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Committee Stage: Friday 19 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 Any withdrawn amendments are listed at the end of the document.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.

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Anne McLaughlin 30  
Angela Crawley

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

- “(7) Notwithstanding the provisions above, this Act shall not come into force until the Lord Chancellor has laid before Parliament a written statement confirming that no provision in this Act contravenes Article 6 or Article 13 of the European Convention on Human Rights.
- (8) The statement under subsection (7) must be laid before Parliament within three months of this Act being passed.”

**Member’s explanatory statement**

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

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Anne McLaughlin 31  
Angela Crawley

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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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.

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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.

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## Notices Withdrawn

The following notices were withdrawn on 2 November 2021:

39 (duplicate of 12)

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