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Committee Stage: Tuesday 2 November 2021

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## Judicial Review and Courts Bill (Amendment Paper)

This document lists all amendments tabled to the Judicial Review and Courts Bill. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

★ New Amendments.

New Amendments: 25 to 44

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### Resolution of the Programming Sub-Committee

*The Programming Sub-Committee appointed by the Speaker in respect of the Bill agreed the following Resolution at its meeting on Monday 1 November (Standing Order 83C):*

That—

1. the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 2 November) meet—
  - (a) at 2.00 pm on Tuesday 2 November;
  - (b) at 11.30 am and 2.00 pm on Thursday 4 November;
  - (c) at 9.25 am and 2.00 pm on Tuesday 9 November;
  - (d) at 9.25 am and 2.00 pm on Tuesday 16 November;
  - (e) at 11.30 am and 2.00 pm on Thursday 18 November;
  - (f) at 2.00 pm on Tuesday 23 November;
2. the Committee shall hear oral evidence in accordance with the following Table:

Date	Time	Witness
Tuesday 2 November	Until no later than 10.25 am	Sir Stephen Laws, KCB, QC; Professor Jason Varuhas, University of Melbourne; Professor Richard Ekins, University of Oxford
Tuesday 2 November	Until no later than 11.25 am	Professor David Feldman, University of Cambridge; Dr Jonathan Morgan, University of Cambridge

<b>Date</b>	<b>Time</b>	<b>Witness</b>
Tuesday 2 November	Until no later than 2.45 pm	Richard Leiper QC; André Rebello OBE, Senior Coroner for Liverpool and the Wirral and Hon Secretary of the Coroners' Society of England and Wales
Tuesday 2 November	Until no later than 3.30 pm	Public Law Project; Law Society; Liberty
Tuesday 2 November	Until no later than 4.30 pm	Inquest; Justice; Amnesty
Tuesday 2 November	Until no later than 5.00 pm	Dr Joe Tomlinson, University of York; The Law Society of Scotland; Aidan O'Neill QC

3. proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 15; Schedule 1; Clauses 16 and 17; Schedule 2; Clause 18; Schedule 3; Clauses 19 to 29; Schedule 4; Clauses 30 to 32; Schedule 5; Clauses 33 to 48; new Clauses; new Schedules; remaining proceedings on the Bill;
4. the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 23 November.

James Cartlidge has given notice of his intention to make a motion in the terms of the Resolution of the Programming Sub-Committee (Standing Order No. 83C).

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James Cartlidge

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.

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James Cartlidge

That, at this and any subsequent meeting at which oral evidence is to be heard, the Committee shall sit in private until the witnesses are admitted.

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Andy Slaughter 12

Clause 1, page 1, line 8, leave out from “order” to the end of line 9

**Member’s explanatory statement**

This amendment would remove the provision for making quashing orders prospective-only.

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Andy Slaughter 13

Clause 1, page 1, line 9, at end insert—

“(1A) Provision under subsection (1) may only be made if the court considers that it is in the interest of justice to do so.”

**Member’s explanatory statement**

This amendment would limit the remedies in subsection (1) to where the court considers it is in the interests of justice.

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Andy Slaughter 14

Clause 1, page 1, line 9, at end insert—

“(1A) Provision under subsection (1) may only be made in exceptional circumstances.”

**Member’s explanatory statement**

This amendment would limit the use of the remedies in subsection (1) to exceptional circumstances.

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Andy Slaughter 39

★ Clause 1, page 1, leave out line 9

**Member’s explanatory statement**

This amendment removes the statutory power for courts to award prospective only quashing orders and preserves the status quo in relation to the retrospective effect of quashing orders.

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Andy Slaughter 35

★ Clause 1, page 1, leave out lines 10 and 11

**Member’s explanatory statement**

This amendment removes the ability to make a suspended or prospective-only quashing order subject to conditions.

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Andy Slaughter 16

Clause 1, page 1, line 13, after “subsection (2)” insert “and to subsection (5A)”

**Member’s explanatory statement**

See explanatory statement to Amendment 15.

