



Tribunals, Courts and Enforcement Act 2007

2007 CHAPTER 15

PART 1

TRIBUNALS AND INQUIRIES

CHAPTER 2

FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL

“Judicial review”

15 Upper Tribunal’s “judicial review” jurisdiction

- (1) The Upper Tribunal has power, in cases arising under the law of England and Wales or under the law of Northern Ireland, to grant the following kinds of relief—
 - (a) a mandatory order;
 - (b) a prohibiting order;
 - (c) a quashing order;
 - (d) a declaration;
 - (e) an injunction.
- (2) The power under subsection (1) may be exercised by the Upper Tribunal if—
 - (a) certain conditions are met (see section 18), or
 - (b) the tribunal is authorised to proceed even though not all of those conditions are met (see section 19(3) and (4)).
- (3) Relief under subsection (1) granted by the Upper Tribunal—
 - (a) has the same effect as the corresponding relief granted by the High Court on an application for judicial review, and

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- (b) is enforceable as if it were relief granted by the High Court on an application for judicial review.
- (4) In deciding whether to grant relief under subsection (1)(a), (b) or (c), the Upper Tribunal must apply the principles that the High Court would apply in deciding whether to grant that relief on an application for judicial review.
- (5) In deciding whether to grant relief under subsection (1)(d) or (e), the Upper Tribunal must—
 - (a) in cases arising under the law of England and Wales apply the principles that the High Court would apply in deciding whether to grant that relief under section 31(2) of the Supreme Court Act 1981 (c. 54) on an application for judicial review, and
 - (b) in cases arising under the law of Northern Ireland apply the principles that the High Court would apply in deciding whether to grant that relief on an application for judicial review.
- (6) For the purposes of the application of subsection (3)(a) in relation to cases arising under the law of Northern Ireland—
 - (a) a mandatory order under subsection (1)(a) shall be taken to correspond to an order of mandamus,
 - (b) a prohibiting order under subsection (1)(b) shall be taken to correspond to an order of prohibition, and
 - (c) a quashing order under subsection (1)(c) shall be taken to correspond to an order of certiorari.

16 Application for relief under section 15(1)

- (1) This section applies in relation to an application to the Upper Tribunal for relief under section 15(1).
- (2) The application may be made only if permission (or, in a case arising under the law of Northern Ireland, leave) to make it has been obtained from the tribunal.
- (3) The tribunal may not grant permission (or leave) to make the application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.
- (4) Subsection (5) applies where the tribunal considers—
 - (a) that there has been undue delay in making the application, and
 - (b) that granting the relief sought on the application would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.
- (5) The tribunal may—
 - (a) refuse to grant permission (or leave) for the making of the application;
 - (b) refuse to grant any relief sought on the application.
- (6) The tribunal 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

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- (b) the tribunal is satisfied that such an award would have been made by the High Court if the claim had been made in an action begun in the High Court by the applicant at the time of making the application.
- (7) An award under subsection (6) may be enforced as if it were an award of the High Court.
- (8) Where—
- (a) the tribunal refuses to grant permission (or leave) to apply for relief under section 15(1),
 - (b) the applicant appeals against that refusal, and
 - (c) the Court of Appeal grants the permission (or leave),
- the Court of Appeal may go on to decide the application for relief under section 15(1).
- (9) Subsections (4) and (5) do not prevent Tribunal Procedure Rules from limiting the time within which applications may be made.

17 Quashing orders under section 15(1): supplementary provision

- (1) If the Upper Tribunal makes a quashing order under section 15(1)(c) in respect of a decision, it may in addition—
- (a) remit the matter concerned to the court, tribunal or authority that made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the Upper Tribunal, or
 - (b) substitute its own decision for the decision in question.
- (2) The power conferred by subsection (1)(b) is exercisable only if—
- (a) the decision in question was made by a court or tribunal,
 - (b) the decision is quashed on the ground that there has been an error of law, and
 - (c) without the error, there would have been only one decision that the court or tribunal could have reached.
- (3) Unless the Upper Tribunal otherwise directs, a decision substituted by it under subsection (1)(b) has effect as if it were a decision of the relevant court or tribunal.

