



# Judicial Review and Courts Act 2022

## 2022 CHAPTER 35

### PART 1

#### JUDICIAL REVIEW

#### 1 Quashing orders

(1) After section 29 of the Senior Courts Act 1981 insert—

**“29A Further provision in connection with quashing orders**

- (1) A quashing order may include provision—
  - (a) for the quashing not to take effect until a date specified in the order, or
  - (b) removing or limiting any retrospective effect of the quashing.
- (2) Provision included in a quashing order under subsection (1) may be made subject to conditions.
- (3) If a quashing order includes provision under subsection (1)(a), the impugned act is (subject to any conditions under subsection (2)) upheld until the quashing takes effect.
- (4) If a quashing order includes provision under subsection (1)(b), the impugned act is (subject to any conditions under subsection (2)) upheld in any respect in which the provision under subsection (1)(b) prevents it from being quashed.
- (5) Where (and to the extent that) an impugned act is upheld by virtue of subsection (3) or (4), it is to be treated for all purposes as if its validity and force were, and always had been, unimpaired by the relevant defect.
- (6) Provision under subsection (1)(a) does not limit any retrospective effect of a quashing order once the quashing takes effect (including in relation to the period between the making of the order and the taking effect of the quashing); and subsections (3) and (5) are to be read accordingly.

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*Status: This is the original version (as it was originally enacted).*

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- (7) Section 29(2) does not prevent the court from varying a date specified under subsection (1)(a).
- (8) In deciding whether to exercise a power in subsection (1), the court must have regard to—
- (a) the nature and circumstances of the relevant defect;
  - (b) any detriment to good administration that would result from exercising or failing to exercise the power;
  - (c) the interests or expectations of persons who would benefit from the quashing of the impugned act;
  - (d) the interests or expectations of persons who have relied on the impugned act;
  - (e) so far as appears to the court to be relevant, any action taken or proposed to be taken, or undertaking given, by a person with responsibility in connection with the impugned act;
  - (f) any other matter that appears to the court to be relevant.
- (9) In this section—
- “impugned act” means the thing (or purported thing) being quashed by the quashing order;
- “relevant defect” means the defect, failure or other matter on the ground of which the court is making the quashing order.”
- (2) In section 31 of the Senior Courts Act 1981 (judicial review)—
- (a) in subsection (5), for “quashes” substitute “makes a quashing order in respect of”;
  - (b) in subsection (5A)(b), for “decision is quashed” substitute “quashing order is made”.
- (3) In section 17 of the Tribunals, Courts and Enforcement Act 2007 (supplementary provision about quashing orders made by the Upper Tribunal)—
- (a) before subsection (1) insert—
- “(A1) In cases arising under the law of England and Wales, section 29A of the Senior Courts Act 1981 applies in relation to a quashing order under section 15(1)(c) of this Act as it applies in relation to a quashing order under section 29 of that Act.”;
- (b) in subsection (2)(b), for “decision is quashed” substitute “quashing order is made”.
- (4) The amendments made by subsections (1) to (3) have effect only in relation to proceedings commenced on or after the day on which this section comes into force.

## 2 Exclusion of review of Upper Tribunal’s permission-to-appeal decisions

- (1) In the Tribunals, Courts and Enforcement Act 2007, after section 11 insert—

### “11A Finality of decisions by Upper Tribunal about permission to appeal

- (1) Subsections (2) and (3) apply in relation to a decision by the Upper Tribunal to refuse permission (or leave) to appeal further to an application under section 11(4)(b).

- (2) The decision is final, and not liable to be questioned or set aside in any other court.
- (3) In particular—
  - (a) the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision;
  - (b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.
- (4) Subsections (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether—
  - (a) the Upper Tribunal has or had a valid application before it under section 11(4)(b),
  - (b) the Upper Tribunal is or was properly constituted for the purpose of dealing with the application, or
  - (c) the Upper Tribunal is acting or has acted—
    - (i) in bad faith, or
    - (ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.
- (5) Subsections (2) and (3) do not apply so far as provision giving the First-tier Tribunal jurisdiction to make the first-instance decision could (if the Tribunal did not already have that jurisdiction) be made by—
  - (a) an Act of the Scottish Parliament, or
  - (b) an Act of the Northern Ireland Assembly the Bill for which would not require the consent of the Secretary of State.
- (6) The court of supervisory jurisdiction is not to entertain any application or petition for judicial review in respect of a decision of the First-tier Tribunal that it would not entertain (whether as a matter of law or discretion) in the absence of this section.
- (7) In this section—
  - “decision” includes any purported decision;
  - “first-instance decision” means the decision in relation to which permission (or leave) to appeal is being sought under section 11(4)(b);
  - “the supervisory jurisdiction” means the supervisory jurisdiction of—
    - (a) the High Court, in England and Wales or Northern Ireland, or
    - (b) the Court of Session, in Scotland,and “the court of supervisory jurisdiction” is to be read accordingly.”
- (2) The amendment made by subsection (1) does not apply in relation to a decision (including any purported decision) of the Upper Tribunal made before the day on which this section comes into force.