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Andy Slaughter 17

Clause 1, page 1, line 16, after “subsection (2)” insert “and to subsection (5A)”

**Member’s explanatory statement**

See explanatory statement to Amendment 15.

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Andy Slaughter 40

★ Clause 1, page 1, leave out lines 15 to 18

**Member’s explanatory statement**

See explanatory statement to Amendment 39.

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Andy Slaughter 18

Clause 1, page 2, line 1, at beginning insert “Subject to subsection (5A),”

**Member’s explanatory statement**

See explanatory statement to Amendment 15.

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Andy Slaughter 41

★ Clause 1, page 2, line 2, leave out “or (4)”

**Member’s explanatory statement**

See explanatory statement to Amendment 39.

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Andy Slaughter 15

Clause 1, page 2, line 4, at end insert—

“(5A) Where the impugned act consists in the making or laying of delegated legislation (the impugned legislation), subsection (4) does not prevent any person charged with an offence under or by virtue of any provision of the impugned legislation raising the validity of the impugned legislation as a defence in criminal proceedings.

(5B) Subsection (4) does not prevent a court or tribunal awarding damages, restitution or other compensation for loss caused to the claimant by the impugned act before the date on which the quashing takes effect.”

**Member’s explanatory statement**

This amendment would protect collateral challenges by ensuring that if a prospective only or suspended quashing order is made, the illegality of the delegated legislation can be relied on.

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Andy Slaughter

19

Clause 1, page 2, line 12, leave out “must” and insert “may”

**Member’s explanatory statement**

This amendment would make clear that the factors which the court considers are a matter for its judgment.

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Andy Slaughter

32

★ Clause 1, page 2, line 13, at end insert—

“(aa) any detriment to the environment that would result from exercising or failing to exercise the power;

(ab) whether exercising or failing to exercise the power would constitute an effective remedy for the claimant;”

**Member’s explanatory statement**

This amendment would require the court to have regard to any detriment to the environment that would result from the use of any suspended or prospective-only quashing order.

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Andy Slaughter

36

★ Clause 1, page 2, leave out lines 14 and 15

**Member’s explanatory statement**

This amendment removes one of the factors to be given consideration by the courts when deciding whether to award a suspended quashing order or quashing order with limited or no retrospective effect. The removal of this factor is intended to rebalance the factors to be given consideration so as not to disadvantage the claimant unfairly.

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Andy Slaughter 37

- ★ Clause 1, page 2, line 17, at end insert “including, but not limited to, the interests and expectations of a claimant in receiving a timely remedy”

**Member’s explanatory statement**

This amendment would make an addition to one of the factors to be given consideration by the courts when deciding whether to award a suspended quashing order or quashing order with limited or no retrospective effect. This amendment would make it clear that the provision of a timely remedy to the claimant is a factor to be given consideration.

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Andy Slaughter 38

- ★ Clause 1, page 2, line 19, at end insert “which are to be identified by the defendant”

**Member’s explanatory statement**

This amendment would require the defendant to identify what the interests and expectations of persons who have relied on the impugned act are and to explain these to the court.

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Andy Slaughter 20

Clause 1, page 2, line 21, leave out “or proposed to be taken”

**Member’s explanatory statement**

This amendment would remove the requirement to take account of actions which the public body proposes or intends to take but has not yet taken.

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Andy Slaughter 33

- ★ Clause 1, page 2, leave out lines 14 to 22

**Member’s explanatory statement**

This amendment would reduce the requirement to consider non-legal factors in assessing the legality of decisions made.

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Andy Slaughter 21

Clause 1, page 2, line 23, at end insert—

“(8A) In deciding whether there is a detriment to good administration under subsection (8)(b), a court must have regard to the principle that good administration is administration which is lawful.”

**Member’s explanatory statement**

This amendment would clarify that the principle of good administration includes the need for administration to be lawful.

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Andy Slaughter

34

- ★ Clause 1, page 2, line 27, leave out “adequate redress” and insert “effective remedy to the claimant”

**Member’s explanatory statement**

This amendment would specify that the remedy should be for the claimant.