18 Limits of jurisdiction under section 15(1)

- (1) This section applies where an application made to the Upper Tribunal seeks (whether or not alone)—
- (a) relief under section 15(1), or
 - (b) permission (or, in a case arising under the law of Northern Ireland, leave) to apply for relief under section 15(1).
- (2) If Conditions 1 to 4 are met, the tribunal has the function of deciding the application.
- (3) If the tribunal does not have the function of deciding the application, it must by order transfer the application to the High Court.
- (4) Condition 1 is that the application does not seek anything other than—
- (a) relief under section 15(1);
 - (b) permission (or, in a case arising under the law of Northern Ireland, leave) to apply for relief under section 15(1);
 - (c) an award under section 16(6);

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- (d) interest;
 - (e) costs.
- (5) Condition 2 is that the application does not call into question anything done by the Crown Court.
- (6) Condition 3 is that the application falls within a class specified for the purposes of this subsection in a direction given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 (c. 4).
- (7) The power to give directions under subsection (6) includes—
- (a) power to vary or revoke directions made in exercise of the power, and
 - (b) power to make different provision for different purposes.
- (8) Condition 4 is that the judge presiding at the hearing of the application is either—
- (a) a judge of the High Court or the Court of Appeal in England and Wales or Northern Ireland, or a judge of the Court of Session, or
 - (b) such other persons as may be agreed from time to time between the Lord Chief Justice, the Lord President, or the Lord Chief Justice of Northern Ireland, as the case may be, and the Senior President of Tribunals.
- (9) Where the application is transferred to the High Court under subsection (3)—
- (a) the application is to be treated for all purposes as if it—
 - (i) had been made to the High Court, and
 - (ii) sought things corresponding to those sought from the tribunal, and
 - (b) any steps taken, permission (or leave) given or orders made by the tribunal in relation to the application are to be treated as taken, given or made by the High Court.
- (10) Rules of court may make provision for the purpose of supplementing subsection (9).
- (11) The provision that may be made by Tribunal Procedure Rules about amendment of an application for relief under section 15(1) includes, in particular, provision about amendments that would cause the application to become transferrable under subsection (3).
- (12) For the purposes of subsection (9)(a)(ii), in relation to an application transferred to the High Court in Northern Ireland—
- (a) an order of mandamus shall be taken to correspond to a mandatory order under section 15(1)(a),
 - (b) an order of prohibition shall be taken to correspond to a prohibiting order under section 15(1)(b), and
 - (c) an order of certiorari shall be taken to correspond to a quashing order under section 15(1)(c).

19 Transfer of judicial review applications from High Court

- (1) In the Supreme Court Act 1981 (c. 54), after section 31 insert—

“31A Transfer of judicial review applications to Upper Tribunal

- (1) This section applies where an application is made to the High Court—
- (a) for judicial review, or

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- (b) for permission to apply for judicial review.
 - (2) If Conditions 1, 2, 3 and 4 are met, the High Court must by order transfer the application to the Upper Tribunal.
 - (3) If Conditions 1, 2 and 4 are met, but Condition 3 is not, the High Court may by order transfer the application to the Upper Tribunal if it appears to the High Court to be just and convenient to do so.
 - (4) Condition 1 is that the application does not seek anything other than—
 - (a) relief under section 31(1)(a) and (b);
 - (b) permission to apply for relief under section 31(1)(a) and (b);
 - (c) an award under section 31(4);
 - (d) interest;
 - (e) costs.
 - (5) Condition 2 is that the application does not call into question anything done by the Crown Court.
 - (6) Condition 3 is that the application falls within a class specified under section 18(6) of the Tribunals, Courts and Enforcement Act 2007.
 - (7) Condition 4 is that the application does not call into question any decision made under—
 - (a) the Immigration Acts,
 - (b) the British Nationality Act 1981 (c. 61),
 - (c) any instrument having effect under an enactment within paragraph (a) or (b), or
 - (d) any other provision of law for the time being in force which determines British citizenship, British overseas territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.”
- (2) In the Judicature (Northern Ireland) Act 1978 (c. 23), after section 25 insert—

“25A Transfer of judicial review applications to Upper Tribunal

- (1) This section applies where an application is made to the High Court—
 - (a) for judicial review, or
 - (b) for leave to apply for judicial review.
- (2) If Conditions 1, 2, 3 and 4 are met, the High Court must by order transfer the application to the Upper Tribunal.
- (3) If Conditions 1, 2 and 4 are met, but Condition 3 is not, the High Court may by order transfer the application to the Upper Tribunal if it appears to the High Court to be just and convenient to do so.
- (4) Condition 1 is that the application does not seek anything other than—
 - (a) relief under section 18(1)(a) to (e);
 - (b) leave to apply for relief under section 18(1)(a) to (e);
 - (c) an award under section 20;
 - (d) interest;

