and energetic participation of all the young people who attended.

Conferences and Seminars

62. It was with huge regret that the Attorney decided not to hold the Attorney General's Constitutional Law Summer School so successfully established by the previous Attorney. Although the Attorney General gave considerable thought to holding the Summer School remotely, one of the strengths of the School is the interaction of participants both during and after the numerous sessions and so with much regret and for the safety of all, the Attorney General decided to cancel the 2020/2021 Summer School. The Attorney General wishes to express her gratitude to the Law Society of Northern Ireland, the Bar of Northern Ireland and Law Centre NI for their support for the Summer School in previous years.

Miscellaneous

63. The Office of the Attorney General received 9 Departmental Consultations for consideration -
- Consultation on the amendment of the Horse Racing (Northern Ireland) Order 1990;
 - Consultation on UK Human Medicines Regulations 2012;
 - Consultation on the draft Gas (Internal Markets) Regulations (NI) 2020 and Associated Gas (EU Exit) amending Regulations;
 - Consultation on proposals to establish a regional Care and Justice Campus for Children and Young People;
 - Consultation on Domestic Abuse Protection Notices and Orders;
 - Consultation on Consent No Defence issues;
 - Consultation on the Local Government Pension Scheme (NI) - amendments to the statutory underpinning of the scheme;
 - Consultation on a Climate Change Bill for Northern Ireland;
 - Consultation on Extended Producer Responsibility for Packaging Consultation and Deposit Return Scheme.

64. The Office of the Attorney General provided responses to 5 Freedom of Information requests.
65. Lawyers from the Office of the Attorney General are members of the Court of Judicature Rules Committee, the Crown Court Rules Committee, the Criminal Justice Delivery Group, and the Gillen Review Education and Awareness Group.

