

No. 2

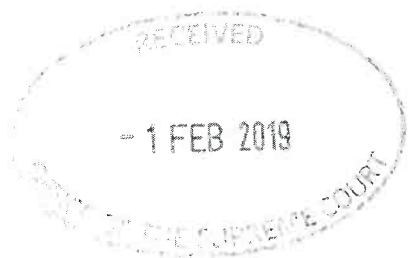
O. 58, r. 18(1)



SUPREME COURT

Record No:

S:AP:IE:2019:000013.



Respondent's Notice

Part I

The information contained in this part will be published. It is the respondent's responsibility to also provide electronically to the Office a redacted version of this part if it contains information the publication of which is prohibited by any enactment or rule of law or order of the Court

1. Title of the Proceedings:

High Court Record No. 2017/884 JR

Between:

PAT FITZPATRICK AND MICHAEL J FLANNERY (By Order of the Court)

Applicants

AND

**MINISTER FOR AGRICULTURE, FOOD AND THE MARINE AND THE SEA FISHERIES
PROTECTION AUTHORITY**

Respondents

2. Name of Respondent: MINISTER FOR AGRICULTURE, FOOD AND THE MARINE

3. Application to extend time: Yes No

If an application is being made to extend time for the filing of this Notice, please set out concisely the grounds upon which it is contended time should be extended.

4. Do you oppose the applicant's application to extend time:

Yes No

5. Do you oppose the applicant's application for leave to appeal:

Yes No

6. Matter of general public importance:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is contended, that the matter does not involve a matter of general public importance. If the application is not opposed, please set out precisely and concisely the grounds upon which it is contended that the matter involves a matter of general public importance.

This section should contain no more than 500 words and the word count should appear at the end of the text.

The First Named Respondent adopts a neutral position to the Applicants' application for leave to appeal to the Supreme Court. For the avoidance of doubt, this should not be interpreted as an acceptance of the validity or correctness of the factual and legal submissions made by the Applicants in support of the application for leave to appeal.

Word count – 57

7. Interests of Justice:

Please set out precisely and concisely, in numbered paragraphs, the grounds upon which it is alleged, that the interests of justice do not require an appeal. If the application is not opposed please set out precisely and concisely the grounds upon which it is contended, that the interests of justice require an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

The First Named Respondent adopts a neutral position to the Applicants' application for leave to appeal to the Supreme Court. For the avoidance of doubt, this should not be interpreted as an acceptance of the validity or correctness of the factual and legal submissions made by the Applicants in support of the application for leave to appeal.

In the event that this Honourable Court is disposed to permit a direct appeal, the Respondent respectfully requests that the parties be heard on the content of the appeal or any questions that will be addressed in the appeal.

Word count – 96

8. Exceptional Circumstances Article 34.5.4.:

Where it is sought to apply for leave to appeal direct from a decision of the High Court pursuant to Article 34.5.4, please set out concisely, in numbered paragraphs, the grounds upon which it is contended that there are no exceptional circumstances justifying such an appeal. If the application is not opposed, please set out precisely and concisely the grounds upon which it is contended that there are exceptional circumstances justifying such an appeal.

This section should contain no more than 300 words and the word count should appear at the end of the text.

The First Named Respondent adopts a neutral position to the Applicants' application for leave to appeal to the Supreme Court. For the avoidance of doubt, this should not be interpreted as an acceptance of the validity or correctness of the factual and legal submissions made by the Applicants in support of the application for leave to appeal.

Word count - 57

9. Respondent's grounds for opposing an appeal if leave to appeal is granted:

Please set out in the Appendix attached hereto the Respondent's grounds of opposition to the Grounds of Appeal set out in the Appellant's Notice of Appeal.

10. Cross Application for Leave:

If it is intended to make a cross application for leave to appeal please set out here precisely and concisely, in numbered paragraphs, the matter(s) alleged to be matter(s) of general public importance or the interests of justice justifying a cross appeal to the Supreme Court.

If it is sought to make a cross application for leave to appeal direct from a decision of the High Court, please also set out precisely and concisely, in numbered paragraphs, the exceptional circumstances upon which it is contended that such a course is necessary.

This section should contain no more than 500 words and the word count should appear at the end of the text.

The First Named Respondent intends to cross-appeal the finding of the Learned Trial Judge that:

1. The Applicants have locus standi to challenge the decisions made by the First Named

Respondent, either under Constitutional or European law, as pleaded at paragraph (E)(1) to (2) of the Statement of Grounds.

The First Named Respondent has adopted a neutral position to the Applicants' application for leave to appeal to the Supreme Court.

If this Court grants the Applicants' leave to appeal, having reached the conclusion that the decision sought to be appealed either involves a matter of general public importance or that it is otherwise in the interest of justice necessary that there be an appeal to this Court and because there are "exceptional circumstances warranting a direct appeal" to this Court, the First Named Respondent submits that the cross-appeal should also be granted leave as the issue of locus standi goes to the ability of the Applicants to maintain these proceedings.

In addition, the issue of locus standi in judicial review proceedings involving a challenge to the allocation of fishing opportunities and effort under the Common Fisheries Policy is relevant to every vessel registered on the Irish Fishing Boat Register (1,992 vessels as of 24 January 2019). The benefit of an intermediate appeal refining or defining the issues with greater clarity is likely to be limited at best.

Word count - 227

11. Additional Grounds on which the decision should be affirmed and Grounds of Cross Appeal

Please set out in the Appendix attached hereto any grounds other than those set out in the decision of the Court of Appeal or the High Court respectively, on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court and / or the grounds of cross appeal that would be relied upon if leave to appeal were to be granted.

12. Priority Hearing:

Yes

No

If a priority hearing is sought please set out concisely the grounds upon which it is alleged that such a hearing is necessary.

This section should contain no more than 100 words and the word count should appear at the end of the text.

13. Reference to CJEU:

If it is contended that it is necessary to refer matters to the Court of Justice of the European Union, please identify the matter, and set out the question or questions which it is alleged it is necessary to refer.

This section should contain no more than 100 words and the word count should appear at the end of the text.

The Applicant did not request the Learned Trial Judge to make an application to the CJEU pursuant to Article 267 of the TFEU. The First Named Respondent is of the view that the issues involved in these proceedings are *acte claire* and therefore a reference is not necessary.

Word count:48

Part II

The information contained in this part will not be published.