

Chapter:	542F	LEGISLATIVE COUNCIL (ELECTION PETITION) RULES	Gazette Number	Version Date
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		Empowering section	L.N. 43 of 1998	16/01/1998
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(Cap 542 section 64(3))

[16 January 1998]

(Originally L.N. 43 of 1998)

Rule:	1	Interpretation	L.N. 43 of 1998	16/01/1998
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In these Rules, unless the context otherwise requires-

"petition" (呈請、呈請書) means an election petition lodged under Part VII of the Ordinance;

"Registrar" (司法常務官) means the Registrar of the High Court;

"respondent" (答辯人) means a respondent within the meaning of section 63(1) of the Ordinance.

Rule:	2	General practice and procedure	L.N. 43 of 1998	16/01/1998
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Subject to Part VII of the Ordinance and to these Rules, the practice and procedure of the High Court, including the rules relating to the discovery and inspection of documents and the delivery of interrogatories, shall apply to a petition as nearly as circumstances permit as if it were an ordinary action within the jurisdiction of the High Court.

Rule:	3	Filing of documents	L.N. 43 of 1998	16/01/1998
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(1) Any document required to be filed in proceedings relating to any petition shall be filed in the Registry of the High Court.

(2) The Supreme Court Fees Rules (Cap 4 sub. leg.) shall, subject to any necessary modifications, apply in respect of all proceedings relating to election petitions.

Rule:	4	Form and substance of petitions	L.N. 43 of 1998	16/01/1998
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A petition shall be in the form set out in the Schedule, or a form to the like effect with such variations as the circumstances may require, and shall state-

- (a) in which of the capacities mentioned in section 62 of the Ordinance the petitioner, or each of the petitioners, lodges the petition;
- (b) the date of declaration of result of the election and the person or persons declared to be elected by the Returning Officer-
 - (i) in the case of an election which was not contested, in a notice of nominations published in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); or
 - (ii) in the case of a contested election, in a notice of result of election published in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); and
- (c) the ground under section 61(1) of the Ordinance on which the election is questioned and on which relief is to be sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved,

and shall conclude with a request setting out the particulars of the relief sought.

Rule:	5	Signature and lodgement of petition	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) A petition shall be signed by the petitioner or by each petitioner if there is more than one and shall be lodged in the Court by filing the petition, together with 4 copies thereof, with the Registrar who shall give a receipt therefor, if required so to do.

(2) Where a petitioner, or if there is more than one petitioner, one or more of the petitioners, is a body, the petition shall be signed on behalf of the petitioner or each such petitioner by a representative authorized by that petitioner or each such petitioner for that purpose.

(3) The Registrar shall, immediately after the lodgement of the petition-

(a) send a certified true copy thereof to the Secretary for Constitutional and Mainland Affairs, who shall forthwith upon receipt thereof cause that copy to be displayed in a conspicuous place on or near the outer door of the Legislative Council Chamber and to the Electoral Affairs Commission and to the Clerk to the Legislative Council; (L.N. 130 of 2007)

(b) cause a certified true copy thereof to be displayed in a conspicuous place in the High Court; and

(c) cause a notice, which shall state that such a petition has been lodged and specify the parties thereto, to be published in the Gazette.

(4) The Registrar shall cause a list of the election petitions to be displayed in a conspicuous place in the High Court.

Rule:	6	Notice of lodgement of petition	L.N. 43 of 1998	16/01/1998
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(1) The petitioner shall, within 2 days of the lodgement of the petition or such other period as the Court may direct, serve on the respondent and the Secretary for Justice, notice of the lodgement of the petition and the nature of the security for costs which the petitioner proposes to give in accordance with section 66 of the Ordinance, together with a copy of the petition.

(2) Service shall be effected in the manner in which a writ of summons is served and an affidavit of service shall be filed as soon as possible after service has been effected.

Rule:	7	Manner of application for directions in chambers	L.N. 43 of 1998	16/01/1998
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(1) Application to the Court for directions under section 66(2) of the Ordinance shall be made by the petitioner by summons to a judge in chambers at the time of lodging the petition, or within 2 days thereafter or such other period as the Court may direct.

(2) The summons under subrule (1) shall be issued by the Registrar forthwith upon being filed.

(3) Subject to subrule (4), all applications under subrule (1) shall be made by inter partes summons, the return day of which shall be not later than 5 days after the lodgement of the petition or the expiry of such other period as the Court may direct for giving security under section 66(1) of the Ordinance.

