



Attorney General for Northern Ireland

Attorney General for Northern Ireland Annual Report

2021/22

*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

Wednesday 4th September 2024



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Attorney General for Northern Ireland

Foreword by the Attorney General for Northern Ireland

I am pleased to publish this report which explains the work carried out by my office over the past year. This is the second annual report published during my tenure and this reporting period has been no less challenging than the first.

The Covid-19 crisis and the impact of EU Exit continued to dominate the work of the Executive and Ministers during the year. Although the tragic impact of the pandemic will endure for a long time, many aspects of our lives began to return to normal. The Executive met weekly, and often daily, during this period and I provided advice. The changing legal landscape as a consequence of EU Exit and the Ireland/Northern Ireland Protocol to the Withdrawal Agreement between the UK and the EU presented significant and complex legal and practical challenges on which I, and other government lawyers, had to advise the Executive and Ministers on an almost daily basis.

Since the re-establishment of the position of the Attorney General for Northern Ireland in 2010, additional statutory functions have been conferred on the Attorney. I highlighted in my report last year the impact that the implementation of a number of important provisions of the Mental Capacity Act (Northern Ireland) 2016 had had on the very limited resources of my office. During this reporting period I received 5,345 notifications of authorisations for detention from the five Northern Ireland Health and Social care Trusts – which equates to around a 75% increase in the number of notifications from the previous year. This reflects the significant and necessary work done by the Trusts to safeguard the rights of those who lack capacity to make decisions about their care and protection arrangements. I am very grateful for the work done by the specialist Mental Capacity Act unit within my office and their dedication to this important and sensitive area of work. I am also grateful to the Review

Tribunal to which I can refer authorisations, in appropriate circumstances, to ensure that the rights of vulnerable individuals are protected by judicial oversight.

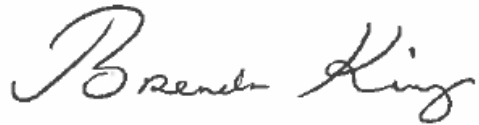
A significant area of my work this year was devoted to the legal scrutiny of a larger number of Northern Ireland Assembly bills than usual. The end of the Assembly's mandate in March of this year, combined with the fact that the Assembly was not sitting for part of the mandate, meant that there was significant pressure to enact bills within a truncated timeframe. I have a statutory duty under the Northern Ireland Act 1998 to scrutinise every Assembly bill (Executive bills and those initiated by MLAs or Assembly Committees) to assess whether the bill is within the legislative competence of the Assembly and can be enacted. During the reporting period I scrutinised and provided legal advice on 45 bills, of which 27 were Executive bills and 9 private members' bills. 36 bills were enacted during the Assembly mandate. In all of this I was supported by the tremendous commitment and energy of my experienced legal staff.

I gave assistance during the year to Sir John Gillen who carried out a review of the role and functions of the Attorney General for Northern Ireland on behalf of our First Minister and deputy First Minister. I recommended that the Executive Office carry out a review of the staffing and resources of the office as soon as the review was completed to assess whether the current resources of my office are sufficient to deliver the significant additional functions that have been conferred on the Attorney General since the establishment of the office in 2010.

This report can only, of course, give an overview of the work done by my office during the reporting year. Much of my work involves the provision of legal advice to the Executive and Ministers and I cannot, of course, comment on that, due to the constitutional convention that the advice given to government by its law officer, or the fact that such advice has been sought, cannot be disclosed.

I could not carry out my functions without the energy, resilience and commitment of my staff, in both legal and administrative roles. We are a very small office but I have, as Attorney General, a very broad range of responsibilities and I am very proud of the work that the office

does. Apart from the self-contained Mental Capacity unit within my office, I have 4.6 lawyers (full time equivalent) to assist me in carrying out my functions, as well as those in my corporate team. All my staff have dealt exceptionally well with the challenges of providing an effective service with the overriding aim of protecting the rule of law in Northern Ireland. I am very grateful to them all.

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, where appropriate, referring those bills to the Supreme Court for a decision on compatibility;
 - Assisting the Courts on devolution issues, that is 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;
 - 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 Act (Northern Ireland) 2016; this includes the review of authorisations of detentions 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 2021/22

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 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 again 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 Attorney attended many of the

Executive meetings to provide oral advice as well as providing written advice and opinions on particular issues to Ministers and the Executive as a whole.

