



Challenging a Decision in the High Court

Important Note - This leaflet is intended for guidance only. It should be noted that there are different procedures involved for statutory challenges and judicial reviews and they follow different timetables. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Challenging a decision

Once a decision is issued we have no power to amend or change it. Decisions are therefore final unless successfully challenged in the High Court. We can only reconsider a decision if a challenge is successful and the decision is returned to us for re-determination.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful, you would have to show that the Inspector had misinterpreted the law or that some relevant criteria had not been met. If, in relation to an order decision, a mistake has been made, and the Court considers it might have affected the decision, it will quash the decision and return the case to us for re-determination or it will quash the order completely. If the Court considers a mistake has been made on a Schedule 14 Appeal or Direction, it will quash the decision and return the case to us for re-determination.

Different order types

The Act under which the order decision has been **confirmed** will specify the conditions under which it can be challenged, and is thus a statutory right to challenge a confirmed order - often referred to as a Part 8 claim as it is brought under Part 8 of the Civil Procedure Rules 1998. There is no statutory right to challenge where an order is '**not confirmed**'; in these circumstances a judicial review under Part 54 of the Civil Procedure Rules 1998 of the decision not to confirm may be applied for. Both scenarios are set out in more detail below.

Challenges to confirmed orders made under the Wildlife and Countryside Act 1981

Any person aggrieved by the confirmed order can make an application to the High Court under paragraph 12 of Schedule 15 to the 1981 Act on the grounds i) that the order is not within the power of section 53 or 54; or ii) that any of the requirements of the Schedule have not been complied with. If the challenge is successful, the court will either quash the order or the decision. The Inspectorate will only be asked to re-determine the case if the decision only is quashed.

Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.

Challenges to confirmed orders made under the Town and Country Planning Act 1990 and the Highways Act 1980

Any person aggrieved by the confirmed order can make an application to the High Court under paragraph 287, in the case of an order made under the 1990 Act, or paragraph 2 of Schedule 2 in the case of an order made under the 1980 Act, on the grounds that i) the order is not within the powers of the Act; or ii) that any of the requirements of the Act or regulations made under it have not been complied with. If the challenge is successful, the court will either quash the order or the decision. The Inspectorate will only be asked to re-determine the case if the decision only is quashed.

Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.

Challenges to orders which are not confirmed and all Schedule 14 Appeal and Direction decisions

If an order made under any of the Acts is not confirmed, an aggrieved person can only challenge the decision by applying for a judicial review to the Administrative Court for a court order to quash the decision, the matter will then go back to the Inspectorate to re-determine. This also applies to an aggrieved person to a Schedule 14 Appeal or Direction decision as there is no statutory right to challenge.

For applications for judicial review, the Claim form must be filed with the Administrative Court promptly and in any event not later than 3 months after the date of the decision (for orders made under the Highways Act 1980 or the Wildlife and Countryside Act 1981) or 6 weeks (for orders made under the Town and Country Planning Act 1990), unless the Court extends this period.

Who should be named as Defendant in the claim form?

In order cases the Inspector is usually appointed on behalf of the Secretary of State for Environment, Food and Rural Affairs to confirm an order made by a local authority. In Schedule 14 appeal cases the Inspector is acting as the Secretary of State. The claim form for all types of proceedings should therefore be issued against the Secretary of State for Environment, Food and Rural Affairs and served upon: The Government Legal Department, One Kemble Street, London, WC2B 4TS. For telephone queries, please call the Government Legal Department on 020 7210 3000. Email: thetreasury solicitor@governmentlegal.gov.uk

Interested parties

Interested parties can find out whether a case has been challenged by contacting the Administrative Court. If you do not know the name of the likely claimant, you will need to provide the Court with the date of the decision and the full title of the order or appeal (including the name of the relevant local authority). The more information you can provide, the easier it will be for the Court to identify it. If a person wants to become a formal party to the Court proceedings then they can make representations to the Court under Part 19 of the Civil Court Procedure Rules 1998 (see overleaf). Should you wish to become a formal party you may wish to seek legal assistance or ask the court for guidance. To be a party to a judicial review a person would have to have a sufficient interest.

Frequently asked questions

"Who can make a challenge?" – In principle, a person must have a sufficient interest (sometimes called standing) in the decision to be able to bring a challenge. This can include statutory objectors, applicants, interested parties as well as the relevant local authority.