(4) Where the petitioner proposes to give the maximum amount of security that may be directed under section 66(2) of the Ordinance, and proposes to give such amount by the deposit of money to that extent, an application for directions that the security be given in such maximum amount and by the deposit of money, may be made by ex parte summons, and the Registrar shall by endorsement on the summons order the petitioner to appear at the time and place directed by the Registrar, being not later than 5 days after the lodgement of the petition.

Rule:	8	Affidavit of proposed surety to be filed and served on respondents	L.N. 43 of 1998	16/01/1998
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(1) Where the petitioner proposes to give security under section 66 of the Ordinance wholly or partly by recognizance entered into by a surety or sureties, the petitioner shall, together with the summons referred to in rule 7(1), file an affidavit sworn by the proposed surety or each proposed surety, which shall specify the sum in which it is proposed the surety should be bound by a recognizance and shall state that after payment of all his debts the value of all his assets is not less than the sum so specified.

(2) The petitioner shall forthwith upon the affidavit being filed in accordance with subrule (1) serve or cause to be served on the respondent the summons issued under rule 7(2) together with a copy of the affidavit.

Rule:	9	Grounds of objection to recognizance	L.N. 43 of 1998	16/01/1998
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(1) The respondent to a petition may, at the hearing of the summons issued under rule 7(2), object to any recognizance on the grounds that the amount of any security is insufficient, or that any surety is dead, or cannot be found, or cannot be ascertained for want of a sufficient description in the notice served under rule 6 or in the copy of the affidavit served under rule 8(2).

(2) The Court may, at any time during the hearing of a petition, increase the amount of security ordered on an application under rule 7(1), subject to the maximum amount specified in section 66 of the Ordinance, and give directions as to the manner and form of giving such increased security.

Rule:	10	Time and place for trial of petition	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) The petitioner shall, within 28 days of giving security in accordance with section 66 of the Ordinance and these Rules, apply by summons to a judge for a time and place to be fixed for the trial of the petition.

(2) If the petitioner fails to make an application under subrule (1) within the period specified under that subrule, any respondent may, within 7 days of the expiry of such period, apply to a judge in the same manner as specified in subrule (1) for a time and place to be fixed for the trial of the petition.

(3) If no application to fix the time and place for the trial of the petition is made in accordance with subrule (1) or (2), the Registrar shall refer the matter to a judge, who shall thereupon fix such a time and place.

(4) Not less than 7 days before the day so fixed the Registrar shall cause a notice of the time and place of the trial to be displayed in a conspicuous place in the High Court, and cause a copy of that notice to be sent-

- (a) to the petitioner;
- (b) to the respondent;
- (c) to the Secretary for Justice;
- (d) to the Secretary for Constitutional and Mainland Affairs; (L.N. 130 of 2007)
- (e) to the Electoral Affairs Commission; and
- (f) to the Clerk to the Legislative Council.

(5) The Secretary for Constitutional and Mainland Affairs shall, forthwith upon receipt of such notice, cause it to be displayed in the same manner as provided under rule 5(3)(a) in respect of a copy of a petition. (L.N. 130 of 2007)

Rule:	11	Trial of petition	L.N. 55 of 2000	03/03/2000
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(1) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.

(2) Where more petitions than one are lodged relating to the same election, the Court may, upon its own motion or application by a party to any such petition, order those petitions to be consolidated on such terms as it thinks fit or order them to be tried at the same time or one immediately after another.

(3) On the trial of a petition, unless the Court otherwise directs, any charge of corrupt or illegal conduct may be inquired into, and evidence in relation thereto may be received, before any proof has been given of agency on behalf of any candidate in respect of the corrupt or illegal conduct. (10 of 2000 s. 47)

(4) Subject to rule 12(4)(a), on the trial of a petition complaining that a person was not duly elected and claiming the office for some other person, the respondent may give evidence to prove that that other person was not duly elected in his place, in the same manner as if he had lodged a petition questioning the election of that person.

