



Environment Act 2021

2021 CHAPTER 30

PART 1

ENVIRONMENTAL GOVERNANCE

CHAPTER 2

THE OFFICE FOR ENVIRONMENTAL PROTECTION

The OEP's enforcement functions

38 Environmental review

- (1) Where the OEP has given a decision notice to a public authority it may apply to the court for an environmental review, but only if—
 - (a) it is satisfied, on the balance of probabilities, that the authority has failed to comply with environmental law, and
 - (b) it considers that the failure is serious.
- (2) An environmental review is a review of alleged conduct of the authority that is described in the decision notice as constituting a failure to comply with environmental law.
- (3) An application for an environmental review may not be made—
 - (a) before the earlier of—
 - (i) the end of the period within which the authority must respond to the decision notice in accordance with section 36(3), and
 - (ii) the date on which the OEP receives the authority's response to that notice, or
 - (b) before the expiry of any time limit which applies to the commencement of judicial review or other similar legal proceedings for questioning the alleged conduct.

Status: Point in time view as at 24/01/2022.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 38. (See end of Document for details)

- (4) Any restriction imposed by or under any other enactment on questioning the conduct of a public authority in legal proceedings does not apply to an environmental review.
- (5) On an environmental review the court must determine whether the authority has failed to comply with environmental law, applying the principles applicable on an application for judicial review.
- (6) If the court finds that the authority has failed to comply with environmental law, it must make a statement to that effect (a “statement of non-compliance”).
- (7) A statement of non-compliance does not affect the validity of the conduct in respect of which it is given.
- (8) Where the court makes a statement of non-compliance it may grant any remedy that could be granted by it on a judicial review other than damages, but only if Condition A or Condition B is met.
- (9) Condition A is that the court is satisfied that granting the remedy would not—
 - (a) be likely to cause substantial hardship to, or substantially prejudice the rights of, any person other than the authority, or
 - (b) be detrimental to good administration.
- (10) Condition B is that Condition A is not met but the court is satisfied that—
 - (a) granting the remedy is necessary in order to prevent or mitigate serious damage to the natural environment or to human health, and
 - (b) there is an exceptional public interest reason to grant it.
- (11) In deciding whether to grant a remedy the court must (subject to subsection (8)) apply the principles applicable on an application for judicial review; but this does not require the court to apply section 31(2A) of the Senior Courts Act 1981 (High Court to refuse to grant relief where the outcome for the applicant not substantially different) on an environmental review in England and Wales.
- (12) If, on an environmental review, the court has made a statement of non-compliance in respect of a public authority, and the statement 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 review.
- (13) A statement under subsection (12) must be published before the end of the 2 month period beginning with the day the review (including any appeal) concludes.
- (14) In this section—

“the court” means—

 - (a) in relation to an environmental review arising under the law of England and Wales or Northern Ireland, the High Court, or
 - (b) in relation to an environmental review arising under the law of Scotland, the Court of Session;

“enactment” has the same meaning as in the European Union (Withdrawal) Act 2018;

“the principles applicable on an application for judicial review” means, in relation to an environmental review, the principles that would apply on an application for judicial review in the jurisdiction under which the environmental review arises;

“remedy” includes any relief or order.

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

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Commencement Information

- I1** S. 38 not in force at Royal Assent, see [s. 147\(3\)](#)
- I2** [S. 38](#) in force at 24.1.2022 by [S.I. 2022/48, reg. 2\(g\)](#)

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