



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Status: This is the original version (as it was originally enacted).

- (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—

“(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.”