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 establish that they are within competence. Ministers share draft Executive bills with the Attorney before introduction 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. 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 itself could result in the bill being outside the competence of the Assembly.

12. During the period of this report the Attorney undertook final scrutiny of 27 Executive bills:
 - Pension Schemes Bill
 - Licensing and Registration of Clubs (Amendment) Bill

- Criminal Justice (Committal Reform) Bill
- Protection from Stalking Bill
- Damages (Return on Investment) Bill
- Health and Social Care Bill
- Charities Bill
- Justice (Sexual Offences and Trafficking Victims) Bill
- Organ and Tissue Donation (Deemed Consent) Bill
- Private Tenancies Bill
- Betting, Gaming, Lotteries and Amusements (Amendment) Bill
- Adoption and Children Bill
- Support for Mortgage Interest etc (Security for Loans) Bill
- Social Security (Terminal Illness) Bill
- Welfare Supplementary Payments (Amendment) Bill
- Parental Bereavement (Leave and Pay) Bill
- Horse Racing Amendment Bill
- Financial Reporting (Departments and Public Bodies) Bill
- Non Domestic Rates Valuations (Coronavirus) Bill
- Animal Welfare (Service Animals) Bill
- Local Government (Meetings and Performance) Bill
- Climate Change (No.2) Bill
- Motor Vehicles (Compulsory Insurance) Bill
- School Age Bill
- Budget Bill 2022
- General Teaching Council (Directions) Bill
- Budget (No.2) Bill

13. The Attorney also undertook final scrutiny of the 9 Private Members' bills passed during this period:

- Defamation Bill
- Autism (Amendment) Bill
- Abortion Services (Safe Access Zones) Bill

- Period Products (Free Provision) Bill
 - Domestic Abuse (Safe Leave) Bill
 - Preservation of Documents (Historical Institutions) Bill
 - Integrated Education Bill
 - Hospital Parking Charges Bill
 - Fair Employment (School Teachers) Bill
14. A further 9 Private Members' bills were scrutinised during the year but these bills either did not progress or fell at the end of the Assembly mandate.

The Courts - Departmental Litigation

15. In July 2021, the Attorney assisted the Minister of Health in his response to judicial review proceedings brought by the Society for the Protection of Unborn Children and unusually, her opinion was shared with all parties to the litigation and summarised in the judgment. Declarations were sought but not granted as regards the ability of the Minister to commission abortion services without Executive approval. The High Court concluded that 'the final decision as to the scope of the service and the detail of how it is to be delivered may well require the Minister to bring the matter to the attention of the Executive Committee'. The judgment of the High Court is now under appeal but not as regards the position of the Health Minister. Advice provided to other Ministers on litigation remains subject to the Law Officers Convention.

The Courts - Devolution and Incompatibility Notices

16. 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 14 cases in which devolution notices were issued by courts.

17. 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 fully considers such notices, participates in the proceedings, if appropriate, and makes submissions where necessary. During the reporting year the Attorney General gave consideration to intervening in 9 cases in which incompatibility notices were issued by courts.

18. In general terms, the Attorney tends to 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.

19. The Attorney intervened in an application for judicial review brought by the Northern Ireland Human Rights Commission in relation to the provision of abortion services in Northern Ireland. The High Court issued a Notice of a Devolution Issue in these proceedings and the Attorney made a written submission to the Court. The Attorney invited the Court to answer the devolution issue by finding that the Northern Ireland Ministers had not acted in a way which falls short of what is required by Article 8 of the Convention. The Court gave judgment on 14 October 2021 and dismissed the claim for judicial review against the Minister of Health and the Northern Ireland Executive Committee.