Rule:	12	Lists of objections in recriminatory case	2 of 2011	11/03/2011
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Remarks:

The amendments made to this rule by the Legislative Council (Amendment) Ordinance 2011 (2 of 2011) shall come into operation on 11 March 2011 for the purpose only of enabling arrangements to be made for-

- (a) the holding of the elections of members of the Election Committee under the Chief Executive Election Ordinance (Cap 569) in 2011; and
 - (b) the holding of the Legislative Council general election in 2012.
- (1) Where on the trial of a petition complaining that a person was not duly elected and claiming the office for some other person, the respondent intends to give evidence in accordance with rule 11(4) to prove that that other person was not duly elected in his place, the respondent shall, not less than 7 days before the day fixed for the trial of the petition, file a list of his objections to the election of that other person on which he intends to rely and serve a copy of the list on the petitioner and the Secretary for Justice.
 - (2) Where the petition claims the office for an unsuccessful candidate on the ground that-
 - (a) that person who is a candidate at an election for a functional constituency (other than the District Council (second) functional constituency); or (25 of 2003 s. 50; 2 of 2011 s. 44)
 - (b) the list of candidates referred to in section 38(10) of the Ordinance on which that person is one of the candidates,

had the number of valid votes that entitled him to claim the office, every party shall, not less than 7 days before the date fixed for the trial, file a list of the votes which that party contends were wrongly admitted or wrongly rejected, stating in respect of each such vote the grounds for his contention, and serve a copy of the list on every other party and the Secretary for Justice.
 - (3) Any party to a petition may inspect and obtain a copy of any list filed in accordance with subrule (1) or (2).
 - (4) Except by leave of the Court, and upon such terms as the Court may order, no evidence shall be given-
 - (a) by a respondent, of any objection to the election of any person which is not specified in a list filed by him in accordance with subrule (1); or
 - (b) by a party against the admission or rejection of any vote, or as to any ground of contention, which is not specified in a list filed by him in accordance with subrule (2).

Rule:	13	Application for leave to withdraw petition	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

- (1) An application for leave to withdraw or abandon or cease to prosecute a petition shall be made by motion to the Court at such time and place as the Court may appoint.
- (2) Not less than 7 days before the day so appointed the applicant shall-
 - (a) serve a notice of the intended motion on the respondent, the Secretary for Justice, the Secretary for Constitutional and Mainland Affairs, the Electoral Affairs Commission and the Clerk to the Legislative Council, and file a copy with the Registrar; and (L.N. 130 of 2007)
 - (b) publish a notice of the intended motion in at least two newspapers circulating in Hong Kong, one being published in English and the other one being published in Chinese.
- (3) The notice of the intended motion shall state the grounds on which the application is made to withdraw or abandon or cease to prosecute the petition, and shall contain a statement to the effect that on the hearing of the application any person who might have been a petitioner in respect of the election or the Secretary for Justice may apply to the Court to be substituted as a petitioner.
- (4) The Secretary for Constitutional and Mainland Affairs shall, forthwith upon receipt of the notice under subrule (2)(a), cause it to be displayed in the same manner as provided under rule 5(3)(a) in respect of a copy of a petition. (L.N. 130 of 2007)

Rule:	14	Evidence required for withdrawal of petition	L.N. 43 of 1998	16/01/1998
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- (1) Before leave to withdraw or abandon or cease to prosecute a petition is granted, there shall be produced affidavits by all parties to the petition and their solicitors (if any) and by the election agents (if any) of all the parties who were candidates at the election, but the Court may dispense with the affidavit of any particular person if it seems to the Court on special grounds to be just so to do.
- (2) Each affidavit shall state that, to the best of the knowledge and belief of the deponent, no agreement of any kind whatsoever has been made, and no undertaking has been entered into, in relation to withdrawing or abandoning

or ceasing to prosecute the petition, but if any agreement has been made with respect to withdrawing or abandoning or ceasing to prosecute the petition, the affidavit shall set forth that agreement and shall make the foregoing statement subject to what appears from the affidavit.

(3) The affidavits of the applicant and his solicitor (if any) shall further state the grounds on which the petition is sought to be withdrawn or abandoned or no longer prosecuted.

(4) Copies of the affidavit shall be delivered to the Secretary for Justice not less than 7 days before the day appointed for the hearing of the application for leave to withdraw or abandon or cease to prosecute the petition, and the Court may hear the Secretary for Justice or his representative in opposition to the application for leave to withdraw or abandon or cease to prosecute the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Secretary for Justice or his representative may consider material.

(5) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

Rule:	15	Application to stay or dismiss petition	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) An application by a respondent to stay or dismiss a petition before the day fixed for the trial shall be made by motion to the Court at such time and place as the Court may appoint.

