



Criminal Justice and Courts Act 2015

2015 CHAPTER 2

PART 4

JUDICIAL REVIEW

Judicial review in the High Court and Upper Tribunal

84 Likelihood of substantially different outcome for applicant

(1) In section 31 of the Senior Courts Act 1981 (applications for judicial review), after subsection (2) insert—

“(2A) The High Court—

- (a) must refuse to grant relief on an application for judicial review, and
- (b) may not make an award under subsection (4) on such an application, if it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.

(2B) The court may disregard the requirements in subsection (2A)(a) and (b) if it considers that it is appropriate to do so for reasons of exceptional public interest.

(2C) If the court grants relief or makes an award in reliance on subsection (2B), the court must certify that the condition in subsection (2B) is satisfied.”

(2) In that section, before subsection (4) insert—

“(3C) When considering whether to grant leave to make an application for judicial review, the High Court—

- (a) may of its own motion consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred, and
- (b) must consider that question if the defendant asks it to do so.

Status: Point in time view as at 28/02/2017. This version of this cross heading contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Courts Act 2015, Cross Heading: Judicial review in the High Court and Upper Tribunal. (See end of Document for details)

- (3D) If, on considering that question, it appears to the High Court to be highly likely that the outcome for the applicant would not have been substantially different, the court must refuse to grant leave.
- (3E) The court may disregard the requirement in subsection (3D) if it considers that it is appropriate to do so for reasons of exceptional public interest.
- (3F) If the court grants leave in reliance on subsection (3E), the court must certify that the condition in subsection (3E) is satisfied.”
- (3) In that section, after subsection (7) insert—
- “(8) In this section “the conduct complained of”, in relation to an application for judicial review, means the conduct (or alleged conduct) of the defendant that the applicant claims justifies the High Court in granting relief.”
- (4) In section 15 of the Tribunals, Courts and Enforcement Act 2007 (the Upper Tribunal’s “judicial review” jurisdiction), after subsection (5) insert—
- “(5A) In cases arising under the law of England and Wales, subsections (2A) and (2B) of section 31 of the Senior Courts Act 1981 apply to the Upper Tribunal when deciding whether to grant relief under subsection (1) as they apply to the High Court when deciding whether to grant relief on an application for judicial review.
- (5B) If the tribunal grants relief in reliance on section 31(2B) of the Senior Courts Act 1981 as applied by subsection (5A), the tribunal must certify that the condition in section 31(2B) as so applied is satisfied.”
- (5) In section 16 of the Tribunals, Courts and Enforcement Act 2007 (application for relief under section 15(1)), before subsection (4) insert—
- “(3C) In cases arising under the law of England and Wales, when considering whether to grant permission to make the application, the tribunal—
- (a) may of its own initiative consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred, and
- (b) must consider that question if the respondent asks it to do so.
- (3D) In subsection (3C) “the conduct complained of” means the conduct (or alleged conduct) of the respondent that the applicant claims justifies the tribunal in granting relief.
- (3E) If, on considering the question mentioned in subsection (3C)(a) and (b), it appears to the tribunal to be highly likely that the outcome for the applicant would not have been substantially different, the tribunal must refuse to grant permission.
- (3F) The tribunal may disregard the requirement in subsection (3E) if it considers that it is appropriate to do so for reasons of exceptional public interest.
- (3G) If the tribunal grants permission in reliance on subsection (3F), the tribunal must certify that the condition in subsection (3F) is satisfied.”
- (6) In that section, after subsection (6) insert—

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“(6A) In cases arising under the law of England and Wales, subsections (2A) and (2B) of section 31 of the Senior Courts Act 1981 apply to the Upper Tribunal as regards the making of an award under subsection (6) as they apply to the High Court as regards the making of an award under section 31(4) of the Senior Courts Act 1981.

(6B) If the tribunal makes an award in reliance on section 31(2B) of the Senior Courts Act 1981 as applied by subsection (6A), the tribunal must certify that the condition in section 31(2B) as so applied is satisfied.”