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Anne McLaughlin  
Angela Crawley

27

- ★ Clause 1, page 2, line 29, leave out from “court” to end of line 30 and insert “may exercise the powers in that subsection accordingly”

**Member’s explanatory statement**

This amendment would remove the requirement for a court to issue a suspended or prospective quashing order when the provisions of section 1(9)(b) apply.

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Andy Slaughter

23

Clause 1, page 2, leave out lines 24 to 32 and insert—

“(9) Provision may only be made under subsection (1) if and to the extent that the court considers that an order making such provision would, as a matter of substance, offer an effective remedy to the Claimant and any other person materially affected by the impugned act in relation to the relevant defect.”

**Member’s explanatory statement**

The amendment would remove the presumption and insert a precondition of the court’s exercise of the new remedial powers that they would offer an effective remedy to the claimant and any other person material affected by the impugned act.

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Andy Slaughter

24

Clause 1, page 2, leave out lines 24 to 32 and insert—

“(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 an effective remedy to the Claimant and any other person materially affected by the impugned act 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.”

**Member’s explanatory statement**

This amendment would require an effective remedy to the claimant and any other person materially affected by the impugned act.

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Andy Slaughter

22

Clause 1, page 2, leave out lines 24 to 32

**Member's explanatory statement**

This amendment would remove the presumption in favour of using the new remedial powers in clause 1 and protect the discretion of the court.

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Anne McLaughlin

Angela Crawley

Andy Slaughter

25

★ Page 1, line 3, leave out Clause 1

**Member's explanatory statement**

This amendment would remove Clause 1 of the Bill.

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Andy Slaughter

43

★ Clause 2, page 3, line 19, at end insert—

“(1A) Notwithstanding subsection (1), subsections (2) and (3) shall not apply where the party refused permission (or leave) to appeal by the Upper Tribunal was the appellant before the First-tier Tribunal and—

- (a) that party was without legal representation and the appeal before the First-tier Tribunal was not within legal aid scope;
- (b) that party was not of full age or capacity;
- (c) the appeal before the First-tier Tribunal was not an in-country appeal;
- (d) the appeal before the First-tier Tribunal was subject to any accelerated procedure;
- (e) the decision of the First-tier Tribunal was subject to any statutory restriction or direction concerning how that tribunal was to evaluate the credibility of the appellant or the evidence before it; or
- (f) the application to the Upper Tribunal raises a point of law concerning the construction of any statutory provision for interpretation of an international agreement.”

**Member's explanatory statement**

This amendment is contingent on the interpretative provisions in Amendment 44. This amendment would provide a further list of exceptions to the ousting of the High Court's jurisdiction that is proposed by Clause 2.



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Andy Slaughter

42

★ Clause 2, page 3, leave out lines 34 to 37 and insert—

- “(c) that decision or the decision against which the Upper Tribunal has refused permission (or leave) to appeal is vitiated by any—
- (i) bad faith, or
  - (ii) fundamental breach of the principles of natural justice.”

**Member’s explanatory statement**

This amendment would expand the current exception in Clause 2 to ensure it applies to any bad faith or fundamental breach of natural justice.

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Andy Slaughter

44

★ Clause 2, page 4, line 8, at end insert—

““accelerated procedure” means any procedure for which procedure rules permit or require that less time is provided than is the case for another party before the tribunal bringing an appeal under the same statutory right of appeal; and includes an accelerated detained appeal under section 106A(1) of the Nationality, Immigration and Asylum Act 2002;

an appeal is “not an in-country appeal” if the appellant is only permitted to bring or continue the appeal from outside the United Kingdom;

a party is “not of full age or capacity” if that party is—

- (a) a child, or
- (b) requires the assistance of a third party to understand the procedure or decision of, or issues before, the First-tier Tribunal and communicate effectively with that tribunal (whether or not that assistance is provided save to the extent to which the person requires an interpreter and one is provided)

an appeal is “not within legal scope” if representation before the First-tier Tribunal does not fall within civil legal services under section 9 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“interpreter” means a person whose sole function in proceedings before the tribunal is to translate between the English language and another language spoken by the appellant;

“legally represented” means having legal services as defined by section 8 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which services must be provided by a person who is not prohibited from providing them by any statute, court order or decision of any relevant professional standards body;

“relevant professional standards body” means a designated professional body as defined by section 86 of the Immigration and Asylum Act 1999 or such other body in England and Wales as may be designated by the Lord Chancellor, in Scotland as may be designated by the Scottish Ministers or in

Northern Ireland as may be designated by the Department of Justice in Northern Ireland;

“an international agreement” includes the 1951 UN Convention relating to the Status of Refugees.”

