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Committee Stage: Thursday 18 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 Any withdrawn amendments are listed at the end of the document.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.

This document should be read alongside the Chair's provisional Selection and Grouping, which sets out the order in which the amendments will be debated.

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Andy Slaughter

69

Clause 37, page 49, line 33, at end insert—

“(4) After subsection (2), insert—

“(2A) The coroner is not to decide that the investigation should be discontinued unless—

- (a) the coroner is satisfied that no outstanding evidence that is relevant to the death is available,
- (b) the coroner has considered whether Article 2 of the European Convention on Human Rights is engaged and is satisfied that it is not,
- (c) there are no ongoing investigations by public bodies into the death,
- (d) the coroner has invited and considered representations from any interested person known to the coroner named at section 47 (2)(a) or (b) of this Act, and
- (e) all interested persons known to the coroner named at section 47 (2)(a) or (b) of this Act consent to discontinuation of the investigation.”

**Member's explanatory statement**

This amendment would ensure that certain safeguards are met before a coroner can discontinue an investigation into a death.

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Andy Slaughter

70

Clause 37, page 49, line 33, at end insert—

“(4) After subsection (2), insert—

“(2B) If a coroner is satisfied that subsection (1) applies and has complied with the provisions at subsection (2A)(a) to (d), prior to discontinuing the investigation, the coroner must—

- (a) inform each interested person known to the coroner named at section 47(2)(a) or (b) of this Act of the coroner’s intended decision and provide a written explanation as to the reasons for this intended decision,
- (b) explain to each interested person known to the coroner named at section 47(2)(a) or (b) of this Act that the investigation may only be discontinued if all such interested persons consent, and
- (c) invite each interested person known to the coroner named at section 47(2)(a) or (b) of this Act to consent to the discontinuation of the investigation.””

**Member’s explanatory statement**

This amendment would ensure that family members and personal representatives of the deceased are provided with the coroner’s provisional reasons for why the coroner considers that the investigation should be discontinued, to ensure that family members can make an informed decision as to whether to consent to the discontinuation.

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Andy Slaughter

71

Clause 37, page 49, line 33, at end insert—

“(4) Omit subsection (4) and insert—

“(4) A senior coroner who discontinues an investigation into a death under this section must—

- (a) as soon as practicable, notify each interested person known to the coroner named at section 47(2)(a) or (b) of this Act of the discontinuation of the investigation and provide a written explanation as to why the investigation was discontinued, and
- (b) if requested to do so in writing by an interested person, give to that person as soon as practicable a written explanation as to why the investigation was discontinued.””

**Member’s explanatory statement**

This amendment would ensure that family members are informed in writing for the reasons for a discontinuation of an investigation, without being required to request this information.

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Andy Slaughter

72

Clause 37, page 49, line 33, at end insert—

“(4) Section 43 of the Coroners and Justice Act 2009 (Coroners regulations) is amended as follows.

(5) In subsection (3) after paragraph (a) insert—

- “(aa) provision for the establishment of an appeals process for interested persons who disagree with the decision to discontinue an investigation under the provision in section 4 of this Act.””

**Member’s explanatory statement**

The purpose of this amendment is to ensure the Lord Chancellor establishes an appeal process for families who disagree with the decision to discontinue an investigation.

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Andy Slaughter

73

Clause 38, page 50, line 18, after “hearing” insert—

- “(e) the coroner has considered the views of any of the interested persons named at section 47(2)(a) or (b) of this Act who are known to the coroner,  
(f) all of the interested persons named at section 47(2)(a) or (b) of this Act who are known to the coroner consent to a hearing in writing.”

**Member’s explanatory statement**

This amendment will ensure that inquests are not held without a hearing if that is against the wishes of the deceased’s family.

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Andy Slaughter

74

Clause 39, page 51, line 10, at end insert—

- “(2B) Coroner rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must not allow the conduct of hearings wholly or partly by sound only.”

**Member’s explanatory statement**

The purpose of this amendment is to prevent an inquest from being conducted by telephone or other means which are audio only.

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Andy Slaughter

75

Clause 39, page 51, line 10, at end insert—

- “(2C) Coroner rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must provide for

all interested persons to have to give their agreement to the conduct of hearings wholly or partly by way of electronic transmission of sounds or images.”

**Member’s explanatory statement**

The purpose of this amendment is to ensure the agreement of families is secured before an inquest is conducted remotely.

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Andy Slaughter

76

Clause 39, page 51, line 10, at end insert—

“(2D) Coroners rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must specify that, other than for any pre-inquest hearing, such a hearing, may only be held if—

- (a) all interested persons known to the coroner named at section 47(2)(a) or (b) of this Act 2009 consent to such a hearing,
- (b) the coroner is satisfied, and continues to be satisfied until the conclusion of any such hearing, that such a hearing is in the interests of justice, considering all the circumstances of the case,
- (c) the coroner has considered the likely complexity of the inquest, and
- (d) the coroner has considered the ability of interested persons known to the coroner to engage effectively with the hearing by way of electronic transmission of sounds or images.”

