

2004 No. 1033

SUPREME COURT OF ENGLAND AND WALES

**The Civil Procedure (Modification of Supreme Court Act 1981)
Order 2004**

<i>Made</i>	<i>29th February 2004</i>
<i>Laid before Parliament</i>	<i>1st April 2004</i>
<i>Coming into force</i>	<i>1st May 2004</i>

The Lord Chancellor, in exercise of the powers conferred upon him by section 4(1) of the Civil Procedure Act 1997(a), hereby makes the following Order :

1. This Order may be cited as the Civil Procedure (Modification of Supreme Court Act 1981) Order 2004, and shall come into force on 1st May 2004.

2. The Supreme Court Act 1981(b) is amended as follows.

3. In section 29 (orders of mandamus, prohibition and certiorari) —

(a) for subsection (1) substitute—

“(1) The orders of mandamus, prohibition and certiorari shall be known instead as mandatory, prohibiting and quashing orders respectively.

(1A) The High Court shall have jurisdiction to make mandatory, prohibiting and quashing orders in those classes of case in which, immediately before 1st May 2004, it had jurisdiction to make orders of mandamus, prohibition and certiorari respectively.”;

(b) in each of subsections (3) and (3A), for “orders of mandamus, prohibition or certiorari” substitute “mandatory, prohibiting or quashing orders”;

(c) in subsection (4), for “order of mandamus” substitute “mandatory order”;

(d) for subsection (5) substitute—

“(5) In any statutory provision—

(a) references to mandamus or to a writ or order of mandamus shall be read as references to a mandatory order;

(b) references to prohibition or to a writ or order of prohibition shall be read as references to a prohibiting order;

(c) references to certiorari or to a writ or order of certiorari shall be read as references to a quashing order; and

(d) references to the issue or award of a writ of mandamus, prohibition or certiorari shall be read as references to the making of the corresponding mandatory, prohibiting or quashing order.”;

- (e) for the side-note substitute “Mandatory, prohibiting and quashing orders”.
4. In section 31 (application for judicial review) —
- (a) for subsection (1)(a) substitute—
“(a) a mandatory, prohibiting or quashing order;”;
- (b) in subsection (2)(a), for “orders of mandamus, prohibition or certiorari” substitute
“mandatory, prohibiting or quashing orders”;
- (c) for subsection (4) substitute—
“(4) On an application for judicial review the High Court may award to the applicant damages, restitution or the recovery of a sum due if—
- (a) the application includes a claim for such an award arising from any matter to which the application relates; and
- (b) the court is satisfied that such an award would have been made if the claim had been made in an action begun by the applicant at the time of making the application.”;
- (d) in subsection (5), for “an order of certiorari” substitute “a quashing order”.
5. In section 43 (power of High Court to vary sentence on certiorari)—
- (a) in subsection (1), for “an order of certiorari” substitute “a quashing order”;
- (b) in the side-note, for “certiorari” substitute “application for quashing order”.
6. In section 81 (bail), in subsection (1)(e), for “an order of certiorari” substitute “a quashing order”.

Falconer of Thoroton C.

Date 29th February 2004

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Supreme Court Act 1981, and in particular sections 29 and 31, to provide that the orders of mandamus, prohibition and certiorari are to be known instead as mandatory, prohibiting and quashing orders, not just in that Act but in any primary or secondary legislation extending to England and Wales.

Section 31(4) is amended to give the High Court, on an application for judicial review, the power to award restitution or the recovery of a sum due, in addition to the existing power to award damages.

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