



Suspended
Quashing Orders
and Prospective
only Remedies






General Comments

- Discretionary Power
 - Broadly welcome the change
 - Fits with recent case law in the Supreme Court looking at remedies
 - May provide stronger remedies
- Mandatory Component
 - More problematic
 - Courts are likely to find ways so as not to require a mandatory suspended or prospective only quashing order



Discretionary Power

- 8) In deciding whether to exercise a power in subsection (1), the court must have regard to
- (a) the nature and circumstances of the relevant defect;
 - (b) any detriment to good administration that would result from exercising or failing to exercise the power;
 - (c) the interests or expectations of persons who would benefit from the quashing of the impugned act;
 - (d) the interests or expectations of persons who have relied on the impugned act;
 - (e) so far as appears to the court to be relevant, any action taken or proposed to be taken, or undertaking given, by a person with responsibility in connection with the impugned act;
 - (f) any other matter that appears to the court to be relevant
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Fit with Supreme Court

- *R ((TN) Vietnam) v Secretary of State for the Home Department* [2021] UKSC 41
- *R (Majera) v Secretary of State for the Home Department* [2021] UKSC 46

The complexity and variability of the practical consequences of unlawful administrative acts necessitate a more flexible approach than is afforded by a binary distinction between what is valid and what is void. Judges have therefore expressed reservations not only about the use of words such as “void” and “null”, but more importantly about reasoning in the field of administrative law which allows the logic of those concepts to override important values underpinning the court’s supervisory jurisdiction, such as the public interest in legal certainty, orderly administration, and respect for the rule of law. [32]

Stronger Remedies

- *R (Plan B Earth Ltd) v Secretary of State for Transport* [2020] EWCA Civ 214
 - ANPS had not fully complied with the Planning Act as the Secretary of State had not taken account of a formulation of government policy in a national policy statement. The Paris Agreement should have been taken into account when preparing the ANPS.
 - Granted a declaration here as appropriate relief
 - Could this be the type of case where a suspended quashing order may be better, or a prospective only remedy?



*R (Majera) v Secretary of
State for the Home
Department* [2021] UKSC 46

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- the public interest in legal certainty,
- orderly administration, and
- respect for the rule of law. [32]

Possible Criteria

Judicial Review and Courts Bill

8) In deciding whether to exercise a power in subsection (1), the court must have regard to

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Possible situations

- Breach of international obligations:
 - *R (Ahmed) v Her Majesty's Treasury (No 2)* [2010] UKSC 5
- Domino effect:
 - *R ((TN) Vietnam) v Secretary of State for the Home Department* [2021] UKSC 41
- Compelling public reasons – economic cost??
 - *Reilly and Hewstone v Secretary of State for Work and Pensions* [2013] UKSC 68 and [2014] EWHC 2182

Mandatory requirement

(9) If—

(a) the court is to make a quashing order, and

(b) it appears to the court that an order including provision under subsection (1) would, as a matter of substance, offer adequate redress in relation to the relevant defect, the court must exercise the powers in that subsection accordingly unless it sees good reason not to do so.

(10) In applying the test in subsection (9)(b), the court is to take into account, in particular, anything within subsection (8)(e).

Possible Interpretation

- Sections 31 (2A) – (2C) Senior Courts Act 1981
 - Must refuse remedy
 - If highly likely that the outcome for the applicant would not have been substantially different
 - UNLESS exceptional public interest
- *R (Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214
 - ‘Parliament has not altered the fundamental relationship between the courts and the executive...Courts should also not lose sight of their fundamental function, which is to maintain the rule of law’ [273]
 - Defect in the decision-making process (not taking Paris Convention into account) and not willing to see this as not making a substantial difference
 - And triggered the public policy exception

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(10) In applying the test in subsection (9)(b), the court is to take into account, in particular, anything within subsection (8)(e).