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- (e) costs.
- (5) Condition 2 is that the application does not call into question anything done by the Crown Court.
- (6) Condition 3 is that the application falls within a class specified under section 18(6) of the Tribunals, Courts and Enforcement Act 2007.
- (7) Condition 4 is that the application does not call into question any decision made under—
 - (a) the Immigration Acts,
 - (b) the British Nationality Act 1981,
 - (c) any instrument having effect under an enactment within paragraph (a) or (b), or
 - (d) any other provision of law for the time being in force which determines British citizenship, British overseas territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.”
- (3) Where an application is transferred to the Upper Tribunal under 31A of the Supreme Court Act 1981 (c. 54) or section 25A of the Judicature (Northern Ireland) Act 1978 (transfer from the High Court of judicial review applications)—
 - (a) the application is to be treated for all purposes as if it—
 - (i) had been made to the tribunal, and
 - (ii) sought things corresponding to those sought from the High Court,
 - (b) the tribunal has the function of deciding the application, even if it does not fall within a class specified under section 18(6), and
 - (c) any steps taken, permission given, leave given or orders made by the High Court in relation to the application are to be treated as taken, given or made by the tribunal.
- (4) Where—
 - (a) an application for permission is transferred to the Upper Tribunal under section 31A of the Supreme Court Act 1981 (c. 54) and the tribunal grants permission, or
 - (b) an application for leave is transferred to the Upper Tribunal under section 25A of the Judicature (Northern Ireland) Act 1978 (c. 23) and the tribunal grants leave,

the tribunal has the function of deciding any subsequent application brought under the permission or leave, even if the subsequent application does not fall within a class specified under section 18(6).
- (5) Tribunal Procedure Rules may make further provision for the purposes of supplementing subsections (3) and (4).
- (6) For the purposes of subsection (3)(a)(ii), in relation to an application transferred to the Upper Tribunal under section 25A of the Judicature (Northern Ireland) Act 1978—
 - (a) a mandatory order under section 15(1)(a) shall be taken to correspond to an order of mandamus,
 - (b) a prohibiting order under section 15(1)(b) shall be taken to correspond to an order of prohibition, and

- (c) a quashing order under section 15(1)(c) shall be taken to correspond to an order of certiorari.

20 Transfer of judicial review applications from the Court of Session

- (1) Where an application is made to the supervisory jurisdiction of the Court of Session, the Court—
 - (a) must, if Conditions 1, 2 and 4 are met, and
 - (b) may, if Conditions 1, 3 and 4 are met, but Condition 2 is not,by order transfer the application to the Upper Tribunal.
- (2) Condition 1 is that the application does not seek anything other than an exercise of the supervisory jurisdiction of the Court of Session.
- (3) Condition 2 is that the application falls within a class specified for the purposes of this subsection by act of sederunt made with the consent of the Lord Chancellor.
- (4) Condition 3 is that the subject matter of the application is not a devolved Scottish matter.
- (5) Condition 4 is that the application does not call into question any decision made under—
 - (a) the Immigration Acts,
 - (b) the British Nationality Act 1981 (c. 61),
 - (c) any instrument having effect under an enactment within paragraph (a) or (b), or
 - (d) any other provision of law for the time being in force which determines British citizenship, British overseas territories citizenship, the status of a British National (Overseas) or British Overseas citizenship.
- (6) There may not be specified under subsection (3) any class of application which includes an application the subject matter of which is a devolved Scottish matter.
- (7) For the purposes of this section, the subject matter of an application is a devolved Scottish matter if it—
 - (a) concerns the exercise of functions in or as regards Scotland, and
 - (b) does not relate to a reserved matter within the meaning of the Scotland Act 1998 (c. 46).
- (8) In subsection (2), the reference to the exercise of the supervisory jurisdiction of the Court of Session includes a reference to the making of any order in connection with or in consequence of the exercise of that jurisdiction.

21 Upper Tribunal’s “judicial review” jurisdiction: Scotland

- (1) The Upper Tribunal has the function of deciding applications transferred to it from the Court of Session under section 20(1).
- (2) The powers of review of the Upper Tribunal in relation to such applications are the same as the powers of review of the Court of Session in an application to the supervisory jurisdiction of that Court.

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- (3) In deciding an application by virtue of subsection (1), the Upper Tribunal must apply principles that the Court of Session would apply in deciding an application to the supervisory jurisdiction of that Court.
- (4) An order of the Upper Tribunal by virtue of subsection (1)—
 - (a) has the same effect as the corresponding order granted by the Court of Session on an application to the supervisory jurisdiction of that Court, and
 - (b) is enforceable as if it were an order so granted by that Court.
- (5) Where an application is transferred to the Upper Tribunal by virtue of section 20(1), any steps taken or orders made by the Court of Session in relation to the application (other than the order to transfer the application under section 20(1)) are to be treated as taken or made by the tribunal.
- (6) Tribunal Procedure Rules may make further provision for the purposes of supplementing subsection (5).