



# Judicature (Northern Ireland) Act 1978

## 1978 CHAPTER 23

### PART II

#### THE HIGH COURT

##### *Supervisory and declaratory jurisdiction*

#### **18 Application for judicial review**

- (1) Rules of court shall provide for a procedure, to be known as an application for judicial review, under which application may be made to the High Court for one or more of the following forms of relief, that is to say, relief by way of—
- (a) an order of mandamus;
  - (b) an order of certiorari;
  - (c) an order of prohibition ;
  - (d) a declaration;
  - (e) an injunction.
- (2) Without prejudice to the generality of subsection (1), the rules shall provide—
- (a) that leave of the court shall be obtained before any application for judicial review, other than an application for an order of certiorari by the Attorney General acting on behalf of the Crown, is made ;
  - (b) that such leave shall not be granted if, having regard to the nature of the persons and bodies against whom relief may be granted by way of an order of mandamus, prohibition or certiorari, the court is satisfied that the case is one in respect of which relief could not be granted by way of any such order;
  - (c) that, where leave is so obtained, the grounds relied on and the relief granted shall only be one or more of those specified in the application;
  - (d) that the court may direct, or grant leave for, the application to be amended to specify different or additional grounds or relief; and

- (e) that the court may, subject to subsection (6), direct pleadings to be delivered or authorise or require oral evidence to be given where this appears to the court to be necessary or desirable.
- (3) On an application for judicial review the court may grant any of the forms of relief mentioned in subsection (1)(a) to (e) which the applicant has claimed and to which he appears to be entitled whether or not he appears to be entitled to any of the other forms of relief so mentioned, whether claimed or not.
- (4) The court shall not grant any relief on an application for judicial review unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (5) Without prejudice to section 25 of this Act or to section 160 of the Magistrates' Courts Act (Northern Ireland) 1964, where, on an application for judicial review, the court finds that—
  - (a) the sole ground of relief established is a defect in form or a technical irregularity; and
  - (b) no substantial wrong and no miscarriage of justice has occurred or no remedial advantage could accrue to the applicant,the court may refuse relief and, where a lower deciding authority has exercised jurisdiction, may make an order, having effect from such time and on such terms as the court thinks just, validating any decision or determination of the lower deciding authority or any act done in consequence thereof notwithstanding that defect or irregularity.
- (6) No return shall be made to orders of mandamus, prohibition or certiorari and no pleadings in prohibition shall be allowed but, subject to any right of appeal, such orders shall be final.
- (7) For references in any statutory provision coming into operation as respects Northern Ireland before 15th September 1965 to a writ of mandamus, prohibition or certiorari there shall be substituted references to the corresponding order and for references to the issue or award of any such writ there shall be substituted references to the making of the corresponding order.

## **19 Stay and interim relief**

On an application for judicial review, the High Court may grant a stay of proceedings or of enforcement of an order or may grant such interim relief as it considers appropriate pending final determination of the application.

## **20 Damages**

In proceedings on an application for judicial review the High Court may, in lieu of or in addition to any other relief, award damages to an applicant, if—

- (a) he has, in accordance with rules of court, joined with his application a claim for damages arising from any matter to which the application relates ; and
- (b) the court is satisfied that, if such claim had been made in a separate action begun by the applicant at the time of making his application, he would have been entitled to such damages.

## **21 Power to remit matter or reverse or vary decision**

Without prejudice to section 18(5), where on an application for judicial review—

- (a) the relief sought is an order of certiorari; and
- (b) the High Court is satisfied that there are grounds for quashing the decision in issue,

the court may, instead of quashing the decision, remit the matter to the lower deciding authority concerned, with a direction to reconsider it and reach a decision in accordance with the ruling of the court or may reverse or vary the decision of the lower deciding authority.

## **22 Extension of supervisory powers of High Court 23. Declaratory judgments**

- (1) Any statutory provision to the effect that any order or determination shall not be called into question in any court, or which by similar words excludes any of the powers of the High Court, shall not operate so as to—
  - (a) prevent the removal of the proceedings into the High Court by order of certiorari; or
  - (b) prejudice the powers of the High Court to make orders of mandamus.
- (2) This section does not apply to—
  - (a) section 26 of the British Nationality Act 1948;
  - (b) any statutory provision specially authorising applications to the High Court within a time limited by that provision ; or
  - (c) a statutory provision passed or made on or after 1st August 1958.

## **23 Declaratory judgments.**

- (1) No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby.
- (2) The High Court may make binding declarations of right in any action or other proceeding whether or not any consequential relief is or could be claimed therein.
- (3) Notwithstanding that the events on which a right depends may not have occurred, the High Court may in its discretion make a binding declaration of right if it is satisfied that—
  - (a) the question for decision involves a point of general public importance or that it would in the circumstances be unjust or inconvenient to withhold the declaration ; and
  - (b) the interests of persons not parties to the proceedings would not be unjustly prejudiced by the declaration.

## **24 Injunction concerning public office**

- (1) Where a person is acting or has acted in an office to which this section applies without being entitled so to act, the High Court, on an application under this section, may—
  - (a) grant an injunction restraining him from so acting;
  - (b) declare the office to be vacant.

- (2) This section applies to any substantive office of a public nature and permanent character which is held under the Crown or has been created by or under a statutory provision or royal charter.

## **25 Power of High Court to vary sentence on certiorari**

- (1) Where a person has been sentenced for an offence by a magistrates' court or, on appeal, by a county court and an application is made to the High Court for an order of certiorari to remove the proceedings of the magistrates' court or the county court into the High Court, and the High Court determines that the magistrates' court or county court had no power to pass the sentence, the High Court may, instead of quashing the conviction, amend it by substituting for the sentence passed any sentence which the magistrates' court had power to impose.
- (2) Any sentence passed by the High Court by virtue of this section in substitution for the sentence passed in the proceedings of the magistrates' court or county court shall, unless the High Court otherwise directs, begin to run from the time when it would have begun to run if passed in those proceedings.
- (3) Subsections (1) and (2) shall apply, with the necessary modifications, in relation to any order of a magistrates' court or county court which is made on, but does not form part of, the conviction of an offender as they apply in relation to a conviction and sentence.
- (4) The High Court may release from custody a person who has been convicted or sentenced by a magistrates' court or, on appeal, by a county court and has applied to the High Court for an order of certiorari to remove the proceedings of the magistrates' court or the county court into the High Court on his entering into a recognizance, with or without sureties, conditioned for his appearance within ten days after the judgment of the High Court is given, unless the conviction or sentence is quashed by that judgment.
- (5) The time during which a person is admitted to bail under this section shall not count as any term of imprisonment or detention under his sentence, and any sentence of imprisonment or detention imposed by a magistrates' court or, on appeal, by a county court after the imposition of which a person is so admitted to bail shall be deemed to begin to run or to be resumed as from the date on which he is received under the sentence in the prison or other place where he is to be detained.
- (6) Rules of court may prescribe the persons before whom and the manner in which a recognizance under subsection (4) shall be entered into by a person applying for an order of certiorari and the manner in which such a recognizance may be enforced and may authorise the recommittal of persons so applying.