

## APPENDIX D

### EXTRACTS FROM SUPREME COURT ACT (SENIOR COURT ACT) 1981

The Supreme Court Act 1981 will be renamed as the Senior Courts Act 1981 when Pt 3 of the Constitutional Reform Act 2005 is brought into force (which is expected in October 2009). That will herald the start of work of the new Supreme Court of the United Kingdom. The change of name is intended to avoid confusion. D-001

#### Section 29: Orders of mandamus, prohibition and certiorari

(1) The orders of mandamus, prohibition and certiorari shall be known instead as mandatory, prohibiting and quashing orders respectively. D-002

(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.

(2) Every such order shall be final, subject to any right of appeal therefrom.

(3) In relation to the jurisdiction of the Crown Court, other than its jurisdiction in matters relating to trial on indictment, the High Court shall have all such jurisdiction to make [mandatory, prohibiting or quashing orders] as the High Court possesses in relation to the jurisdiction of an inferior court.

(3A) The High Court shall have no jurisdiction to make [mandatory, prohibiting or quashing orders] in relation to the jurisdiction of a court-martial in matters relating to—

- (a) trial by court-martial for an offence, or
- (b) appeals from a Standing Civilian Court;

and in this subsection “court-martial” means a court-martial under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957.

(3A) The High Court shall have no jurisdiction to make mandatory, prohibiting or quashing orders in relation to the jurisdiction of the Court Martial in matters relating to—

- (a) trial by the Court Martial for an offence; or
- (b) appeals from the Service Civilian Court.

(4) The power of the High Court under any enactment to require justices of the peace or a judge or officer of a county court to do any act relating to the duties of their respective offices, or to require a magistrates' court to state a case for the opinion of the High Court, in any case where the High Court formerly had by virtue of any enactment jurisdiction to make a rule absolute, or an order, for any of those purposes, shall be exercisable by mandatory order.

(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.

(6) In subsection (3) the reference to the Crown Court's jurisdiction in matters relating to trial on indictment does not include its jurisdiction relating to orders under section 17 of the Access to Justice Act 1999.

### Section 31: Application for judicial review

D-003

(1) An application to the High Court for one or more of the following forms of relief, namely—

- (a) a mandatory, prohibiting or quashing order;
- (b) a declaration or injunction under subsection (2); or
- (c) an injunction under section 30 restraining a person not entitled to do so from acting in an office to which that section applies,

shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.

(2) A declaration may be made or an injunction granted under this subsection any case where an application for judicial review, seeking that relief, has been made and the High Court considers that, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by [mandatory, prohibiting or quashing orders];
- (b) the nature of the persons and bodies against whom relief may be granted by such orders; and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration to be made or of the injunction to be granted, as the case may be.

(3) No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(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.

(5) <sup>1</sup>If, on an application for judicial review, the High Court quashes the decision to which the application relates, it may in addition—

- (a) remit the matter to the court, tribunal or authority which made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the High Court, or
- (b) substitute its own decision for the decision in question.

(5A) But the power conferred by subsection (5)(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 which the court or tribunal could have reached.

(5B) Unless the High Court otherwise directs, a decision substituted by it under subsection (5)(b) has effect as if it were a decision of the relevant court or tribunal.

(6) Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant—

- (a) leave for the making of the application; or
- (b) any relief sought on the application,

if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.

<sup>1</sup> Subsections (5), (5A) and (5B) inserted by Tribunals, Courts and Enforcement Act 2007 s.141.

**Section 31A: Transfer of judicial review applications to Upper Tribunal<sup>2</sup>**

- D-004 (1) This section applies where an application is made to the High Court—
- (a) for judicial review, or
  - (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(l)(a) and (b);
  - (b) permission to apply for relief under section 31(l)(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.

<sup>2</sup> Inserted by Tribunals, Courts and Enforcement Act 2007 s.19.