**Member’s explanatory statement**

This amendment would ensure that certain safeguards are met before a remote inquest hearing is held.

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Andy Slaughter

77

Clause 39, page 51, line 10, at end insert—

“(2E) Coroners rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must require coroners to set out to all interested persons the reasons for why such a hearing, other than for any pre-inquest hearing, is to be held—

- (a) at the conclusion of any pre-inquest hearing where any such hearing is ordered, if applicable, and
- (b) in writing as soon as practicable after a decision has been taken for such a hearing to be held and prior to the commencement of the hearing.”

**Member’s explanatory statement**

This amendment would ensure that interested persons are provided with the reasons for any remote inquest hearings.

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Andy Slaughter

78

Clause 39, page 51, line 10, at end insert—

“(2F) Coroners rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must provide for such hearings to comply with, and be subject to, Rule 11 of The Coroners (Inquests) Rules 2013 (*Inquest hearings to be held in public*).”

**Member’s explanatory statement**

This amendment would ensure that remote inquest hearings and pre-inquest hearings are still held in a manner accessible to the public.

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Andy Slaughter

79

Clause 39, page 51, line 10, at end insert—

“(4) Before this Clause may be commenced, the Lord Chancellor must—

- (a) commission an independent review, including a consultation, of the potential impact of the conduct of inquest hearings wholly or partly by way of electronic transmission of sounds or images, considering in particular the impact on the participation of interested persons, and open justice,
- (b) lay before Parliament the report and findings of such independent review, and
- (c) provide a response explaining whether and how such issues which have been identified would be mitigated.”

**Member’s explanatory statement**

This amendment would require a review, including a consultation, of the potential impact of remote inquest hearings before Clause 39 comes into effect.

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Alex Cunningham

96

Clause 42, page 52, line 34, at end insert—

“(7) Before introducing the changes outlined in section (1), the Secretary of State must consult with relevant stakeholders on the impact of the proposals.”

**Member's explanatory statement**

This amendment would require the government to consult on the abolition of local justice areas before any changes are introduced.

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Anne McLaughlin  
Angela Crawley

30

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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Alex Cunningham

NC1

To move the following Clause—

**“Review of the Single Justice Procedure**

- (1) Before the Commencement of this Act, the Secretary of State must commission a review and publish a report on the effectiveness of the Single Justice Procedure.
- (2) A review under subsection (1) must consider—

- (a) the transparency of the Single Justice Procedure in line with the principle of open justice,
  - (b) prosecution errors under the Single Justice Procedure and what redress victims of errors have,
  - (c) the suitability of the use of the Single Justice Procedure for Covid-19 offences,
  - (d) the proportion of defendants who do not respond to a Single Justice Procedure Notice and the reasons why defendants do not respond,
  - (e) the suitability of the Single Justice Procedure for people living with disabilities or neurodivergent conditions,
  - (f) the possible introduction of training for prosecutorial bodies who use the Single Justice Procedure on identifying and supporting individuals with vulnerabilities or disabilities.
- (3) The Secretary of State must lay a copy of the report before Parliament.”

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Alex Cunningham

NC2

To move the following Clause—

**“Online Procedural Assistance**

- (1) Online Procedural Assistance, must be made available and accessible to any party or potential party to proceedings governed by Online Procedure Rules that requires it. In delivering this duty, the Lord Chancellor must have due regard to the intersection of digital exclusion with other factors, such as age, poverty, disability and geography and deliver support services accordingly.
- (2) It must include assistance to enable such a party or potential party to have a reasonable understanding of the nature of the proceedings, the procedure applicable under Online Procedure Rules and of how to access and navigate such procedure. To this effect, it will provide both advice and technical hardware, as appropriate, and will provide assistance to such individuals throughout the course of their proceedings.
- (3) Anyone who requires Online Procedural Assistance must have the option of receiving it either via remote appointments or in-person appointments at a site local to them.
- (4) Online Procedural Assistance must include, for a party or potential party whose first language is not English, assistance, by interpretation or translation as appropriate, in a language that is familiar to the party or potential party.
- (5) The delivery of Online Procedural Assistance must be evaluated at yearly intervals by an independent evaluation team. To assist in these evaluations, data must be routinely collected relating to the protected characteristics of those using the service, outcomes of cases that used Online Procedural Assistance and the frequency and location of the appointments provided. This must also be made publicly available.”

**Member’s explanatory statement**

This new clause clarifies the nature of online procedural assistance.

