
Committee Stage: Friday 5 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 Any withdrawn amendments are listed at the end of the document.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.

★ New Amendments.

New Amendments: 45 to 58 and NC1

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.

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.

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.

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.

Alex Cunningham

45

★ Clause 3, page 4, line 28, at end insert—

“(1) Before this Clause may be commenced, the Secretary of State must—

- (a) commission an independent review of the potential impact, efficacy, and operational issues on defendants and the criminal justice system of the automatic online conviction and penalty for certain summary offences as set out in Clause 3 of this Act;
- (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 of Clause 3 of this Bill before it is introduced.

Alex Cunningham

46

★ Clause 3, page 4, line 28, at end insert—

“(1) Before this Clause may be commenced, the Secretary of State must publish—

- (a) an equalities assessment concerning the impact the automatic online conviction and penalty process will have on individuals

- with protected characteristics, as defined in the Equality Act 2010; and
- (b) an impact assessment on the effective participation for defendants with vulnerabilities, and must lay such assessment before Parliament.”

Member’s explanatory statement

This amendment would mandate the Secretary of State to publish assessments regarding the impact of Clause 3 on individuals with protected characteristics as defined in the Equality Act 2010 before its commencement, as well as those with vulnerabilities.

Alex Cunningham

47

★ Clause 3, page 4, line 28, at end insert—

“(1) Before this Clause may be commenced, the Secretary of State must publish statutory guidance which sets out how prosecutors should provide and explain to defendants any information contained within the required documents in an accessible way.”

Member’s explanatory statement

This amendment will mandate the Secretary of State to publish guidance for prosecutors on how to ensure that defendants fully understand the information provided to them.

Alex Cunningham

48

★ Clause 3, page 5, line 32, at end insert—

“(e) The prosecutor is satisfied that the accused has engaged a legal representative”.

Member’s explanatory statement

The amendment would provide that the accused cannot be convicted online via the AOCSSP procedure without legal assistance.

Alex Cunningham

57

★ Clause 3, page 5, line 32, at end insert—

“(e) the prosecutor is satisfied that the accused does not have any vulnerabilities and disabilities that impede the ability of the accused to understand or effectively participate in proceedings, having undertaken a physical and mental health assessment.”

Member’s explanatory statement

This amendment would require that all accused persons considered for automatic online convictions are subject to a health assessment, and that only those who do not have any vulnerabilities or disabilities are given the option of being convicted online.

Alex Cunningham

49

★ Clause 3, page 5, line 33, leave out subsection (4) and insert—

“(3A) An offence may not be specified in regulations under subsection (3)(a) unless it is—

- (a) a summary offence that is not punishable with imprisonment; and
- (b) a non-recordable offence, which excludes any offence set out in the Schedule to the National Police Records (Recordable Offences) Regulations 2000/1139 (as amended).”

Member’s explanatory statement

This amendment would exclude any offences which are recordable from the automatic online conviction option.

Alex Cunningham

50

★ Clause 3, page 6, line 6, at the end insert—

- “(d) a document in clear and accessible language which—
- (i) explains the consequences of agreeing to an automatic online conviction and penalty; and
 - (ii) directs the accused to legal advice and information.”

Member’s explanatory statement

This amendment would include further information about the consequences of engaging with the automatic online conviction process and a signpost to legal advice within the required documents that are sent to the defendant.

Alex Cunningham

51

★ Clause 4, page 9, line 34, leave out “16” and insert “18”

Member’s explanatory statement

This amendment would raise the age of eligibility for written procedures for entering guilty pleas from 16 to 18.

Alex Cunningham

52

★ Clause 6, page 11, line 10, at end insert—

“(c) the court has been provided with a physical and mental health assessment of the accused confirming that the written procedure will not impede their ability to understand or effectively participate in proceedings”.

Member’s explanatory statement

This amendment would require that all accused persons whose cases are considered for the written or online procedure are subject to a health assessment, and only those who are considered not to have vulnerabilities or disabilities are able to indicate their pleas remotely.

Alex Cunningham

53

★ Clause 6, page 11, line 10, at end insert—

“(2A) Subsection (3) only has effect where a magistrates’ court is satisfied that the accused has engaged a legal representative, who is responsible for responding to the charge and giving any written indication of plea.”

Member’s explanatory statement

This amendment would mean that defendants must be legally represented in order to indicate a plea in writing.

Alex Cunningham

54

★ Clause 6, page 11, line 29, after “plea” insert “and consequences of pleading guilty”

Member’s explanatory statement

This amendment will require that an accused person informed about the practical consequences of pleading guilty, such as gaining a criminal record and what that may mean for the defendant.

Alex Cunningham

55

★ Clause 6, page 11, line 36, at end insert—

“(4A) The prosecutor must obtain proof of receipt by the accused of the information outlined in subsection (3)”.

Member’s explanatory statement

This amendment would require prosecutors to obtain proof of receipt of the information relating to written pleas sent to defendants.

Alex Cunningham

56

★ Clause 6, page 18, line 5, at end insert—

“(4) The Secretary of State must, before the changes to the written procedure for indicating plea and determining mode of trial are introduced, conduct a pilot in two police force areas to evaluate the impact of the changes on effective participation in the justice process. The evaluation should include—

- (a) the proportion of defendants with disabilities affected by the changes;
- (b) the impact on the effective participation of all defendants including those with disabilities; and
- (c) the effectiveness of reasonable adjustment measures”.

Member’s explanatory statement

This amendment would require the expansion of online pleas and online indication of pleas to be piloted in two areas of England and Wales, and the pilot evaluated with published results, before any further changes are introduced.

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.

Alex Cunningham

58

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

“(1G) In a case within subsection (1A)—

- (a) the accused may, at any time before the taking of a plea in the summary trial, apply to the court for the question of the mode of trial to be reopened;
- (b) the court may, if it considers it in the interests of justice to do so, accede to the application and arrange a hearing under paragraph (c);
- (c) if a hearing takes place under this paragraph and the accused appears at it, the court is not to proceed to summary trial by virtue of subsection (1A), but is to proceed in accordance with subsections (2) to (9) of section 20 above.”

Member's explanatory statement

This amendment would allow defendants to reopen the allocation process and elect for jury trial up to the point of taking a plea in a summary trial if the court considers it in the interest of justice to do so.

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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.

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.

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.

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.

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).

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.

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.”

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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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.

Notices Withdrawn

The following notices were withdrawn on 2 November 2021:

39 (duplicate of 12)
