**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:
3. principal duties:
4. other statutory duties and responsibilities;
5. other constitutional or common law duties.
6. 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*

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

*Engagement with the Executive*

1. 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*

1. 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.
2. 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*

1. 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*

1. 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*

1. 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*

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

**Statutory duties and responsibilities**

*Independence*

1. 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*

1. 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.
2. 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.
3. 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*

1. 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*

1. 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.
2. 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.
3. 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*

1. 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*

1. 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*

1. 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*

1. 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*

1. 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*

1. 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*

1. 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*

1. 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.
2. 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*

1. 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*

1. 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*

1. 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*

1. 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*

1. 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*

1. 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*

1. 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*

1. 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*

1. 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.
2. 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*

1. 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.