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Sir John Hayes  
Tom Hunt

NC3

To move the following Clause—

**“Exclusion of review of the Investigatory Powers Tribunal**

- (1) Section 67 of the Regulation of Investigatory Powers Act 2000 is amended as follows.
- (2) Leave out subsection (8) and insert—

“(8) Subject to section 67A and subsections (9) and (10), determinations, awards, orders and other decisions of the Tribunal (including decisions as to whether the Tribunal has jurisdiction and purported determinations, awards, orders and other decisions) shall be final and shall not be subject to appeal or be liable to be questioned in any court.
- (9) In particular—
  - (a) the Tribunal is not to be regarded as having exceeded its powers by reason of any error of fact or law made in reaching any decision; and
  - (b) the supervisory jurisdiction of the courts does not extend to, and no application or petition for judicial review may be made or brought in relation to, any decision of the Tribunal.
- (10) Subsections (8) and (9) do not apply so far as the decision involves or gives rise to any question as to whether the Tribunal—
  - (a) has a valid case before it;
  - (b) is or was properly constituted for the purpose of dealing with the case; and
  - (c) is acting or has acted in bad faith, with actual bias or corruption or in some other way that constitutes a fundamental procedural defect.
- (11) No error of fact or law made by the Tribunal in reaching any decision is to be construed as relevant to the question.”
- (3) The amendment made by subsection (2) applies to determinations, awards, orders and other decisions of the Tribunal (including purported determinations, awards, orders and other decisions) made before the day on which this section comes into force.”

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Sir John Hayes  
Tom Hunt

NC4

To move the following Clause—

**“Exclusion of judicial review of prorogation**

- (1) A court or tribunal may not question—
  - (a) the scope or exercise of Her Majesty’s prerogative power to prorogue Parliament;

- (b) any decision or purported decision relating to that power; or
  - (c) any ministerial advice or action relating to that power.
- (2) For the purposes of Article 9 of the Bill of Rights 1689, a prorogation or purported prorogation of Parliament is a proceeding in Parliament.
- (3) Nothing in this section amends any statutory limitation on Her Majesty's power to prorogue Parliament or affects any statutory power or duty to recall Parliament if prorogued."

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Sir John Hayes  
Tom Hunt

NCS

To move the following Clause—

**"Evidence in judicial review proceedings**

- (1) Unless there are compelling reasons to the contrary, no court shall—
- (a) permit oral evidence to be elicited in judicial review proceedings; or
  - (b) order public bodies or any person exercising or entitled to exercise public authority to disclose evidence in anticipation of or in the course of judicial review proceedings,
- (2) In relation to any judicial review proceedings, or in anticipation of any judicial review proceedings, in which a public body or a person exercising or entitled to exercise public authority argues, or indicates its intention to argue, that—
- (a) the proceedings concern a matter that is non-justiciable, or
  - (b) that an enactment excludes or limits judicial review,
- no evidential duty arises on that body or person until a court determines that the matter is justiciable and that no enactment excludes or limits judicial review.
- (3) In subsection (2), "evidential duty" means any principle of law or rule of court touching the identification of relevant facts or reasoning underlying the measure or other matter in respect of which judicial review is sought, or any order of the court to adduce oral or other evidence.
- (4) Nothing in subsection (2) or (3) affects an evidential duty that may arise in relation to judicial review proceedings other than in relation to a measure or other matter that is argued to be non-justiciable or to be excluded from judicial review by legislation."

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Sir John Hayes  
Tom Hunt

NC6

To move the following Clause—

**“Exercise of powers and duties**

After section 12 of the Interpretation Act 1978, insert—

**“12A Exercise of powers and duties**

- (1) Where the provision of any enactment confers a power or imposes a duty on any Minister of the Crown it is implied, unless the contrary intention appears, that the Carltona principle applies.
- (2) Where the provision of any enactment confers a power or imposes a duty on a Minister of the Crown it is implied, unless the contrary intention appears, that the power may be exercised or the duty carried out on the Minister’s behalf by any person for whose actions the Minister, pursuant to his office, takes responsibility.
- (3) Where the provision of any enactment confers a power or imposes a duty on a Minister of the Crown it is implied, unless the contrary intention appears, that the Minister is not required personally to exercise the power or carry out the duty.
- (4) Where the provision of any enactment provides (in whatever terms) that the instrument by which any power or duty is to be exercised or carried out by a Minister of the Crown may be signed by a specified office holder, that enactment is to be construed, unless express provision is made to the contrary, as authorising that office holder to exercise or carry out that power or duty without consulting that Minister in relation to that particular case.
- (5) In this section a “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.
- (6) This section applies to enactments contained in Acts and subordinate legislation whenever passed or made (and also to any Northern Ireland legislation (within the meaning of section 24)) whenever passed or made.””