20. After assessing the legal issues before the Court, the Attorney decided not to participate in the following cases in which a devolution or incompatibility notice was served on her:
- The Attorney was served with a Notice of Incompatibility in an application for judicial review brought by Jim Allister MLA and others seeking to challenge the lawfulness of both the Northern Ireland Protocol on Ireland and the Northern Ireland (Democratic Consent Process) (EU Exit) Regulations 2020.
 - An appeal by way of case stated appeal which arose from the conviction of a taxi driver for collecting a fare which gave rise to the issue of whether or not the relevant provisions Taxis Act (NI) (2008) and/or the Taxi Licensing Regulations (Northern Ireland) (2015) were within the legislative competence of the Northern Ireland Assembly.
 - An application for judicial review which sought to enforce a declaration made in related criminal proceedings that certain provisions in the Counter Terrorism and Sentencing Act 2021 breached the applicant's Article 7 rights.
 - An application by JR 159 for judicial review in relation to deferral of the start date for a child starting primary school. The child was born prematurely and was not considered to be ready for school. The applicant complained about the absence of discretion to meet such cases and sought to impugn Article 46 of the Education and Libraries (NI) Order 1986 (and like provisions).
 - An application for judicial review by JR 85 (2) in relation to the failure to provide for a right of appeal in the Police Pension Regulations against certain decisions.
 - An application arising from a difference in procedure for dealing with Public Interest Immunity Certificates as between the High Court and the County Court.

- An application regarding a challenge to the Children Order (NI) 1995 on the basis that it discriminated between married and unmarried parents in an application to remove the father's parental responsibility.
 - An application for judicial review brought on behalf of TA (a minor) arising from the contention that the Criminal Injuries Compensation Scheme was operating inconsistently and in breach of the applicant's convention rights.
 - An application for judicial review in relation to the delay in / non-provision of medical services.
 - An application for judicial review in relation to the settlement of minors' case without proceedings being issued and thereby not being subject to court approval.
 - An application for judicial review by JR130 in relation to the Coronavirus Regulations prohibition on children playing outdoor sport.
 - An application by JR87 in relation to the Education (Core Syllabus for Religious Education) Order (NI) 2007.
 - Two applications for judicial reviews in which the applicants sought to compel the NIEA, DAERA and Belfast City Council to take enforcement action in relation to a landfill site at Mulloughglass. The applicants relied upon Article 8 and Article 1 Protocol 1 ECHR.
21. The Attorney may also provide submissions to the courts, either on the Attorney's own initiative or at the request of the court. For example, Keegan J (as she then was) invited the Attorney General and the Department of Education to consider intervening in an appeal by way of a case stated by the Special Education Needs and Disability Tribunal in relation to the placement of a 17 year old male in bespoke secure accommodation

within a school. The Attorney General provided a written submission and Keegan J gave judgment on 5 May 2021 dismissing appeal and accepting Attorney's submissions.

Appointment of Amicus Curiae and Special Counsel

22. 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.
23. 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.
24. During the period covered by this report the Attorney General acceded to a request by a Family Judge to appoint an amicus in care proceedings and to a request by the Chancery Judge to appoint an amicus to assist in a charity case. There were no requests to appoint special counsel during the period covered by this report.

Inquests

25. 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 applies, 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.

26. During 2021/22, the Attorney General did not direct the Presiding Coroner to hold an inquest in any cases. In 2 cases the Attorney General determined a fresh inquest was not advisable. In total, 23 applications were still under consideration of which in 20 the Attorney is awaited further information from solicitors representing the families of the deceased.
27. A number of decisions made by the Attorney 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. 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. Rosaleen Dalton, another daughter of the deceased, 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. The Attorney General applied to the UK Supreme Court for permission to appeal to it from the judgment of the Court of Appeal and permission was granted on 15 December 2021. The appeal is listed for hearing on 26-27 October 2022.
28. Judicial review proceedings are ongoing in respect of decisions not to direct inquests in relation to 3 legacy cases. On 11 March 2022 Mr Justice Humphreys granted leave to apply for judicial review in an application in which Ms Patricia Burns sought to challenge

a decision made by the Attorney General's predecessor not to direct an inquest into the death of her father, Thomas Aquinas Burns, who was shot and killed by a member of the British Army outside the Glenpark Social Club in North Belfast on 13 July 1972. In light of this decision the Attorney has decided to consider afresh the application for direction of an inquest.

Charities

29. 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 Charity Tribunal can also request that the Attorney General assist it by arguing specified questions. One such request was made this year. Given the particular context, the Attorney considered that rather than argue the question of jurisdiction posed by the Charity Tribunal, a pragmatic approach would be for her to refer a question to the Charity Tribunal under paragraph 2 (b) of Schedule 4 to the 2008 Act. The question asks whether a lawful direction to produce documents has been issued by the Charity Commission. This matter has arisen in consequence of the Court of Appeal's ruling in *McKee and others v Charity Commission* as regards how decisions can be made by the Charity Commission.
30. 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.
31. 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.

