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# **THE ROLE OF JUDICIAL REVIEW IN UK CONSTITUTIONAL JURISPRUDENCE**

AUTHORED BY - SHABIHA DIWAN

University of Bradford

## **Abstract**

The terms of secondary legislation can have a dramatic effect on the rights of individuals. Judicial review allows individuals to challenge the lawfulness of decisions or actions by public authorities. It is a means to ensure that such decisions are made within the scope of the authority granted and comply with legal standards. This approach allows courts to declare a decision or law unlawful without immediate effect, giving the government time to rectify the issue before the ruling takes full effect. As the relationship between the state and individuals continues to evolve, judicial review will likely remain a critical instrument for upholding the rule of law and protecting individual rights in the UK.s

**Keyword:** approach, legislation, individuals, judicial review, significant

## **Introduction**

Secondary legislation is a significant part of the legal landscape of the United Kingdom. However, whether due to a lack of parliamentary time, a desire to reduce scrutiny, a wish to be able to amend provisions rapidly, or to maintain executive control, much significant law-making takes place through the use of statutory instruments, regulations, rules, orders, or other species of secondary legislation. It is no longer the case, if it ever was, that primary legislation sets out the substance of the law, with only the details, procedure, or technicalities set out in delegated legislation. The terms of secondary legislation can have a dramatic effect on the rights of individuals.

At the same time, political scrutiny of much delegated legislation is modest, or in practice non-existent. In large part, this is unsurprising: if one of the main reasons for the growth of secondary legislation is due to a lack of parliamentary time, criticism of secondary legislation for not having taken up more parliamentary time risks seeming naïve. No doubt there could be

improvements to scrutiny of delegated legislation and greater questioning of whether the use of secondary legislation to address a particular matter is constitutionally appropriate, but these approaches are unlikely to provide a complete solution. Much secondary legislation is not considered by Parliament at all.

## Aspects of Judicial Review in the UK

### Definition and Purpose:

Judicial review allows individuals to challenge the lawfulness of decisions or actions by public authorities. It is a means to ensure that such decisions are made within the scope of the authority granted and comply with legal standards.

### Purpose of Judicial Review:

- **Supervising Public Authorities:**

Judicial review is a way of challenging the lawfulness of decisions or actions made by public bodies, such as government departments, local councils, and other organizations exercising public functions.

- **Not About the 'Right' Decision:**

It's important to understand that judicial review is not about whether a decision was 'right' or 'wrong' in the eyes of the court. Instead, it focuses on the **process** by which the decision was made.

- **Upholding the Rule of Law:**

Judicial review plays a crucial role in upholding the rule of law by ensuring that public bodies act within their powers and follow fair procedures.

### Scope and Limitations:

Judicial review in the UK primarily addresses the decisions of public officials and bodies, as well as secondary (delegated) legislation. It does not extend to primary legislation (Acts of Parliament), reflecting the doctrine of Parliamentary sovereignty.

### Procedure:

- **Permission Required:**

First, the claimant needs to obtain permission from the court to bring a judicial review claim. This involves demonstrating that there are arguable grounds for challenging the

decision.

- **Time Limits:**

There are strict time limits for applying for judicial review. Generally, the claim must be filed within three months of the decision being made.

- **Court's Powers:**

If the court finds the decision unlawful, it can quash the decision, order the public body to reconsider it, or grant other remedies.

### **A potential solution: the use of suspended quashing orders**

The use of suspended quashing orders has been proposed as a potential solution to balance judicial review and governmental authority in the UK legal system. This approach allows courts to declare a decision or law unlawful without immediate effect, giving the government time to rectify the issue before the ruling takes full effect. The introduction of suspended quashing orders represents a compromise between judicial oversight and government efficiency. It offers flexibility in judicial review while ensuring that legal decisions do not unduly disrupt governance. However, its effectiveness will depend on how courts apply this power in practice.

### **Conclusion**

In conclusion, judicial review plays a crucial role in UK constitutional jurisprudence, acting as a vital check on the power of public authorities. It upholds the rule of law by ensuring that decisions are made within legal boundaries, rationally, and following fair procedures. While not an appeal on the merits of a decision, it safeguards against abuse of power and protects individual rights.

Judicial review has evolved over time, adapting to changes in the political and social landscape. It has been instrumental in shaping administrative law and promoting good governance. However, it is not without limitations. It is primarily concerned with the process of decision-making, not the outcome. Access to judicial review can also be restricted by factors like standing and time limits.

Despite these limitations, judicial review remains a cornerstone of the UK's uncodified constitution. It provides a mechanism for citizens to hold public bodies accountable and ensures

that those in power exercise their authority within the bounds of the law. As the relationship between the state and individuals continues to evolve, judicial review will likely remain a critical instrument for upholding the rule of law and protecting individual rights in the UK.s

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