

Criminal Justice and Courts Bill

Fact Sheet: Procedures for challenges to decisions under the planning Acts

Introduction

1. Legislation currently provides a right for certain people to apply to the High Court to challenge certain planning decisions.
2. Clause 71 and Sch 11 concern challenges by way of “statutory review”. Statutory review is similar to, but distinct from, judicial review.
3. Clause 72 is a consistency measure that apply to the judicial review and statutory review cases specified in the clause.

Procedure for challenging planning decisions

What is the current position?

4. Sections 287 and 288 of the Town and Country Planning Act 1990, section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990, section 22 of the Planning (Hazardous Substances) Act 1990, and section 113 of the Planning and Compulsory Purchase Act 2004 provide the only mechanism by which an aggrieved person can challenge certain planning orders, decisions, documents and directions. Challenges may be brought in the High Court on the basis that the order or action concerned was beyond the power conferred by the Act, or that the procedural requirements in relation to the order or action were not complied with.
5. At present, any application to the High Court proceeds directly to a full hearing regardless of merit. This contrasts with judicial review, where leave of the court must be obtained before a challenge can be brought.
6. Where an award of costs is made in planning and listed buildings cases which may be challenged via section 288 of the Town and Country Planning Act 1990 and section 63 of the Planning (Listed Building and Conservation Areas) Act 1990 respectively, the award of costs must be challenged through a separate application for judicial review.

What is proposed?

7. The Government considers that introducing a permission stage for these challenges will allow unmeritorious cases to be dealt with more quickly. Scarce court resources can then be better focused on determining those cases with merit more quickly. It will also ensure consistency with the equivalent permission stage for planning judicial reviews.
9. Clause 71 and Sch 11 create a requirement for leave of the High Court to be obtained before a challenge can be brought under section 288 of the Town and Country Planning Act 1990 and in four additional types of case, as set out above at paragraph 4. The clause, as amended at Report stage, also ensures the leave requirement for all cases applies in both England and Wales.
10. The clause also provides that an award of costs relating to a planning or listed buildings case can be challenged by way of statutory review under section 288 of the Town and

Country Planning Act 1990 and section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990 respectively.

Clause 72: Harmonising the periods of time for challenges

What is the current position?

11. Most planning challenges must be brought within six weeks of the decision or other action that is being challenged. However, the day from which the six week period begins to run is not consistent across the planning Acts. Some include the day on which the decision is taken, whereas others start from the day after.

What is proposed?

12. The Government considers that it would be beneficial for claimants and the courts to harmonise the start period for the calculation of the six week challenge period to the day after the decision date. This will avoid any inconsistency in interpretation of the start point. Clause 72 applies to challenges brought under sections 61N and 106C of the Town and Country Planning Act 1990 and sections 13 and 118 of the Planning Act 2008. As part of the changes being made through Sch11, a similar provision will apply to challenges under section 113 of the Planning and Compulsory Purchase Act 2004.