



# Environment Act 2021

## 2021 CHAPTER 30

### PART 1

#### ENVIRONMENTAL GOVERNANCE

### CHAPTER 2

#### THE OFFICE FOR ENVIRONMENTAL PROTECTION

##### *The OEP's enforcement functions*

### **39 Judicial review: powers to apply in urgent cases and to intervene**

- (1) The OEP may apply for judicial review, or a statutory review, in relation to conduct of a public authority (whether or not it has given an information notice or a decision notice to the authority in respect of that conduct) if—
  - (a) the OEP considers that the conduct constitutes a serious failure to comply with environmental law, and
  - (b) the urgency condition is met.
- (2) The urgency condition is that making an application under subsection (1) (rather than proceeding under sections 35 to 38) is necessary to prevent, or mitigate, serious damage to the natural environment or to human health.
- (3) Section 31(2A), (3C) and (3D) of the Senior Courts Act 1981 (High Court to refuse to grant leave or relief where the outcome for the applicant not substantially different) does not apply to an application for judicial review made under subsection (1) in England and Wales.
- (4) If, on an application for judicial review or a statutory review made by virtue of subsection (1), there is a finding that a public authority has failed to comply with environmental law, and the finding has not been overturned on appeal, the authority must publish a statement that sets out the steps it intends to take in light of the finding.

*Status: Point in time view as at 24/01/2022.*

*Changes to legislation: There are currently no known outstanding effects for the Environment Act 2021, Section 39. (See end of Document for details)*

- (5) A statement under subsection (4) must be published before the end of the 2 month period beginning with the day the proceedings relating to the application for judicial review or the statutory review (including any appeal) conclude.
- (6) Subsection (7) applies to proceedings (including any appeal) that—
- (a) are in respect of an application for judicial review or a statutory review, and
  - (b) relate to an alleged failure by a public authority to comply with environmental law (however the allegation is framed in those proceedings).
- (7) If the OEP considers that the alleged failure, if it occurred, would be serious, it may apply to intervene in the proceedings (whether it considers that the public authority has, or has not, failed to comply with environmental law).
- (8) In this Part—
- (a) except in section 38, reference to an application for judicial review includes an application for the permission of the High Court or, as the case may be, the Court of Session to apply for judicial review;
  - (b) “statutory review” means a claim for statutory review under—
    - (i) section 287 or 288 of the Town and Country Planning Act 1990,
    - (ii) section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990,
    - (iii) section 22 of the Planning (Hazardous Substances) Act 1990, or
    - (iv) section 113 of the Planning and Compulsory Purchase Act 2004.

**Commencement Information**

- I1** S. 39 not in force at Royal Assent, see [s. 147\(3\)](#)
- I2** S. 39 in force at 24.1.2022 by [S.I. 2022/48](#), [reg. 2\(g\)](#)

**Status:**

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