

## Challenging the Decision in the High Court

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### ***Challenging the decision***

Once an Order 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 an order 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 misinterpreted the law or that some relevant criteria had not been met. If a mistake has been made and the Court considers that it might have affected the decision, it will either quash the decision and return the case to us for re-determination or it will quash the order completely.

### ***Different order types***

The Act under which the Order Decision has been **confirmed** will specify the conditions under which the Order Decision can be challenged, and is thus a statutory right to challenge a confirmed Order. There is no statutory right to challenge where an Order is **not confirmed**; in these circumstances a judicial review 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***

Anyone 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 quash the order. The Inspectorate will not be asked to re-determine the case.

**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***

Anyone 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 quash the order.

**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

If an order made under any of the Acts is not confirmed, an aggrieved person can only challenge the decision by applying for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information below). If the challenge is successful, the court will either quash the order, or quash the decision and ask the Inspectorate to re-determine the case.

**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 Order decision, unless the Court extends this period.**

**Important Note** - This leaflet is intended for guidance only. 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).

### 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, interested parties as well as applicants and Order Making Authorities.

**"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, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

**"How long will it take?"** - This can vary considerably. Although many challenges are decided within six months, some can take longer.

**"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 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.

**"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.

### Contacting us

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#### Public Services Ombudsman for Wales

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(General enquiries only)

*"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.

### ***Inspection of order documents***

We normally keep case files for one year after the Order Decision is issued, after which they are destroyed. You can inspect order documents here at the Welsh Assembly Government building in Cathays Park Cardiff by contacting us on 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 would involve a long or difficult journey, it may be more convenient to arrange to view the documents at the offices of the Order Making Authority.

### ***Further information***

Further advice about making a High Court challenge can be obtained from the Administrative Court at Cardiff Civil Justice Centre, 2 Park Street, Cardiff CF10 1ET, telephone 029 20376400; Website: <http://www.justice.gov.uk/>



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