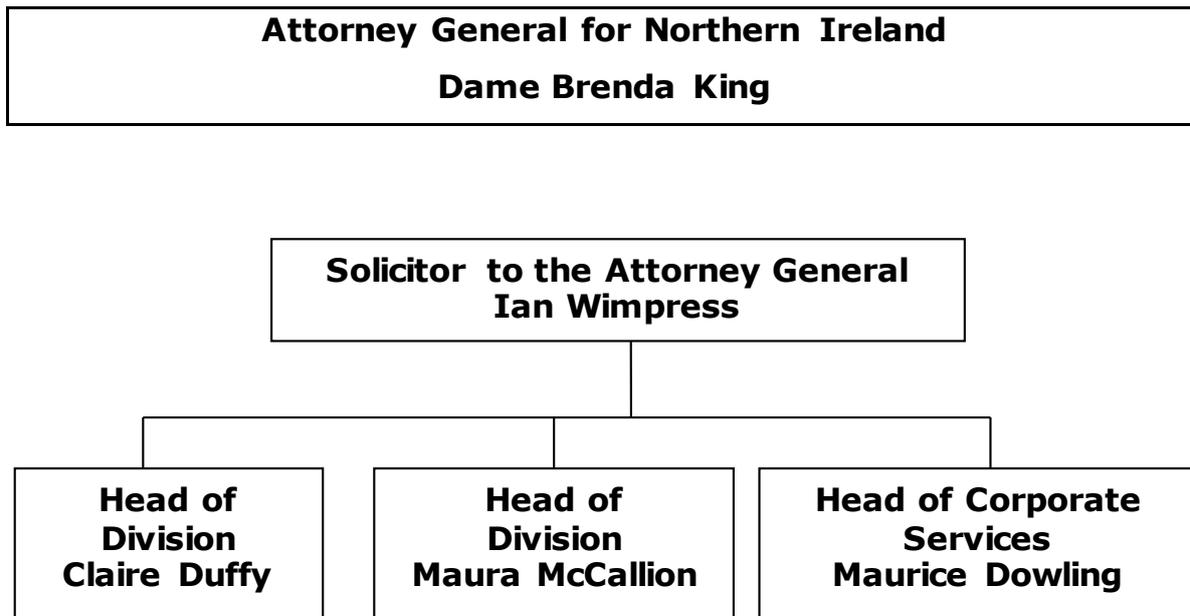
External Engagements

66. Though the Attorney General has no formal links with the Bar and the Law Society, she is keen to promote, and assist with, the work done by both branches of the legal profession. The Attorney is an ex officio member of the Council of Law Reporting for Northern Ireland.
67. The Attorney General spoke at a number of external events, all of which unfortunately had to be held online due to coronavirus restrictions. In July 2020 the Attorney gave an address to law graduates on their graduation day at the Queen's University of Belfast. In November 2020 the Attorney gave a presentation to the Government Legal Service of Northern Ireland on "Protecting the Rule of Law during a Pandemic". The Attorney was a speaker at the Institute of Directors' Conference on 5th March 2021 and on 8th March 2021 recorded a video presentation for International Women's Day at the invitation of the Assembly Speaker. The Attorney General also addressed a meeting of Commonwealth Law Ministers and Attorneys General.

Staff

68. Subject to the approval of the First Minister and deputy First Minister as to numbers, salary and other conditions of service, the Attorney General may appoint staff to the Office of the Attorney General. As of 31 March 2021, the Office of the Attorney General consists of 5.6 full time equivalent lawyers (one of whom is deployed exclusively on deprivation of liberty cases); 2 trainee solicitors; 3 paralegals (who deal exclusively with deprivation of liberty cases); and 3.8 Administrative Staff.

Senior Organisational Structure



Corporate Services

69. Under section 22(3) of the Justice (Northern Ireland) Act 2002 the office of the Attorney General is to be funded by the First Minister and deputy First Minister acting jointly.
70. The financial expenditure of the Office of the Attorney General is included in the Annual Report and Accounts of The Executive Office.
71. In 2020/21 the Office of the Attorney General had a budget of £1.249m. The year-end financial spend was £1.242m. The majority of expenditure is on salaries and accommodation.
72. Robust systems and processes are in place to ensure effective corporate governance in line with NICS procedures.
73. The Office website www.attorneygeneralni.gov.uk outlines the work and responsibilities of the Attorney.

**DUTIES AND RESPONSIBILITIES OF THE
ATTORNEY GENERAL FOR NORTHERN IRELAND**

Introduction

1. The Justice (Northern Ireland) Act 2002 establishes the Attorney General for Northern Ireland as a statutory office-holder. With the devolution of justice responsibilities on 12 April 2010, the provisions establishing a new post of Attorney General for Northern Ireland were brought into force. Section 22(5) of the 2002 Act provides that the functions of the Attorney General shall be exercised by the Attorney independently of any other person.
2. The duties and responsibilities of the Attorney General may be classified as follows:
 - (a) principal duties:
 - (b) other statutory duties and responsibilities;
 - (c) other constitutional or common law duties.
3. Some functions can be traced back to both statute and the common law while the other duties fulfil the constitutional principles that inform both the statutory and common-law responsibilities of the office.

Principal duties

Chief legal adviser to the Executive

4. The Attorney General provides advice on the most important and complex legal matters facing the Executive and Ministers.

Engagement with the Executive

5. The Attorney General may attend Executive meetings and pre-meetings. All draft Executive papers are copied to the Attorney General at the same time as they are circulated by the originating Minister to other Ministers for comment, to assist the Attorney General in identifying legal issues.

Scrutiny of legislation and devolution issues

6. Section 11 of the Northern Ireland Act 1998 provides that the Attorney General may refer the question of whether a provision of a Bill would be within the legislative competence of the Northern Ireland Assembly to the Supreme Court for decision.
7. The Northern Ireland Act 1998 defines devolution issues, which relate to whether the Assembly is acting within its legislative competence and whether Ministers and Northern Ireland departments are acting compatibly with Convention Rights. The 1998 Act outlines the powers of the Attorney General to institute proceedings for the determination of a devolution issue.

Devolution Notices

8. The Northern Ireland Act 1998 make provision for the service of devolution notices on a number of persons including the Attorney General for Northern Ireland. In broad terms the purpose of a devolution notice is to ensure that a court dealing with issues central to the interests of the devolved administration receives all necessary assistance. To this end, in appropriate cases, the Attorney General may enter an appearance in the proceedings and make written and / or oral submissions to the court.

