

21K. 申请司法复核

- (1) 向原讼法庭要求批予以下一种或多种于一种济助的申请——
 - (a) 履行义务令、禁止令或移审令；
 - (b) 根据第21J条授予禁制一名无权担当该条所适用的职位的人担当该职位的强制令，
 须按照法院规则以一项称为申请司法复核的程序作出。
- (2) 要求作出宣布或授予强制令(并非第(1)款所述的强制令)的申请，可按照法院规则以申请司法复核的方式提出，而原讼法庭在接获该申请后，如在考虑到——
 - (a) 可藉履行义务令、禁止令或移审令批予济助的事实的性质；
 - (b) 可藉该等命令批予济助所针对的人及团体的性质；及
 - (c) 有关案件的所有情况，
 认为作出宣布或授予强制令(视属何情况而定)是公正及适宜的，可作出所要求的宣布或授予所要求的强制令。
- (3) 除非已按照法院规则取得原讼法庭的许可，否则不得提出申请司法复核，而除非法院认为申请人与申请所关涉的事宜有充分利害关系，否则不得批予提出该项申请的许可。
- (4) 在有人申请司法复核时，如符合以下情况，原讼法庭可将损害赔偿判给申请人——
 - (a) 申请人已在其中加入就申请所关涉事宜引致的损害赔偿而提出的申索；及
 - (b) 法院信纳，假若申请人是在其申请提出时开展诉讼而他又在该诉讼中提出该申索，则本可获判给损害赔偿。
- (5) 如在接获寻求移审令的申请司法复核后，原讼法庭撤销该项申请所关涉的决定，则原讼法庭可将有关事宜发回有关的法院、审裁处或主管当局，并指示须按照原讼法庭的裁断而重新考虑有关事宜和达成决定。
- (6) 凡原讼法庭认为在提出一项申请司法复核时有不当的延迟，如法院认为批予所寻求的济助相当可能会对任何人造成实质困难或在实质上对任何人的权利造成损害，或会有损良好的行政运作，可拒绝批予——
 - (a) 提出该项申请的许可；或
 - (b) 该项申请所寻求的任何济助。
- (7) 第(6)款不损害任何具有限制提出司法复核申请时限的效力的成文法则或法院规则。

(由1987年第52号第18条增补。由1998年第25号第2条修订)
[比照 1981 c. 54 s. 31 U.K.]

21K. Application for judicial review

- (1) An application to the Court of First Instance for one or more of the following forms of relief—
 - (a) an order of mandamus, prohibition or certiorari;
 - (b) an injunction under section 21J 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) An application for a declaration or an injunction (not being an injunction mentioned in subsection (1)) may be made in accordance with rules of court by way of an application for judicial review, and on such an application the Court of First Instance may grant the declaration or injunction claimed if it considers that, having regard to—
 - (a) the nature of the matters in respect of which relief may be granted by orders of mandamus, prohibition or certiorari;
 - (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 the injunction to be granted, as the case may be.
- (3) No application for judicial review shall be made unless the leave of the Court of First Instance 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 Court of First Instance may award damages to the applicant if—
 - (a) he has joined with his application a claim for damages arising from any matter to which the application relates; and
 - (b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he would have been awarded damages.
- (5) If, on an application for judicial review seeking an order of certiorari, the Court of First Instance quashes the decision to which the application relates, the Court of First Instance may remit the matter to the court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the Court of First Instance.
- (6) Where the Court of First Instance 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.

(Added 52 of 1987 s. 18. Amended 25 of 1998 s. 2)
[cf. 1981 c. 54 s. 31 U.K.]