"Who is notified of the challenge?" – In Part 8 statutory claims, the claimant will serve proceedings on the named defendants. In Judicial Review claims the claimant will serve proceedings on the persons the challenge is against and anyone else they have identified as an interested party. The Planning Inspectorate will not notify anyone of the challenge. The claimant would be expected to identify and include the Council as an interested party. If the defendant and any interested party are aware that another party should be made aware of the proceedings as an interested party they should include the details of that party in the acknowledgment of service.

"How much is it likely to cost me?" – A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though. It is usual for the costs of a successful party to be paid by the losing party, therefore if the challenge fails you will usually be ordered to pay the defendant's costs as well as having to cover your own. If the challenge is successful, the defendant may be ordered to pay your reasonable legal costs. However, the court ultimately has the power to issue whatever costs it sees fit.

"How long will it take?" – This can vary considerably.

"Do I need to get legal advice?" – You do not have to be legally represented in Court but it is advisable to do so, as you may have to deal with complex points of law.

"Will a successful challenge reverse the order decision?" – Not necessarily. The Court will either quash the order or quash the decision. Where the decision is quashed, we will be required to re-determine the order. However, an Inspector may come to the same decision again, but for different or expanded reasons. Where the order is quashed, jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

"Will a successful challenge reverse the appeal decision?"

Yes. We will be required to re-determine the appeal. However, an Inspector may come to the same decision again, but for different or expanded reasons.

"If the decision is re-determined will it be by the same Inspector?"

The same Inspector will be used unless there is a good reason not to do so.

"What can I do if my challenge fails?" – The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

"What happens if the order is quashed?" – Jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

"What can I do if I am not listed as an interested party on the challenge but want to be involved?" – You can contact the Administrative Court and ask to be listed as an interested party (see Part 54.1(2) of the Civil Procedure Rules 1998 for the definition of an interested party).

"Can the Planning Inspectorate or the Department for Environment, Food and Rural Affairs, provide me with advice about making a challenge?" – Neither the Planning Inspectorate nor the Department for Environment, Food and Rural Affairs can advise you on a challenge or on becoming a formal party – you should seek advice from your own legal adviser.

"Where will I find the claim forms?"

The forms are available on the Administrative Court's website at www.justice.gov.uk/courts/procedure/civil/forms. The Part 8 Claim form is number N208 and the form for making a Judicial Review is N461. Guidance notes for claimants are also available.

"Where do I send the completed claim forms?"

They need to be filed with the Administrative Court at The Royal Courts of Justice, Queen's Bench Division, Strand, London, WC2A 2LL. They also need to be served on The Government Legal Department, One Kemble Street, London, WC2B 4TS.

Further Information

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2A 2LL, telephone 020 7947 6000. Information can also be found on their website at www.justice.gov.uk/courts/rcj-rolls-building/administrative-court. Please see the attached flow charts setting out the main steps to be followed for both the statutory and judicial review procedures (please note that these charts do not contain the specific timelines for submitting evidence).

Inspection of order documents

We normally keep most case files for one year after the decision is issued, after which they are destroyed. You can inspect order documents at our Bristol office, by contacting the case officer dealing with the case, or our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey, it may be more convenient to arrange to view the documents at the offices of the relevant local authority.

CONTACT INFORMATION

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Information: <https://www.gov.uk/guidance/object-to-a-public-right-of-way-order>

General Enquiries

Phone: 0303 444 5000

E-mail: rightsofway2@planninginspectorate.gov.uk

Welsh Office

The Planning Inspectorate
Crown Buildings
Cathays Park
Cardiff CF10 3NQ
Phone: 0292 082 3866

E-mail: Wales@planninginspectorate.gov.uk

Complaints

Please refer to our website: <https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure> Phone: 0303 444 5884

The Government Legal Department

102 Petty France
Westminster
London
SW1H 9GL
Phone: 020 7210 3000 Website:
<https://www.gov.uk/government/organisations/governmentlegal-department>

Administrative Court

Royal Courts of Justice
Queen's Bench Division
Strand
London
WC2A 2LL
Phone: 020 7947 6655
Website:
www.justice.gov.uk/courts/rollsbldg/administrative-court Email for enquiries:
administrativecourtoffice.generaloffice@hmcts.x.gov.uk