Incompatibility Notices

9. The Attorney General for Northern Ireland is also served with notices of incompatibility under the Human Rights Act 1998 in proceedings where a declaration of incompatibility

is sought in respect of primary legislation or where the compatibility of subordinate legislation is being considered by the court. Again the Attorney General may participate in the proceedings, if appropriate, and make written and / or oral submissions as necessary.

Litigation on behalf of The Executive

10. In matters of litigation in which the Attorney General has provided advice, the Attorney General may act on behalf of The Executive.

Guardian of the rule of law

11. The Attorney General has an overarching duty to support and maintain the rule of law.

Statutory duties and responsibilities

Independence

12. The Attorney General is statutorily independent of the First Minister and deputy First Minister, the Northern Ireland Executive and the Northern Ireland Departments. The Justice (Northern Ireland) Act 2002 requires that the Attorney's functions be exercised independently of any other person.

Charities

13. The Attorney General has a number of functions under the Charities Act (Northern Ireland) 2008 (the 2008 Act). The Attorney General also retains some functions under the earlier Charities Act (Northern Ireland) 1964 such as consent to the disposition of misdescribed charitable beneficiaries in wills.
14. Under the 2008 Act the Attorney General may intervene in Charity Tribunal proceedings the proceedings and has a right to appeal its decisions. The Attorney General may also

refer a question which involves either the operation of charity law or the application of charity law to a particular state of affairs to the Charity Tribunal.

15. The 2008 Act also requires the Attorney General to supervise the Charity Commission in the exercise of its power to authorise ex gratia payments.

Mental Health

16. The Mental Health (Northern Ireland) Order 1986 provides that the Attorney General may refer the case of any patient who is liable to be detained under Part II of the Order to the Review Tribunal.

Mental Capacity

17. The Mental Capacity Act (Northern Ireland) 2016 (the 2016 Act) imposes a number of duties on the Attorney General. Provisions relating to deprivation of liberty were commenced in December 2019.
18. The 2016 Act provides that the Attorney General may ask the Review Tribunal to consider whether any authorisation for detention or treatment under Schedule 1 (authorisation by panel of certain serious interventions) or Schedule 2 (authorisation of short-term detention in hospital for examination etc.) is appropriate.
19. The 2016 Act provides that the Attorney General must be notified where a number of events occur. These concern persons being detained where it appears that the person lacks or probably lacks capacity in relation to whether an application to the Tribunal should be made.

Directing inquests

20. Section 14(10) of the Coroners Act (Northern Ireland) 1959 provides that where the Attorney General has reason to believe that a deceased person has died in

circumstances which in the Attorney's opinion make the holding of an inquest advisable the Attorney General may direct any coroner to conduct an inquest into the death of that person, and that coroner shall proceed to conduct an inquest in accordance with the provisions of the 1959 Act.

Guidance for criminal justice organisations on human rights standards

21. The Justice (Northern Ireland) Act 2004 requires the Attorney General to issue guidance to criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. The Attorney General may by order amend the list of organisations that are subject to the section 8 guidance.

Contempt of Court

22. The Attorney General may bring contempt proceedings in respect of actions which may interfere with the administration of justice usually in the context of civil or criminal proceedings. The Attorney General may also issue an advisory notice to the media and the public if there is a concern about an individual case, to flag up that particular care should be taken when reporting or discussing an issue relating to that case. There are special rules in relation to publications which may breach the contempt laws and the Contempt of Court Act 1981 provides a central role for the Attorney General in consenting to the instituting of proceedings for contempt of court under the strict liability rule.

Restriction on vexatious litigants

23. In accordance with section 32 of the Judicature (Northern Ireland) Act 1978, the Attorney General may ask the High Court to make an order declaring someone to be a vexatious litigant which, if such an order is granted, precludes that person from bringing further proceedings without the leave of the High Court.

