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Committee Stage: Friday 12 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 Any withdrawn amendments are listed at the end of the document.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: 59 to 96 and NC2 to NC9

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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)).

Alex Cunningham

80

★ Clause 9, page 23, leave out lines 15 and 16 and insert—

- “(b) the accused has given a reason that the court does not consider to be an acceptable reason for their failure to attend”

**Member's explanatory statement**

This amendment would ensure that the defendant is given the opportunity to provide a reason for their non-attendance and avoid the court speculating as to what that reason might be.

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Alex Cunningham

81

★ Clause 9, page 23, leave out lines 22 and 23 and insert—

“(b) the accused has given a reason that the court does not consider to be an acceptable reason for their failure to attend”

**Member’s explanatory statement**

See Explanatory Statement for Amendment 80.

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Alex Cunningham

82

★ Clause 9, page 23, leave out lines 27 and 28 and insert—

“(b) the accused has given a reason that the court does not consider to be an acceptable reason for their failure to attend”

**Member’s explanatory statement**

See Explanatory Statement for Amendment 80.

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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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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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Alex Cunningham

84

- ★ Clause 9, page 24, line 21, leave out subsection 4

**Member's explanatory statement**

This amendment would remove cases involving children and young people from the provisions of Clause 9.

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Alex Cunningham

83

- ★ Clause 9, page 24, leave out lines 36 and 37 and insert—

"(e) the accused has given a reason that the court does not consider to be an acceptable reason for their failure to attend"

**Member's explanatory statement**

See Explanatory Statement for Amendment 80.

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Alex Cunningham

85

- ★ Clause 9, page 25, line 5, at end insert—

"(5) If the court proceeds with the allocation decision procedure in the absence of the accused, the accused must continue to have the opportunity to plead guilty at any time before the start of the summary trial and still receive the full credit had he pleaded guilty at the first stage of the proceedings."

**Member's explanatory statement**

This amendment would ensure that the accused is entitled to the full credit that they would have received had they pleaded guilty at the first stage of the proceedings.



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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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Alex Cunningham 86

- ★ Clause 18, page 34, line 38, leave out “require online procedural assistance” and insert “are digitally excluded”

**Member’s explanatory statement**

This amendment would require regard to be had to the needs of persons who are digitally excluded when making Online Procedure Rules.

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Alex Cunningham 59

- ★ Clause 18, page 35, line 9, after “that” insert—
- “(a) a person may choose to participate in a hearing by non-electronic means, and
  - (b) “

**Member’s explanatory statement**

This amendment would allow a person to choose to participate in a hearing by non-electronic means.

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Alex Cunningham 90

- ★ Clause 18, page 35, line 11, at end insert—
- “(7A) Online Procedure Rules must require a person to participate in a hearing by non-electronic means if a physical or mental health assessment of that person confirms that online proceedings will impede their ability to understand or effectively participate in proceedings.”

**Member's explanatory statement**

This amendment would ensure if someone had a physical or mental condition that would prevent them from understanding or effectively participating in online proceedings then the Online Procedure Rules must allow them to participate by non-electronic means.

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Anne McLaughlin 28  
Angela Crawley

Clause 21, page 37, line 28, leave out "(3)" and "(4)" and insert "(3), (4) and (4A)"

**Member's explanatory statement**

This amendment is consequential to Amendment 29.

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Alex Cunningham 60

★ Clause 21, page 37, line 38, at end insert—

“(c) one person who is an “authorised court and tribunal staff member” as defined by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018.”

**Member's explanatory statement**

This amendment would require the Lord Chief Justice to appoint an authorised court and tribunal staff member to the Online Procedure Rules Committee.

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Alex Cunningham 61

★ Clause 21, page 38, line 5, leave out “one person who has” and insert “two people who have”

**Member's explanatory statement**

This amendment will expand the membership of the OPRC to include two IT experts.

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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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Alex Cunningham

62

- ★ Clause 21, page 38, line 6, at end insert “and;  
 (d) one person who has experience representing the views of people who are digitally excluded.”

**Member’s explanatory statement**

This amendment will expand the membership of the OPRC to include someone with experience representing the views of people who are digitally excluded.

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Alex Cunningham

91

- ★ Clause 21, page 38, line 6, at end insert—  
 “(d) one person who has experience in, and knowledge of, accessible service design”

**Member’s explanatory statement**

This amendment would increase the membership of the Online Procedure Rule Committee by requiring the Lord Chancellor to appoint a person with expertise in accessible service design.

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Alex Cunningham

63

- ★ Clause 21, page 38, line 14, at end insert—  
 “(6A) Before appointing a person under subsection 3(c) the Lord Chief Justice must—  
 (a) consult the Lord Chancellor, and  
 (b) obtain the agreement of the Senior President of Tribunals.”