Commencement Information

- I1** S. 84(1)-(3) in force at 13.4.2015 by S.I. 2015/778, art. 3, Sch. 1 para. 69 (with Sch. 2 para. 6)
I2 S. 84(4)-(6) in force at 8.8.2016 by S.I. 2016/717, art. 3(c) (with art. 6)

PROSPECTIVE

85 Provision of information about financial resources

(1) In section 31(3) of the Senior Courts Act 1981 (applications for leave to apply for judicial review)—

(a) after second “unless” insert “—
(a)”,
and

(b) at the end insert “, and

(b) the applicant has provided the court with any information about the financing of the application that is specified in rules of court for the purposes of this paragraph.”

(2) In that section, after subsection (3) insert—

“(3A) The information that may be specified for the purposes of subsection (3)(b) includes—

(a) information about the source, nature and extent of financial resources available, or likely to be available, to the applicant to meet liabilities arising in connection with the application, and

(b) if the applicant is a body corporate that is unable to demonstrate that it is likely to have financial resources available to meet such liabilities, information about its members and about their ability to provide financial support for the purposes of the application.

(3B) Rules of court under subsection (3)(b) that specify information identifying those who are, or are likely to be, sources of financial support must provide that only a person whose financial support (whether direct or indirect) exceeds, or is likely to exceed, a level set out in the rules has to be identified.

This subsection does not apply to rules that specify information described in subsection (3A)(b).”

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Changes to legislation: There are currently no known outstanding effects for the Criminal Justice and Courts Act 2015, Cross Heading: Judicial review in the High Court and Upper Tribunal. (See end of Document for details)

- (3) In section 16(3) of the Tribunals, Courts and Enforcement Act 2007 (applications for permission or leave to apply for relief under section 15(1): Upper Tribunal's "judicial review" jurisdiction)—
- (a) after "unless" insert "—
(a)",
and
 - (b) at the end insert " , and
(b) in cases arising under the law of England and Wales, the applicant has provided the tribunal with any information about the financing of the application that is specified in Tribunal Procedure Rules for the purposes of this paragraph."

- (4) In that section, after subsection (3) insert—

"(3A) The information that may be specified for the purposes of subsection (3)(b) includes—

- (a) information about the source, nature and extent of financial resources available, or likely to be available, to the applicant to meet liabilities arising in connection with the application, and
- (b) if the applicant is a body corporate that is unable to demonstrate that it is likely to have financial resources available to meet such liabilities, information about its members and about their ability to provide financial support for the purposes of the application.

(3B) Tribunal Procedure Rules under subsection (3)(b) that specify information identifying those who are, or are likely to be, sources of financial support must provide that only a person whose financial support (whether direct or indirect) exceeds, or is likely to exceed, a level set out in the rules has to be identified.

This subsection does not apply to rules that specify information described in subsection (3A)(b)."

PROSPECTIVE

86 Use of information about financial resources

- (1) This section applies when the High Court, the Upper Tribunal or the Court of Appeal is determining by whom and to what extent costs of or incidental to judicial review proceedings are to be paid.
- (2) The information to which the court or tribunal must have regard includes—
 - (a) information about the financing of the proceedings provided in accordance with section 31(3)(b) of the Senior Courts Act 1981 or section 16(3)(b) of the Tribunals, Courts and Enforcement Act 2007, and
 - (b) any supplement to that information provided in accordance with rules of court or Tribunal Procedure Rules.
- (3) The court or tribunal must consider whether to order costs to be paid by a person, other than a party to the proceedings, who is identified in that information as someone who is providing financial support for the purposes of the proceedings or likely or able to do so.

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- (4) In this section “judicial review proceedings” means—
- (a) proceedings on an application for leave to apply for judicial review,
 - (b) proceedings on an application for judicial review,
 - (c) proceedings on an application for permission to apply for relief under section 15 of the Tribunals, Courts and Enforcement Act 2007 in a case arising under the law of England and Wales,
 - (d) proceedings on an application for such relief in such a case,
 - (e) any proceedings on an application for leave to appeal from a decision in proceedings described in paragraph (a), (b), (c) or (d), and
 - (f) proceedings on an appeal from such a decision.