**Member’s explanatory statement**

This amendment is contingent on Amendment 43. This amendment would provide interpretative provisions for Amendment 43.

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Anne McLaughlin  
Angela Crawley  
Andy Slaughter

26

★ Page 3, line 14, leave out Clause 2

**Member’s explanatory statement**

This amendment would remove Clause 2 of the Bill.

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James Cartlidge

1

Clause 7, page 18, line 10, leave out lines 10 to 20 and insert—

“(1) This section has effect in the circumstances set out in section 17A(7) (indication of not guilty plea by accused at hearing), 17B(2)(d) (indication of not guilty plea by accused’s representative at hearing) and 22(2B) (scheduled offence found at hearing to be triable either way after indication of not guilty plea).”

**Member’s explanatory statement**

This amendment and Amendments 5, 6, 7, 10, and 11 remove drafting inconsistencies to do with the applicability of section 17BA of the Magistrates’ Courts Act 1980 as inserted by clause 7.

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James Cartlidge

2

Clause 9, page 22, line 34, at end insert—

“(1A) In section 17B (power to proceed with indication of plea hearing in absence of disorderly but represented accused)—

- (a) for the heading substitute “Power to proceed if accused does not appear to give indication as to plea”;

(b) for subsection (1) substitute—

“(1A) This section has effect where—

- (a) a hearing is held for the purposes of section 17A,
- (b) the accused does not appear at the hearing,
- (c) any of the conditions in subsections (1B) to (1E) is met, and
- (d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.

(1B) This condition is that a legal representative of the accused is present at the hearing and signifies the accused’s consent to the court’s proceeding in the accused’s absence.

(1C) This condition is that—

- (a) a legal representative of the accused is present at the hearing, and
- (b) the court does not consider that there is an acceptable reason for the accused’s failure to attend.

(1D) This condition is that—

- (a) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed, that notice of the hearing was served on the accused within what appears to the court to be a reasonable time before its date, and
- (b) the court does not consider that there is an acceptable reason for the accused’s failure to attend.

(1E) This condition is that—

- (a) the accused has appeared on a previous occasion to answer the charge, and
- (b) the court does not consider that there is an acceptable reason for the accused’s failure to attend.

(1F) This section also has effect where—

- (a) a hearing is held for the purposes of section 17A,
- (b) the accused appears at the hearing,
- (c) the court considers that by reason of the accused’s disorderly conduct before the court it is not practicable for the hearing to be conducted in the accused’s presence, and
- (d) the court is satisfied that it is not contrary to the interests of justice to proceed in the absence of the accused.”;
- (c) in subsection (2), for the words before paragraph (a) substitute “If a legal representative of the accused is present at the hearing—”;
- (d) after subsection (4) insert—

“(5) If no legal representative of the accused is present at the hearing—

- (a) the court is to proceed in accordance with section 18(1), and
- (b) the accused is to be taken for the purposes of section 20 to have indicated that the accused would (if the offence were to proceed to trial) plead not guilty.””

**Member's explanatory statement**

This amendment allows a magistrates' court to proceed if an accused person does not appear at the "plea before venue" hearing in a wider range of circumstances (equivalent to those provided for in relation to allocation hearings by clause 9(3)).

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James Cartlidge

3

Clause 9, page 23, leave out lines 33 and 34

**Member's explanatory statement**

This amendment allows a magistrates' court to carry on with an allocation hearing in the absence of the accused if the accused disrupts the hearing, even if the accused is not legally represented.

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James Cartlidge

4

Clause 9, page 23, line 41, at end insert—

“(1G)This section also has effect where a magistrates' court determines that section 17B(5) applies and proceeds straight away to a hearing in accordance with section 18(1).”