(2) Not less than 7 days before the day so appointed the respondent shall serve a notice of the intended motion, stating the grounds thereof, on the petitioner, any other respondent, the Secretary for Justice, the Secretary for Constitutional and Mainland Affairs, the Electoral Affairs Commission and the Clerk to the Legislative Council, and file a copy with the Registrar. (L.N. 130 of 2007)

Rule:	16	Notice of termination of petition	L.N. 43 of 1998	16/01/1998
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(1) If an election petition is lodged by a natural person and the petition is terminated by the death of such petitioner, the solicitor acting for him in the proceedings at the date of his death or, if he had no such solicitor, any respondent learning of his death shall file a notice to that effect with the Registrar.

(2) If an election petition is lodged by 2 or more petitioners and the petition is terminated because the last remaining petitioner-

(a) (where that petitioner is a natural person) dies; or

(b) (where that petitioner is a body) ceases to exist,

the solicitor acting for such person or body in the proceedings at the date of his death or at the date on which such body ceases to exist, as the case may be, or if he or it had no such solicitor, any respondent learning of his death or learning that such body ceases to exist shall file a notice to that effect with the Registrar.

Rule:	17	Notice of death, etc. of respondent	L.N. 43 of 1998	16/01/1998
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On the happening of any event mentioned in section 70(1)(a) of the Ordinance, the respondent concerned, or, in the case of the death of a respondent, the solicitor acting for him in the proceedings at the date of his death or, if he had no such solicitor, any petitioner learning of his death shall file a notice to that effect with the Registrar.

Rule:	18	Filing copy particulars	L.N. 43 of 1998	16/01/1998
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A party giving particulars in accordance with an order or otherwise shall file a copy within 24 hours after delivering the particulars to the party requiring them.

Rule:	19	Notice of respondent's solicitor and service of notices	L.N. 130 of 2007	01/07/2007
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Remarks:

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative

Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

(1) A solicitor appointed to act for a respondent in proceedings on a petition shall forthwith give notice of his appointment to the petitioner and file a copy of the notice with the Registrar.

(2) Subject to rule 6(2), any notice required to be served on a respondent to a petition may be served-

- (a) by delivering or sending it by post to any solicitor who has given notice under subrule (1) that he is acting for the respondent; or
- (b) if no notice under subrule (1) has been given, by delivering it to the respondent or by leaving it at, or sending it by post or by recorded delivery or by a registered letter to, his last known place of abode in Hong Kong, or, if the proceedings are before the Court, in such manner as the Court may direct.

(3) Subject to rule 6(2), any notice required to be served on the Secretary for Justice, the Secretary for Constitutional and Mainland Affairs, the Electoral Affairs Commission and the Clerk to the Legislative Council in proceedings on any petition may be served by delivering or sending it by post to that person. (L.N. 130 of 2007)

Rule:	20	Witnesses' expenses	L.N. 43 of 1998	16/01/1998
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The reasonable expenses incurred by any person in appearing to give evidence at the trial of a petition, equal to such sum of money as would be allowed to such person under section 52 of the Supreme Court Ordinance (Cap 4) if he were a witness in any civil proceedings, may be allowed to him by a certificate of the Court or of the Registrar, and shall be deemed to be costs of the petition.

Rule:	21	Costs of petition	L.N. 55 of 2000	03/03/2000
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(1) All costs of, or incidental to, the lodgement of a petition and the proceedings consequent thereon, except such as are otherwise provided for under subrule (3), shall be defrayed by the parties to the petition in such manner and in such proportions as the Court may determine.

(2) Any costs which in the opinion of the Court have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent, and any needless expenses incurred or caused on the part either of the petitioner or of the respondent, may be ordered to be defrayed by the parties by whom those costs or expenses have been incurred or caused whether or not those parties are on the whole successful.

(3) Where upon the trial of a petition it appears to the Court that-

- (a) corrupt conduct has not been proved to have been engaged in in reference to the election by or with the knowledge and consent of the respondent to the petition; and
- (b) the respondent took all reasonable means to prevent corrupt conduct being engaged in on his behalf; but
- (c) any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt conduct, or to have encouraged or promoted extensive corrupt conduct, in reference to the election, (10 of 2000 s. 47)

the Court may, after giving that person or those persons an opportunity of being heard by counsel or solicitor and examining and cross-examining witnesses to show cause why an order should not be made, order-

- (i) the whole or part of the costs to be paid by that person or those persons or any of them; but
- (ii) if the costs cannot be, or are unlikely to be, so recovered from one or more of those persons, that they shall be paid by some other of those persons or by the petitioner or petitioners or the respondent or respondents.

