

The Supreme Court of the United Kingdom

Practice Direction 11

The Court of Justice of the European Union

11.1.1 Article 267 (ex 234) of the Treaty on the Functioning of the European Union provides:

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- a. the interpretation of the Treaties;
- b. the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

11.1.2 When the Court refuses permission to appeal in a case where the application includes a contention that such a question is involved, the UKSC gives additional reasons for its decision not to grant permission to appeal. These reflect the reasoning of the CJEU in *CILFIT v Ministry of Health* (Case C283/81). The CJEU there made clear that no reference need be made to it in relation to any such question of interpretation or validity as referred to Article 267:

- a. where the question raised is irrelevant;
- b. where the European Union law provision in question has already been interpreted by the CJEU;
- c. where the question raised is materially identical with a question which has already been the subject of a preliminary ruling in a similar case; or
- d. where the correct application of European Union law is so obvious as to leave no scope for any reasonable doubt as to the manner in which the question of interpretation or validity is to be resolved.

11.1.3 The Court may order a reference to the CJEU before determining whether to grant permission to appeal. In such circumstances proceedings on the application for permission to appeal are stayed until the answer is received.

11.1.4 When the Court intends to make a reference, it will give consequential directions as to the form of the reference and the staying of the appeal (see rule 42(3)) and the parties are invited to submit an agreed draft of the question(s) to be referred. A further statement of facts and issues, for the use of the European Court of Justice, may also be appropriate. The Court then makes the reference, with or without judgments. At this stage the appeal may also be disposed of in part.

11.1.5 The reference must contain the matters specified in the European Court's rules of procedure¹ and comply with any guidance given by the European Court. Parties should be aware that the Court of Justice will not translate documents which are longer than 20 pages; only summaries are made.

Further proceedings in the Supreme Court

11.1.6 Within 28 days of the judgment of the European Court of Justice, the parties must file written submissions on whether a further hearing before the Supreme Court is necessary or on how the appeal is to be disposed of. If a further hearing is required before the Supreme Court, the parties may file supplemental cases.

11.1.7 If supplemental cases are filed, then:

- a. no later than 5 weeks before the expected date of the further hearing, the appellants must file the original and 7 copies of their supplemental case and also serve it on the respondents;
- b. no later than 3 weeks before the expected date of the further hearing, the respondents must file the original and 7 copies of their supplemental case and also serve it on the appellants;
- c. no later than 3 weeks before the expected date of the further hearing, any other party filing a case (e.g. an intervener or advocate to the court) must file the original and 7 copies of their supplemental case, and also provide copies to the appellants and respondents.

11.1.8 As soon as all the supplemental cases have been exchanged, and no later than 2 weeks before the date of the expected hearing, the appellants must file 10 additional sets of core volumes containing:

¹ See <http://curia.europa.eu>

- a. appellants' and respondents' cases;
- b. cases of interveners etc, if any;
- c. judgment of the European Court of Justice;
- d. any additional authorities relied on that are not included in the original green authorities' volumes.

11.1.9 The Registry supplies the Court with the original core volumes, appendices and authorities volumes.

Costs

11.1.10 The Court of Justice does not make orders for costs. The costs of the reference are included in the order of the Supreme Court disposing of the appeal; and, if necessary, are assessed by the Costs Officers of the Court.