**Member's explanatory statement**

This amendment allows a magistrates' court to move straight to the allocation stage if (under the provision inserted by Amendment 2) it decides at the plea-before-venue stage to proceed in the absence of the accused or a representative, without fresh consideration of the merits of proceeding in the absence of the accused.

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James Cartlidge

5

Schedule 2, page 65, line 26, leave out from "17BA" to end of line 27

**Member's explanatory statement**

See the explanatory statement for Amendment 1.

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James Cartlidge

6

Schedule 2, page 65, line 28, leave out paragraph (d)

**Member's explanatory statement**

See the explanatory statement for Amendment 1.

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James Cartlidge 7

Schedule 2, page 65, line 32, leave out "18(1)" and insert "17BA"

**Member's explanatory statement**

See the explanatory statement for Amendment 1.

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James Cartlidge 8

Schedule 2, page 65, line 32, at end insert—

"(b) in subsection (3), for "and section 18(1) below" substitute ", section 18(1) and section 20"."

**Member's explanatory statement**

This amendment makes a clarification of section 17B(3) of the Magistrates' Court Act 1980 for consistency with the amendments to that section proposed in Amendment 2.

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James Cartlidge 9

Schedule 2, page 66, line 22, at end insert "; or

(c) section 17B has effect and no legal representative of the accused is present at the hearing referred to in that section."

**Member's explanatory statement**

This amendment is consequential on Amendment 2.

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James Cartlidge 10

Schedule 2, page 68, line 7, after "accused" insert ", or a legal representative of the accused,"

**Member's explanatory statement**

See the explanatory statement for Amendment 1.

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James Cartlidge 11

Schedule 2, page 68, line 8, leave out "subsections (2) to (6) of"

**Member's explanatory statement**

See the explanatory statement for Amendment 1.

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Anne McLaughlin 28  
Angela Crawley

- ★ Clause 21, page 37, line 28, leave out from “(3)” to end of line 29 and insert “(3), (4) and (4A)”

**Member’s explanatory statement**

This amendment is consequential to Amendment 29.

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Anne McLaughlin 29  
Angela Crawley

- ★ Clause 21, page 38, line 6, at end insert—

“(4A) The Lord President of the Court of Session is to appoint one person with experience in and knowledge of the Scottish legal system.”

**Member’s explanatory statement**

This amendment would require the Online Procedure Committee to include a person with experience in and knowledge of the Scottish legal system, appointed by the Lord President of the Court of Session.

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Anne McLaughlin 30  
Angela Crawley

- ★ Clause 47, page 54, line 34, at end insert—

“(7) Notwithstanding the provisions above, this Act shall not come into force until the Lord Chancellor has laid before Parliament a written statement confirming that no provision in this Act contravenes Article 6 or Article 13 of the European Convention on Human Rights.

(8) The statement under subsection (7) must be laid before Parliament within three months of this Act being passed.”

**Member’s explanatory statement**

This amendment would prevent any Act resulting from this Bill from coming into force until the Lord Chancellor confirms, via a written statement to Parliament, that none of its provisions contravene ECHR Article 6 (right to fair trial) or ECHR Article 13 (right to effective remedy).

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Anne McLaughlin  
Angela Crawley

31

★ Clause 47, page 54, line 34, at end insert—

“(7) Notwithstanding the provisions above, nothing in this Act relating to Scotland shall come into force without a consenting resolution being passed by the Scottish Parliament.”

**Member’s explanatory statement**

This amendment would require the consent of the Scottish Parliament to be given to any provisions in the Bill that relate to Scotland for those provisions to come into force.

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## Order of the House

**[26 October 2021]**

That the following provisions shall apply to the Judicial Review and Courts Bill:

**Committal**

1. The Bill shall be committed to a Public Bill Committee.

**Proceedings in Public Bill Committee**

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Tuesday 23 November 2021.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

**Proceedings on Consideration and Third Reading**

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and Third Reading.

**Other proceedings**

7. Any other proceedings on the Bill may be programmed.
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