Declaration of parentage

24. The Attorney General must be placed on notice of every application to the court seeking a declaration of parentage and may intervene in proceedings to argue before the court any question relating to the proceedings.

Missing persons presumed to be dead

25. Section 9 of the Presumption of Death Act (Northern Ireland) 2009 provides that rules of court must require the Attorney General to be served with a copy of every application to the High Court seeking a declaration that a missing person is presumed to be dead. The Attorney General may intervene in the proceedings on any application in such manner as the Attorney thinks necessary or expedient.

Declarations as to marital status

26. The Matrimonial and Family Proceedings (Northern Ireland) Order 1989 provides that in applications for declarations as to marital status, the court may send papers in the matter to the Attorney General or, regardless of whether the court has sent papers, the Attorney General may intervene in the proceedings.

Divorce, dissolution and nullity

27. The Matrimonial Causes (Northern Ireland) Order 1978 provides that the Attorney General may intervene in the case of a petition for divorce where either the court hearing the petition or any other person has provided material to the Attorney General which the Attorney General believes makes an intervention by the Attorney General appropriate.
28. The Civil Partnership Act 2004 provides that if an application has been made for a dissolution order or nullity order the court may, if it thinks fit, direct that all necessary papers in the matter are to be sent to the Crown Solicitor who must under the directions

of the Attorney General instruct counsel to argue before the court any question in relation to the matter which the court considers it necessary or expedient to have fully argued.

Conduct of Councillors

29. The Local Government Act (Northern Ireland) 1972 provides the Attorney General with a power to apply to the High Court in relation to the recovery of wrongful gains and remedies against councillor guilty of reprehensible conduct.

Systemic maladministration or injustice

30. Under section 54 of the Public Services Ombudsman Act (Northern Ireland) 2016 where the Ombudsman makes a finding of systemic maladministration or injustice and that this is likely to continue unless the High Court grants relief, the Attorney General may apply to the High Court for relief under section 55.

The Director of Public Prosecutions for Northern Ireland and the Public Prosecution Service

31. Under section 30 of the Justice (Northern Ireland) Act 2002, the Attorney General is required to appoint the Director and Deputy Director of Public Prosecutions for Northern Ireland (and to convene a tribunal for dismissal if necessary) when such appointments are required. The Attorney is a statutory consultee of the Director of Public Prosecutions on his annual report (and arranging for publication of that report) and on any amendments to the Code for Prosecutors.

Consultative function with the Inspector of Criminal Justice

32. The Chief Inspector of Criminal Justice must consult with the Attorney General in preparing a programme of Criminal Justice inspections.

Consultative function on the appointment of Crown Solicitor for Northern Ireland

33. The Advocate General for Northern Ireland must consult the Attorney General before appointing the Crown Solicitor for Northern Ireland.

Consultative function relating to the Northern Ireland Law Commission

34. The Minister responsible must consult with the Attorney General before appointing a person to the Northern Ireland Law Commission and before approving any programme of work prepared by the Commission.

Reporting requirements

35. The Attorney General, as soon as possible after the end of each financial year, must prepare a report on how the Attorney General has exercised their functions during the financial year.

Constitutional or common law duties

Public interest litigation

36. In the Attorney General's capacity as guardian of the public interest, the Attorney General may institute court proceedings or intervene in proceedings to protect a public right that is infringed or threatened.

Appointment of amicus curiae and special counsel

37. The Attorney General may appoint an amicus curiae to assist a court on matters of law. An amicus curiae is not a party to the proceedings but is appointed, at the invitation of the court, in order to assist the court by setting out the law impartially or by advancing relevant legal arguments.

38. The Attorney General may appoint special counsel to represent the interests of an accused from whom certain information is being withheld on public interest grounds. Special counsel test the objections of the prosecution to the disclosure of information and represent the interests of the accused person in any closed hearing or proceedings.

Relator actions

39. Where a member of the public wishes in private law proceedings to enforce (typically by injunction) a right which belongs to the public as a whole rather than a right which has an exclusively private character, that member of the public can ask the Attorney General to allow legal proceedings to be brought to assert that public right.