
Committee Stage: Monday 1 November 2021

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 Any withdrawn amendments are listed at the end of the document.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.

☆ Amendments which will comply with the required notice period at their next appearance.

James Cartlidge

That the Bill be considered in the following order, namely: 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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)).

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.

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.

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.

James Cartlidge

6

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

Member's explanatory statement

See the explanatory statement for Amendment 1.

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.

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.

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.

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.

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.

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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