**Member’s explanatory statement**

This amendment makes the appointment of the authorised court and tribunal staff member to the Online Procedure Rules Committee subject to consultation with the Lord Chancellor and agreement of the Senior President of Tribunals, mirroring the current requirements in relation to judicial appointments to the Committee.

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Alex Cunningham

64

- ★ Clause 21, page 38, line 25, at end insert—  
 “(9A) In making appointments under subsections (3) and (4) above, the Lord Chancellor and the Lord Chief Justice must have due regard to the ethnic and gender balance of the Online Procedure Rules Committee.”

**Member’s explanatory statement**

This amendment would require the Lord Chancellor and the Lord Chief Justice to have due regard



to the ethnic and gender balance of the Online Procedure Rules Committee when making their appointments.

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Alex Cunningham

92

★ Clause 23, page 41, line 14, leave out subsection (5) and insert—

“(5) Regulations under this section are subject to affirmative resolution procedure (see section 45(3)).”

**Member’s explanatory statement**

This amendment would make regulations under clause 23 subject to the affirmative resolution procedure.

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Alex Cunningham

87

★ Clause 24, page 41, line 30, leave out “require online procedural assistance” and insert “are digitally excluded”

**Member’s explanatory statement**

This amendment would require the Lord Chancellor to have regard to the needs of persons who are digitally excluded when allowing or disallowing Online Procedure Rules to be made.

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Alex Cunningham

93

★ Clause 24, page 41, line 38, leave out subsection (7) and insert—

“(7A) A statutory instrument containing Online Procedure Rules is subject to affirmative resolution procedure (see section 45(3)).”

**Member’s explanatory statement**

This amendment would make SIs containing Online Procedure Rules subject to the affirmative resolution procedure.

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Alex Cunningham

65

- ★ Clause 25, page 42, line 5, at end insert—

“(1A) The written notice under subsection (1) is subject to the concurrence requirement (see section 30(1)).”

**Member’s explanatory statement**

This amendment would make the Lord Chancellor’s power to require the Online Procedure Rules Committee to make rules to achieve a specified purpose subject to the concurrence requirement.

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Alex Cunningham

68

- ★ Clause 26, page 42, line 20, leave out subsection (3) and insert—

“(3) Regulations under this section are subject to the concurrence requirement (see section 30(1)).”

**Member’s explanatory statement**

This amendment would make the Lord Chancellor’s power to make amendments in relation to the Online Procedure Rules subject to the concurrence requirement.

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Alex Cunningham

94

- ★ Clause 26, page 42, line 25, leave out “that amend or repeal any provision of an Act”

**Member’s explanatory statement**

This amendment would make all regulations under clause 23 subject to the affirmative resolution procedure.

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Alex Cunningham

95

- ★ Clause 26, page 42, line 27, leave out subsection (6)

**Member’s explanatory statement**

See Explanatory Statement for Amendment 94.

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Alex Cunningham

88

- ★ Clause 27, page 42, line 31, leave out “require online procedural assistance” and insert “are digitally excluded”

**Member’s explanatory statement**

This amendment would require the Lord Chancellor to arrange for the provisions of appropriate and proportionate support for persons who are digitally excluded.

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Alex Cunningham

66

- ★ Clause 30, page 43, line 17, leave out “regulations” and insert “regulations or notices”

**Member’s explanatory statement**

This is a consequential amendment to include a notice given to the Online Procedure Rules Committee to make rules to achieve a specified purpose within the concurrence requirement.

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Alex Cunningham

67

- ★ Clause 30, page 43, line 21, leave out “regulations” and insert “regulations or notices”

**Member’s explanatory statement**

See Explanatory Statement for Amendment 66.

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Alex Cunningham

89

- ★ Clause 31, page 44, leave out lines 11 to 15 and insert—

““persons who are digitally excluded” means persons who, for reasons including their inability to access the internet or digital devices, lack of basic digital skills, or problems with confidence and motivation, experience difficulty in engaging with computers or online processes”

**Member’s explanatory statement**

This amendment inserts a new definition of “persons who are digitally excluded”.

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Andy Slaughter

69

★ Clause 37, page 49, line 33, after “and” 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, after “and” 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, after “and” 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, after “place” 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.

Andy Slaughter

77

- ★ Clause 39, page 51, line 10, after “place” 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.

Andy Slaughter

78

- ★ Clause 39, page 51, line 10, after “place” 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.

Andy Slaughter

79

- ★ Clause 39, page 51, line 10, after “place” 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

NC5

★ 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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## 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:

<b>Date</b>	<b>Time</b>	<b>Witness</b>
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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