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Sir John Hayes  
Tom Hunt

NC7

To move the following Clause—

**“Parliamentary sovereignty and the rule of law**

After section 1 of the Constitutional Reform Act 2005, insert—

**“1A Parliamentary sovereignty and the rule of law**

- (1) Nothing in this Act limits in any way the doctrine of parliamentary sovereignty.
- (2) The principle of the rule of law to which section 1 refers does not—

- (a) allow the construction of an Act in any way that departs from the actual intention of the enacting Parliament; or
  - (b) support any exercise of any jurisdiction for the purpose of qualifying or questioning the exercise of parliamentary sovereignty in the enactment of any Act.
- (3) Section 1 is to be read subject to this section.””

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Sir John Hayes  
Tom Hunt

NC8

To move the following Clause—

**“Non-justiciability of parliamentary accountability**

- (1) No court or tribunal shall hold an act, or a failure to act, unlawful on the grounds that it is incompatible with, or limits, or otherwise interferes with, parliamentary accountability.
- (2) No court or tribunal shall have jurisdiction to consider—
  - (a) whether either House of Parliament or any committee of either House has given adequate or appropriate consideration to any matter,
  - (b) the grounds or premises on which either House or any such committee has made any decision, or
  - (c) whether any information or opinion provided to either House or any such committee for the purposes of its consideration of any matter was truthful, accurate or complete, or in the case of an opinion, reasonable, soundly based or sincere.
- (3) Nothing in subsection (2) changes or limits the criminal law.
- (4) This section is without prejudice to the generality of Article IX of the Bill of Rights 1689.”

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Sir John Hayes  
Tom Hunt

NC9

To move the following Clause—

**“Non-justiciability of the political constitution**

- (1) No court has jurisdiction to decide—
  - (a) whether a constitutional convention exists;
  - (b) what conduct a constitutional convention requires or forbids; or
  - (c) whether any person has complied with, or failed to comply with, a constitutional convention.
- (2) No court may question whether a Minister of the Crown has complied with the Ministerial Code or whether the Prime Minister has upheld or enforced the Code.
- (3) Nothing in this section prohibits a court from considering or recognising a constitutional convention if necessary in order to determine a question of law.

- (4) The question whether a person's actions were or would be in accordance with or compatible with a constitutional convention is not a question of law."

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Andy Slaughter

NC10

To move the following Clause—

**"Publicly funded legal representation for bereaved people at inquests**

- (1) Section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (2) In subsection (1), after "(4)" insert "or (7)."
- (3) After subsection (6), insert—
  - "(7) This subsection is satisfied where—
    - (a) The services consist of advocacy at an inquest where the individual is an Interested Person pursuant to section 47(2)(a), (b), or (m) of the Coroners and Justice Act 2009 because of their relationship to the deceased; and
    - (b) One or more public authorities are Interested Persons in relation to the inquest pursuant to section 47(2) of the Coroners and Justice Act 2009 or are likely to be designated as such.
- (8) For the purposes of this section "public authority" has the meaning given by section 6(3) of the Human Rights Act 1998.""

**Member's explanatory statement**

This new clause would ensure that bereaved people (such as family members) are entitled to publicly funded legal representation in inquests where public bodies (such as the police or a hospital trust) are legally represented.

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Andy Slaughter

NC11

To move the following Clause—

**"Removal of the means test for legal help prior to inquest hearing**

- (1) Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (2) In paragraph 41, after sub-paragraph (3), insert—
 

"(4) For the purposes of this paragraph, the "Financial resources" provisions at section 21 (and in The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 do not apply.""

**Member's explanatory statement**

This new clause would remove the means test for legal aid applications for legal help for bereaved people at inquests.

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Andy Slaughter

NC12

To move the following Clause—

**“Eligibility for bereaved people to access legal aid under existing provisions**

- (1) Section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (2) In subsection (4)(a), after “family”, insert—

“or where the individual is an Interested Person pursuant to section 47(2)(m) of the Coroners and Justice Act 2009 because of their relationship with the deceased.”
- (3) In subsection (6), after paragraph (c), insert—

“(d) or they fall within any of the groups named at section 47(2)(a), (b) or (m) of the Coroners and Justice Act 2009.”
- (4) Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (5) In paragraph 41, after sub-paragraph (3)(c), insert—

“(d) or they fall within any of the groups named at section 47(2)(a), (b) or (m) of the Coroners and Justice Act 2009.””

**Member’s explanatory statement**

This new clause would bring the Legal, Aid, Sentencing and Punishment of Offenders Act 2012 into line with the definition of family used in the Coroners and Justice Act 2009.

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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.

## Order of the Committee

[2 November 2021]

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
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.
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## Notices Withdrawn

The following notices were withdrawn on 2 November 2021:

39 (duplicate of 12)

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