Rule:	22	Forfeiture of recognizance	L.N. 43 of 1998	16/01/1998
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If a petitioner neglects or refuses for 3 months after demand to pay to any person summoned as a witness on his behalf or to the respondent any sum due to him or his costs, and the neglect or refusal is, within 1 year after the demand, proved to the satisfaction of the Court, every person who under these Rules entered into a recognizance relating to the petition shall be held to have made default in the recognizance, and the Court shall thereupon certify the recognizance to be forfeited.

ELECTION PETITION
IN THE HIGH COURT OF HONG KONG
ORIGINAL JURISDICTION

In the Matter of the Legislative Council Ordinance (Cap 542)
and

In the Matter of a Legislative Council election for the *(name of geographical constituency) Geographical
Constituency/(name of functional constituency) Functional Constituency held on (date of election).

- *1. The Petition of (name of Petitioner) states-
- (a) that the Petitioner was a candidate at the above election;
- (or) *1. The Petition of (names of 10 or more Petitioners) states-
- (a) that the Petitioners are electors who were entitled to vote at the above election;
 - *1(b) in an election which was not contested, that *(name of candidate) was a candidate at the election/(name of each candidate) were candidates at the election, and on (date on which that candidate was declared elected or those candidates were declared elected) the Returning Officer for the above-mentioned Constituency declared that *that candidate/those candidates *was/were elected for the above-mentioned Constituency in a notice of nominations published in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap 541); and
- (or) *1(b) in a contested election, that the poll was held on the above day, that (name of each candidate) were candidates at that election, and on (date on which the successful candidate was declared elected or successful candidates were declared elected) the Returning Officer for the above-mentioned Constituency declared (name of successful candidate or names of successful candidates) to be elected for the above-mentioned Constituency in a notice of result of election prepared in accordance with regulations in force under the Electoral Affairs Commission Ordinance (Cap 541), and that that notice was published in the Gazette on (date of publication in Gazette of notice of result of election) in accordance with the regulation in force under that Ordinance; and
- (c) that (ground under section 61(1) of the Ordinance on which the election is questioned and on which relief is to be sought and the facts on which the Petitioner relies or the Petitioners rely).
- *2. The *Petitioner/Petitioners therefore *requests/request, in the case of an election which was not contested, the Court to determine-
- (a) whether any decision of the Returning Officer for the above-mentioned Constituency as to the validity of any nomination in the notice of nominations was correct;
 - (b) if the Court determines that the decision of the Returning Officer was not correct, whether the *candidate/candidates declared by the Returning Officer to have been elected for the above-mentioned Constituency in that notice of nominations *was/were duly elected; and
 - (c) any further or other relief as may be just.
- (or) *2. The Petitioner therefore requests, in the case of a contested election, the Court to determine-
- (a) whether *the candidate (to be named)/some other candidate (to be named) declared by the Returning Officer for the above-mentioned Constituency to be elected in the notice of result of election was duly elected;
 - (b) if the Court determines that that person was not duly elected, whether *the Petitioner/some other candidate (to be named) was duly elected in his place; and
 - (c) any further or other relief as may be just.
- (or) *2. The Petitioners therefore request, in the case of a contested election, the Court to determine-
- (a) whether *the candidate (to be named)/some other candidate (to be named)/the candidates (to be named) declared by the Returning Officer for the above-mentioned Constituency to be elected in the notice of result of election *was/were duly elected;
 - (b) if the Court determines that *that person/those persons *was/were not duly elected, whether *the other

candidate (to be named)/some other candidate (to be named)/the other candidates (to be named)
*was/were duly elected in *his/their place; and
(c) any further or other relief as may be just.

Dated this day of 19

Signed

*Petitioner/Petitioners
(or) *Solicitors

*This Petition is lodged by the *Petitioner/Petitioners.

(or) *This Petition is lodged by (name of solicitors), Solicitors acting for and on behalf of the *Petitioner/Petitioners.
The address for service is (address to be stated).

It is proposed to serve a copy of this Petition on (name of Respondent or names of Respondents) and on the Secretary for Justice.

* Delete whichever is inapplicable.

(25 of 2003 s. 50)