PART 42 Judicial Review

PART 42

Scope of this part and interpretation 42.1 - 42.2

42.1

This Part contains rules about judicial review.

42.2

In this Part:

(1) a 'claim for judicial review' means a claim to review the lawfulness of a decision, action or failure to act in relation to the exercise of a public function;

(2) 'the judicial review procedure' means the Part 8 procedure as modified by this Part; and

(3) 'interested party' means any person (other than the claimant and defendant) who is directly affected by the claim.

When this part must be used 42.3

42.3

The judicial review procedure must be used in a claim for judicial review where the claimant is seeking:

(1) a mandatory order;

(2) a prohibiting order; or

(3) a quashing order.

When this Part may be used 42.4 - 42.5

42.4

The judicial review procedure may be used in a claim for judicial review where the claimant is seeking:

(1) a declaration; or

(2) an injunction .

42.5

A claim for judicial review may include a claim for damages , restitution or the recovery of a sum due, but may not seek such a remedy alone.

Permission required 42.6

42.6

The Court's permission to proceed is required in a claim for judicial review .

Time limit for filing claim form 42.7 - 42.9

42.7

The claim form must be filed:

(1) promptly; and

(2) in any event not later than 3 months after the grounds to make the claim first arose.

42.8

The time limit in Rule 42.7 may not be extended by agreement between the parties.

42.9

Rule 42.7 does not apply when any other enactment specifies a shorter time limit for making the claim for judicial review .

Claim form 42.10 - 42.16

42.10

In addition to the matters set out in Rule 8.8 (contents of the claim form) the claimant must also state:

(1) the name and address of any person he considers to be an interested party ;

(2) that he is requesting permission to proceed with a claim for judicial review ; and

(3) any remedy (including any interim remedy) he is claiming.

42.11

Where the claim for judicial review relates to proceedings in a tribunal , any other parties to those proceedings must be named in the claim form as interested parties under Rule 42.10 (and therefore served with the claim form under Rule 42.17(2)).

42.12

The claim form must include or be accompanied by:

(1) a detailed statement of the claimant's grounds for bringing the claim for judicial review ;

(2) a statement of the facts relied on;

(3) any application to extend the time limit for filing the claim form; and

(4) any application for directions.

42.13

In addition, the claim form must be accompanied by:

(1) any written evidence in support of the claim or application to extend time;

(2) a copy of any order that the claimant seeks to have quashed;

(3) where the claim for judicial review relates to a decision of a tribunal , an approved copy of the reasons for reaching that decision;

(4) copies of any documents on which the claimant proposes to rely;

(5) copies of any relevant statutory material; and

(6) a list of essential documents for advance reading by the Court (with page references to the passages relied on).

42.14

Where it is not possible to file all the above documents, the claimant must indicate which documents have not been filed and the reasons why they are not currently available.

42.15

The claimant must file two copies of a paginated and indexed bundle containing all the documents referred to in Rules 42.12 and 42.13.

42.16

Attention is drawn to Rules 8.23 and 8.29.

Service of claim form 42.17 - 42.18

42.17

The claim form must be served on:

(1) the defendant ; and

(2) unless the Court otherwise directs, any person the claimant considers to be an interested party ;

within 7 days after the date of issue.

42.18

Except as required by Rules 42.30 or 42.34, the Court will not serve documents and service must be effected by the parties.

Acknowledgment of service 42.19 - 42.24

42.19

Any person served with the claim form who wishes to take part in the judicial review must file an acknowledgment of service in Form P42/01 in accordance with Rules 42.20 to 42.23.

42.20

Any acknowledgment of service must be:

(1) filed not more than 21 days after service of the claim form; and

(2) served on:

(a) the claimant ; and

(b) subject to any direction under 42.17(2), any other person named in the claim form;

as soon as practicable and, in any event, not later than 7 days after it is filed.

42.21

The time limits under Rule 42.20 may not be extended by agreement between the parties.

42.22

The acknowledgment of service :

(1) must:

(a) where the person filing it intends to contest the claim, set out a summary of his grounds for doing so; and

(b) state the name and address of any person the person filing it considers to be an interested party ; and

(2) may include or be accompanied by an application for directions.

42.23

Rule 11.6 does not apply.

42.24

Attention is drawn to Rule 8.14 and to Rule 11.8.

Failure to file acknowledgment of service 42.25 - 42.27

42.25

Where a person served with the claim form has failed to file an acknowledgment of service in accordance with Rule 42.19, he:

(1) may not take part in a hearing to decide whether permission should be given unless the Court allows him to do so; but

(2) provided he complies with Rule 42.41 or any other direction of the Court regarding the filing and service of:

(a) detailed grounds for contesting the claim or supporting it on additional grounds; and

(b) any written evidence;

may take part in the hearing of the judicial review.

42.26

Where that person takes part in the hearing of the judicial review, the Court may take his failure to file an acknowledgment of service into account when deciding what order to make about costs.

42.27

Rule 8.16 does not apply.

Permission given 42.28 - 42.29

42.28

Where permission to proceed is given, the Court may also give directions.

42.29

Directions under Rule 42.28 may include a stay of proceedings to which the claim relates and directions about serving the claim form and any evidence on other persons.

Service of order giving or refusing permission 42.30 - 42.31

42.30

The Court will serve:

(1) the order giving or refusing permission; and

(2) any directions;

on:

(a) the claimant ;

(b) the defendant ; and

(c) any other person who filed an acknowledgment of service .

42.31

An order refusing permission or giving it subject to conditions or on certain grounds only must set out or be accompanied by the Court's reasons for coming to that decision.

Permission decision without a hearing 42.32 - 42.37

42.32

The Court will normally consider the question of permission without a hearing.