87 Interveners and costs

- (1) This section applies where—
- (a) a person is granted permission to file evidence or make representations in judicial review proceedings, and
 - (b) at that time, the person is not a relevant party to the proceedings.
- (2) That person is referred to in this section as an “intervener”.
- (3) A relevant party to the proceedings may not be ordered by the High Court or the Court of Appeal to pay the intervener's costs in connection with the proceedings.
- (4) Subsection (3) does not prevent the court making an order if it considers that there are exceptional circumstances that make it appropriate to do so.
- (5) On an application to the High Court or the Court of Appeal by a relevant party to the proceedings, if the court is satisfied that a condition described in subsection (6) is met in a stage of the proceedings that the court deals with, the court must order the intervener to pay any costs specified in the application that the court considers have been incurred by the relevant party as a result of the intervener's involvement in that stage of the proceedings.
- (6) Those conditions are that—
- (a) the intervener has acted, in substance, as the sole or principal applicant, defendant, appellant or respondent;
 - (b) the intervener's evidence and representations, taken as a whole, have not been of significant assistance to the court;
 - (c) a significant part of the intervener's evidence and representations relates to matters that it is not necessary for the court to consider in order to resolve the issues that are the subject of the stage in the proceedings;
 - (d) the intervener has behaved unreasonably.
- (7) Subsection (5) does not require the court to make an order if it considers that there are exceptional circumstances that make it inappropriate to do so.
- (8) In determining whether there are exceptional circumstances that are relevant for the purposes of subsection (4) or (7), the court must have regard to criteria specified in rules of court.
- (9) In this section, “judicial review proceedings” means—
- (a) proceedings on an application for leave to apply for judicial review,

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- (b) proceedings on an application for judicial review,
 - (c) any proceedings on an application for leave to appeal from a decision in proceedings described in paragraph (a) or (b), and
 - (d) proceedings on an appeal from such a decision,
- and the proceedings described in paragraphs (a) to (d) are “stages” of judicial review proceedings.
- (10) For the purposes of this section, “a relevant party” to judicial review proceedings means any of the following—
- (a) a person who is or has been an applicant or defendant in the proceedings described in subsection (9)(a), (b) or (c);
 - (b) a person who is or has been an appellant or respondent in the proceedings described in subsection (9)(d);
 - (c) any other person who is or has been directly affected by the proceedings and on whom the application for judicial review, or for leave to apply for judicial review, has been served.
- (11) If a person who is an intervener in judicial review proceedings becomes a relevant party to the proceedings, the person is to be treated for the purposes of subsections (3) and (5) as having been a relevant party, rather than an intervener, at all times when involved in the proceedings.

Commencement Information

I3 S. 87 in force at 13.4.2015 by S.I. 2015/778, art. 3, **Sch. 1 para. 70** (with Sch. 2 para. 6)

88 Capping of costs

- (1) A costs capping order may not be made by the High Court or the Court of Appeal in connection with judicial review proceedings except in accordance with this section and sections 89 and 90.
- (2) A “costs capping order” is an order limiting or removing the liability of a party to judicial review proceedings to pay another party's costs in connection with any stage of the proceedings.
- (3) The court may make a costs capping order only if leave to apply for judicial review has been granted.
- (4) The court may make a costs capping order only on an application for such an order made by the applicant for judicial review in accordance with rules of court.
- (5) Rules of court may, in particular, specify information that must be contained in the application, including—
 - (a) information about the source, nature and extent of financial resources available, or likely to be available, to the applicant to meet liabilities arising in connection with the application, and
 - (b) if the applicant is a body corporate that is unable to demonstrate that it is likely to have financial resources available to meet such liabilities, information about its members and about their ability to provide financial support for the purposes of the application.
- (6) The court may make a costs capping order only if it is satisfied that—

