



Criminal Justice and Courts Act 2015

2015 CHAPTER 2

PART 4

JUDICIAL REVIEW

Judicial review in the High Court and Upper Tribunal

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—
 - (a) the proceedings are public interest proceedings,

Status: This is the original version (as it was originally enacted).

- (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.