32. An issue arose as to whether certain lands which the plaintiffs, the trustees of a religious organisation, wished to sell was held on trust by them and thus subject to cy-pres jurisdiction of court. The property comprised of both registered and unregistered land. At the invitation of the court the Attorney General submitted a position paper in response to the plaintiffs' written submissions. The case was heard on 17 February 2022 and Huddleston J granted power of sale in respect of all of the property and ordered that a cy-pres scheme be provided in relation to the unregistered land.
33. An application was made to the Chancery Court to remove an incapacitated trustee without replacing him. The court sought the assistance of the Attorney in relation to this issue. The case was heard on 3 March 2022 and McBride J gave a written judgment on 15 March 2022 in which she ordered the removal of the said trustee under the inherent power of the court as she was satisfied that sections 35 and 43 of the Trustee Act could not be utilised to remove a trustee without replacement.

Contempt of Court

34. 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 and did so in July 2021 in response to publications, including on social media, which purported to identify a person known as 'Soldier F'. The Attorney also wrote directly to prominent political figures, social media

organisations and others in relation to the purported identification of 'Soldier F' in contravention of court orders.

35. The Attorney General has continued with a long-running application 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. On 21 March 2022, a Divisional Court acceded to an application for leave to apply for committal of the individual concerned pursuant to Article 114(3) of the Judgments Enforcement (Northern Ireland) Order 1981.

Declaration of Parentage

36. The Attorney General must be placed on notice of every application to the courts seeking a declaration of parentage. In 2021/22 there were 42 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 and whether the papers are complete. The Attorney will also assist the courts, if requested to do so.

Vexatious Litigants

37. 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 2021/22 the Attorney General considered two such cases but made no applications to the High Court for orders.

Mental Capacity Act (NI) 2016

38. 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.
39. 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.
40. The Attorney was asked to make submissions on the law in eleven Review Tribunal hearings this year. As the provisions of the 2016 Act which have been commenced are relatively new, novel issues concerning the interpretation of the provisions, amongst other things, arise. On three occasions, the Review Tribunal requested and received oral submissions. In a further fifteen cases, the Attorney considered correspondence from the Review Tribunal but did not consider it necessary for her to participate in the hearing. The submissions covered issues such as the requirements of Article 5 of the European Convention on Human Rights, the extent of the Review Tribunal's jurisdiction and interpretation of the procedural rules applying to the Review Tribunal.

41. The Attorney General engaged with the Health and Social Care Trusts on the challenges in this area during the pandemic and on continuous improvement across the system given the relatively new legal requirements brought about by the 2016 Act.
42. During the period of this report, the Attorney General received 5,345 notifications from the five Health and Social Care Trusts –around a 75% increase in the number of notifications from the previous year. In 1,591 cases the Attorney General referred the question of whether the authorisation is appropriate to the Review Tribunal. As of 31 March 2022, 12 cases had yet to be determined. 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.
43. The implementation of these safeguards for persons deprived of liberty through care arrangements continues to be an important and demanding area of work 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

44. 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.

45. During the year, the Attorney appointed Counsel to review ten specific sets of human rights guidance in light of developments in international human rights standards since their publication. This review is currently being assessed as to the changes that may be required.

Criminal Justice

46. The Attorney General was 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

47. During the period covered by this report the Attorney General enjoyed positive 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 concluded in November 2021. 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.

48. 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 (PPS) when such appointments are required. The Attorney General's other main responsibilities in relation to the PPS 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 and arranged for the publication of the Director's annual report. She also engaged with the Director on the Code for Prosecutors.
49. 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.
50. 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 occasionally 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

51. 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, and potentially the Northern Ireland Law Commission in the incoming mandate, to progress a programme of statute law consolidation and repeals to further improve the accessibility of statute law.

The Northern Ireland Law Commission

52. In accordance with the Justice (Northern Ireland) Act 2002 Section 50(5), the Justice Minister consulted with the Attorney General in the appointment of Mr Justice David Scoffield as Chair of the Northern Ireland Law Commission.

Criminal Justice Inspectorate for Northern Ireland

53. 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;
- Any body 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.

54. 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.