Parliamentary and Health Service Ombudsman

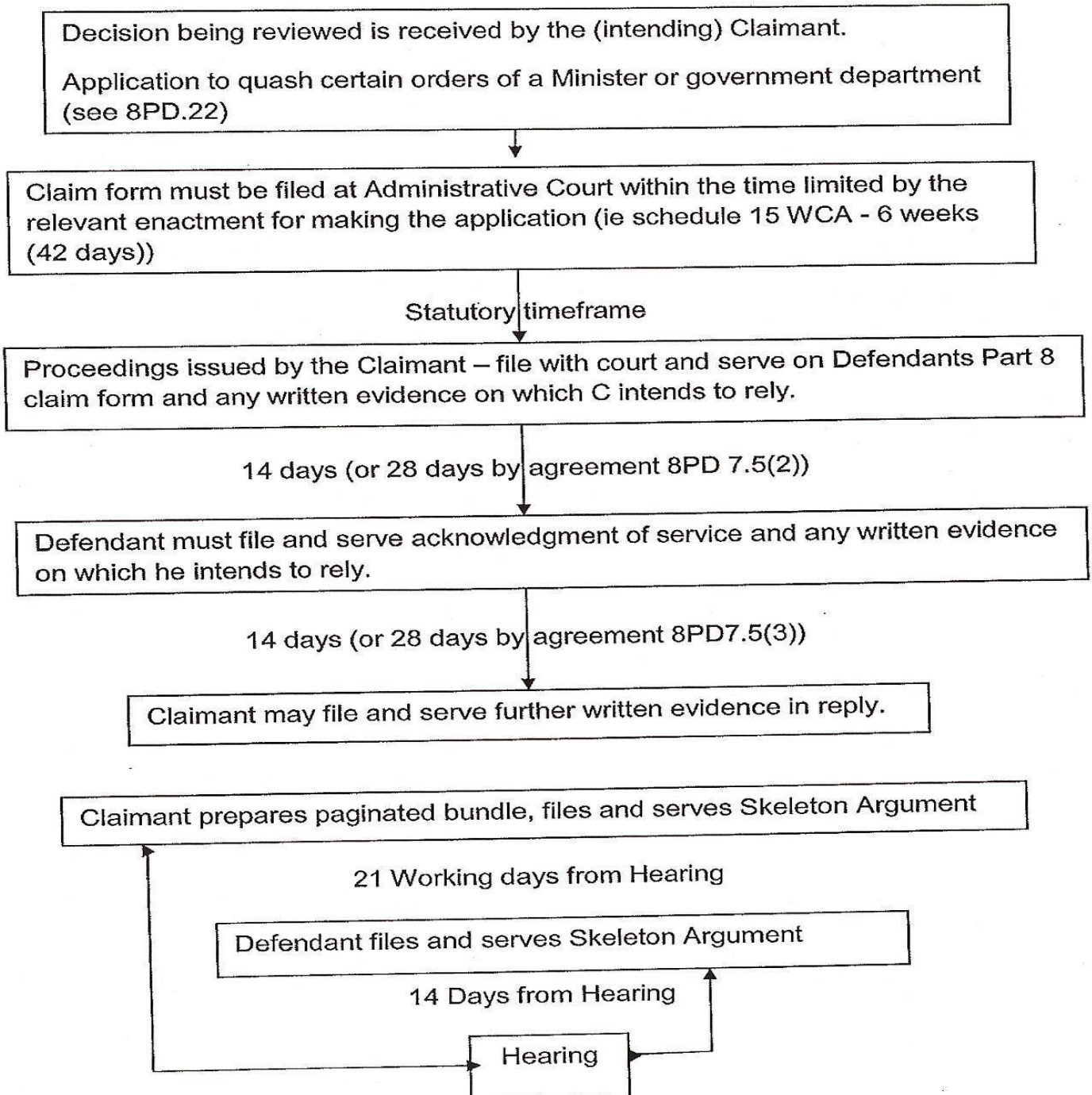
Parliamentary and health Service Ombudsman
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London SW1P 4QP

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Timetable for Part 8 Claims



Timetable for Judicial Review