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- (a) the proceedings are public interest proceedings,
 - (b) in the absence of the order, the applicant for judicial review would withdraw the application for judicial review or cease to participate in the proceedings, and
 - (c) it would be reasonable for the applicant for judicial review to do so.
- (7) The proceedings are “public interest proceedings” only if—
- (a) an issue that is the subject of the proceedings is of general public importance,
 - (b) the public interest requires the issue to be resolved, and
 - (c) the proceedings are likely to provide an appropriate means of resolving it.
- (8) The matters to which the court must have regard when determining whether proceedings are public interest proceedings include—
- (a) the number of people likely to be directly affected if relief is granted to the applicant for judicial review,
 - (b) how significant the effect on those people is likely to be, and
 - (c) whether the proceedings involve consideration of a point of law of general public importance.
- (9) The Lord Chancellor may by regulations amend this section by adding, omitting or amending matters to which the court must have regard when determining whether proceedings are public interest proceedings.
- (10) Regulations under this section are to be made by statutory instrument.
- (11) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (12) In this section and sections 89 and 90—
- “costs capping order” has the meaning given in subsection (2);
 - “the court” means the High Court or the Court of Appeal;
 - “judicial review proceedings” means—
- (a) proceedings on an application for leave to apply for judicial review,
 - (b) proceedings on an application for judicial review,
 - (c) any proceedings on an application for leave to appeal from a decision in proceedings described in paragraph (a) or (b), and
 - (d) proceedings on an appeal from such a decision,
- and the proceedings described in paragraphs (a) to (d) are “stages” of judicial review proceedings.
- (13) For the purposes of this section and section 89, in relation to judicial review proceedings—
- (a) the applicant for judicial review is the person who is or was the applicant in the proceedings on the application for judicial review, and
 - (b) references to relief being granted to the applicant for judicial review include the upholding on appeal of a decision to grant such relief at an earlier stage of the proceedings.

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Modifications etc. (not altering text)

- C1** S. 88 excluded (28.2.2017) by [The Criminal Justice and Courts Act 2015 \(Disapplication of Sections 88 and 89\) Regulations 2017 \(S.I. 2017/100\)](#), regs. 1, **2(1)**

Commencement Information

- I4** S. 88 in force at 8.8.2016 by [S.I. 2016/717](#), **art. 3(d)** (with [art. 7](#))

89 Capping of costs: orders and their terms

- (1) The matters to which the court must have regard when considering whether to make a costs capping order in connection with judicial review proceedings, and what the terms of such an order should be, include—
- (a) the financial resources of the parties to the proceedings, including the financial resources of any person who provides, or may provide, financial support to the parties;
 - (b) the extent to which the applicant for the order is likely to benefit if relief is granted to the applicant for judicial review;
 - (c) the extent to which any person who has provided, or may provide, the applicant with financial support is likely to benefit if relief is granted to the applicant for judicial review;
 - (d) whether legal representatives for the applicant for the order are acting free of charge;
 - (e) whether the applicant for the order is an appropriate person to represent the interests of other persons or the public interest generally.
- (2) A costs capping order that limits or removes the liability of the applicant for judicial review to pay the costs of another party to the proceedings if relief is not granted to the applicant for judicial review must also limit or remove the liability of the other party to pay the applicant's costs if it is.
- (3) The Lord Chancellor may by regulations amend this section by adding to, omitting or amending the matters listed in subsection (1).
- (4) Regulations under this section are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) In this section—
- “free of charge” means otherwise than for or in expectation of fee, gain or reward;
- “legal representative”, in relation to a party to proceedings, means a person exercising a right of audience or conducting litigation on the party's behalf.

Modifications etc. (not altering text)

- C2** S. 89 excluded (28.2.2017) by [The Criminal Justice and Courts Act 2015 \(Disapplication of Sections 88 and 89\) Regulations 2017 \(S.I. 2017/100\)](#), regs. 1, **2(1)**

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Commencement Information

I5 S. 89 in force at 8.8.2016 by S.I. 2016/717, art. 3(e) (with art. 7)

90 Capping of costs: environmental cases

- (1) The Lord Chancellor may by regulations provide that sections 88 and 89 do not apply in relation to judicial review proceedings which, in the Lord Chancellor's opinion, have as their subject an issue relating entirely or partly to the environment.
- (2) Regulations under this section—
 - (a) may make provision generally or only in relation to proceedings described in the regulations, and
 - (b) may include transitional, transitory or saving provision.
- (3) Regulations under this section are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

Commencement Information

I6 S. 90 in force at 8.8.2016 by S.I. 2016/717, art. 3(f) (with art. 7)

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Criminal Justice and Courts Act 2015, Cross Heading: Judicial review in the High Court and Upper Tribunal.