Miscellaneous

55. The Office of the Attorney General received a number of Departmental Consultations, 1 from the Lord Chancellor and 1 from the Lady Chief Justice's Office for consideration.
56. The Attorney provided a response to the Policing Board's review of the PSNI Code of Ethics.
57. The Attorney appeared before the Assembly's Justice Committee to assist the Committee with a number of issues.
58. The Office of the Attorney General provided responses to 7 Freedom of Information requests.
59. Lawyers from the Office of the Attorney General are members of the Crown Court Rules Committee, the Criminal Justice Delivery Group and the Gillen Review Education and Awareness Group.
60. A senior lawyer from the Office of the Attorney General participated in the recruitment panel for the selection of the Northern Ireland Human Rights Commission Chief Commissioner.

External Engagements

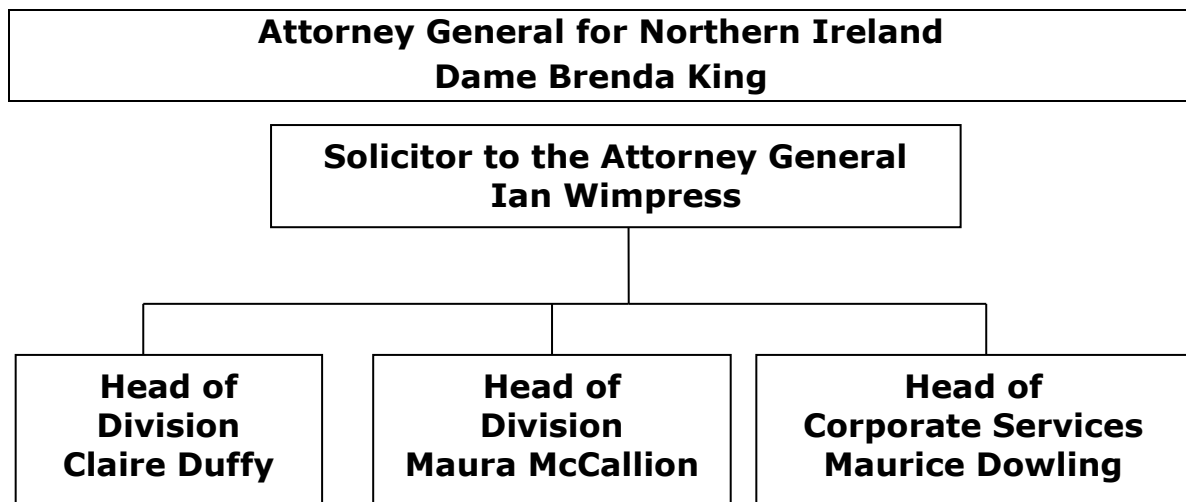
61. Though the Attorney General has no formal links with the Bar and the Law Society, she is keen to promote, and assist with, the work done by both branches of the legal profession. She met with the President of the Law Society and the Chair of the Bar of Northern Ireland on a number of occasions. The Attorney is an ex officio member of the Council of Law Reporting for Northern Ireland and attended meetings of the Council during the year.

62. The Attorney General spoke at a number of external events. In November 2021, the Attorney chaired a Domestic Abuse Conference organised by the Law Society in conjunction with Women’s Aid Federation (NI), the Public Prosecution Service and the PSNI. Also in November, along with the Counsel General for Wales, the Attorney General of Ireland and Sir Jonathan Jones, the Attorney spoke at a webinar organised by the International Society for Public Law Trinity College, Dublin on the legal challenges posed by Brexit. The Attorney gave a presentation to the Government Legal Service of Northern Ireland Annual Conference on “Small Steps, Big Impact” detailing the role of government lawyers on developing the law. In March 2022, the Attorney, along with the Lady Chief Justice, the Justice Minister and the President of the Law Society, was a speaker at the Law Society’s International Women’s Day Event – ‘Women in the Law – Breaking Down the Barriers’. The Attorney gave a keynote speech at an International Legislative Drafting Conference in Jersey which focused on the on-going impact on EU Exit on the different regions of the UK. Lawyers from the Attorney’s office delivered a legal education session to participants in the Developing Women in the Community Programme organised by the Department for Communities.

Staff

63. 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 2022, 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

64. 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.
65. The financial expenditure of the Office of the Attorney General is included in the Annual Report and Accounts of The Executive Office.
66. In 2021/22 the Office of the Attorney General had a resource budget of £1.508m. The year-end financial spend was £1.422m. The majority of expenditure is on salaries and accommodation.
67. Robust systems and processes are in place to ensure effective corporate governance in line with NICS procedures.
68. 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(1) 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.