42.33

Rules 42.34 and 42.37 apply where the Court , without a hearing:

(1) refuses permission to proceed; or

(2) gives permission to proceed:

(a) subject to conditions; or

(b) on certain grounds only.

42.34

The Court will serve its reasons for making the decision when it serves the order giving or refusing permission in accordance with Rule 42.30.

42.35

The claimant may not appeal, but may request the decision to be reconsidered at a hearing.

42.36

A request under Rule 42.35 must be filed within 7 days after service of the reasons under Rule 42.34.

42.37

The claimant , defendant and any other person who has filed an acknowledgment of service will be given at least 2 days' notice of the hearing date.

Permission hearing 42.38 - 42.39

42.38

Neither the defendant nor any other interested party need attend a hearing on the question of permission unless the Court directs otherwise.

42.39

Where the defendant or any party does attend a hearing, the Court will not normally make an order for costs against the claimant .

Defendant etc. may not apply to set aside 42.40

42.40

Neither the defendant nor any other person served with the claim form may apply to set aside an order giving permission to proceed.

Response 42.41 - 42.43

42.41

A defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve:

(1) detailed grounds for contesting the claim or supporting it on additional grounds; and

(2) any written evidence;

within 35 days after service of the order giving permission.

42.42

Where the party filing the detailed grounds intends to rely on documents not already filed, he must file a paginated bundle of those documents when he files the detailed grounds.

42.43

The following rules do not apply:

(1) Rules 8.25 and 8.26 (defendant to file and serve written evidence at the same time as acknowledgment of service); and

(2) Rules 8.27 and 8.28 (claimant to file and serve any reply within 14 days).

Where claimant seeks to rely on additional grounds 42.44 - 42.45

42.44

The Court’s permission is required if a claimant seeks to rely on grounds other than those for which he has been given permission to proceed.

42.45

Where the claimant intends to apply to rely on additional grounds at the hearing of the claim for judicial review , he must give notice to the Court and to any other person served with the claim form no later than 7 clear days before the hearing (or the warned date where appropriate).

Evidence 42.46 - 42.47

42.46

Rule 8.30 does not apply.

42.47

No written evidence may be relied on unless:

(1) it has been served in accordance with any:

(a) Rule under this Part; or

(b) direction of the Court ; or

(2) the Court gives permission.

Court’s powers to hear any person 42.48 - 42.54

42.48

Any person may apply for permission:

(1) to file evidence; or

(2) make representations at the hearing of the judicial review.

42.49

An application under Rule 42.48 should be made promptly.

42.50

Where all the parties consent, the Court may deal with an application under Rule 42.48 without a hearing.

42.51

Where the Court gives permission for a person to file evidence or make representations at the hearing of the claim for judicial review , it may do so on conditions and may give case management directions.

42.52

An application for permission should be made by letter to the Registry , identifying the claim, explaining who the applicant is and indicating why and in what form the applicant wants to participate in the hearing.

42.53

If the applicant is seeking a prospective order as to costs, the letter should say what kind of order and on what grounds.

42.54

Applications to intervene must be made at the earliest reasonable opportunity, since it will usually be essential not to delay the hearing.

Skeleton arguments 42.55 - 42.57

42.55

The claimant must file and serve a skeleton argument not less than 21 working days before the date of the hearing of the judicial review.

42.56

The defendant and any other party wishing to make representations at the hearing of the judicial review must file and serve a skeleton argument not less than 14 working days before the date of the hearing of the judicial review (or the warned date).

42.57

Skeleton arguments must contain:

(1) a time estimate for the complete hearing, including delivery of judgment ;

(2) a list of issues;

(3) a list of the legal points to be taken (together with any relevant authorities with page references to the passages relied on);

(4) a chronology of events (with page references to the bundle of documents (see Rule 42.58);

(5) a list of essential documents for the advance reading of the Court (with page references to the passages relied on) (if different from that filed with the claim form) and a time estimate for that reading; and

(6) a list of persons referred to.

Bundle of documents to be filed 42.58 - 42.59

42.58

The claimant must file a paginated and indexed bundle of all relevant documents required for the hearing of the judicial review application when he files his skeleton argument.

42.59

The bundle must also include those documents required by the defendant and any other party who is to make representations at the hearing.

Agreed final order 42.60 - 42.63

42.60

If the parties agree about the final order to be made in a claim for judicial review , the claimant must file at the Court a document (with 2 copies) signed by all the parties setting out the terms of the proposed agreed order together with a short statement of the matters relied on as justifying the proposed agreed order and copies of any authorities or statutory provisions relied on.

42.61

The Court will consider the documents referred to in Rule 42.60 and will make the order if satisfied that the order should be made.

42.62

If the Court is not satisfied that the order should be made, a hearing date will be set.

42.63

Where the agreement relates to an order for costs only, the parties need only file a document signed by all the parties setting out the terms of the proposed order.

Judicial Review may be decided without a hearing 42.64

42.64

The Court may decide the claim for judicial review without a hearing where all the parties agree.

Court's powers in respect of quashing orders 42.65 - 42.67

42.65

Rule 42.66 applies where the Court makes a quashing order in respect of the decision to which the claim relates.

42.66

The Court may:

(1) remit the matter to the decision-maker; and

(2) direct it to reconsider the matter and reach a decision in accordance with the judgment of the Court .

42.67

Where the Court considers that there is no purpose to be served in remitting the matter to the decision-maker it may, subject to any statutory provision, take the decision itself.

Transfer 42.68

42.68

The Court may:

(1) order a claim to continue as if it had not been started under this Part; and

(2) where it does so, give directions about the future management of the claim.