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Committee Stage: Tuesday 9 November 2021

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## Judicial Review and Courts Bill (Committee Stage Decisions)

This document sets out the fate of each clause, schedule, amendment and new clause considered at committee stage. A glossary with key terms can be found at the end of this document.

First to Sixth Sittings

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### *FIRST AND SECOND SITTINGS*

James Cartlidge

**Agreed to**

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

<b>Date</b>	<b>Time</b>	<b>Witness</b>
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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James Cartlidge

**Agreed to**

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.

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James Cartlidge

**Agreed to**

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.

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**The following Witnesses gave oral evidence:**

Sir Stephen Laws KCB QC, Senior Research Fellow, Policy Exchange; Professor Jason Varuhas, University of Melbourne; Professor Richard Ekins, University of Oxford

Professor David Feldman, University of Cambridge; Dr Jonathan Morgan, University of Cambridge

André Rebello OBE, Senior Coroner for Liverpool and the Wirral and Honorary Secretary of the Coroners' Society of England and Wales; Richard Leiper QC

Sara Lomri, Deputy Legal Director at the Public Law Project; Ellie Cumbo, Head of Public Law at the Law Society; Louise Whitfield, Head of Casework at Liberty

Louise Finer, Head of Policy at Inquest; Stephanie Needleman, Acting Legal Director at Justice; and Steve Valdez-Symonds, Programme Director for Refugee and Migrant Rights at Amnesty

Dr Joe Tomlinson, Senior Lecturer in Public Law at the University of York; Aidan O'Neill QC; Michael P Clancy OBE, Director of Law Reform at The Law Society of Scotland

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*THIRD AND FOURTH SITTINGS*

Andy Slaughter	<b>Negated on division</b>	<b>12</b>
Clause 1, page 1, line 8, leave out from "order" to the end of line 9		
Andy Slaughter	<b>Withdrawn after debate</b>	<b>13</b>
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.”		
Andy Slaughter	<b>Not called</b>	<b>14</b>
Clause 1, page 1, line 9, at end insert— “(1A) Provision under subsection (1) may only be made in exceptional circumstances.”		
Andy Slaughter	<b>Not called</b>	<b>35</b>
Clause 1, page 1, leave out lines 10 and 11		

_____	Andy Slaughter	<b>Withdrawn after debate</b>	<b>16</b>
	Clause 1, page 1, line 13, after "subsection (2)" insert "and to subsection (5A)"		
_____	Andy Slaughter	<b>Not called</b>	<b>40</b>
	Clause 1, page 1, leave out lines 15 to 18		
_____	Andy Slaughter	<b>Not called</b>	<b>17</b>
	Clause 1, page 1, line 16, after "subsection (2)" insert "and to subsection (5A)"		
_____	Andy Slaughter	<b>Not called</b>	<b>18</b>
	Clause 1, page 2, line 1, at beginning insert "Subject to subsection (5A),"		
_____	Andy Slaughter	<b>Not called</b>	<b>41</b>
	Clause 1, page 2, line 2, leave out "or (4)"		
_____	Andy Slaughter	<b>Negatived on division</b>	<b>15</b>
	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.”		
_____	Andy Slaughter	<b>Not called</b>	<b>19</b>
	Clause 1, page 2, line 12, leave out "must" and insert "may"		
_____	Andy Slaughter	<b>Not called</b>	<b>32</b>
	Clause 1, page 2, line 13, at end insert—		
	“(aa) any detriment to the environment that would result from exercising or failing to exercise the power;		
	(ab) whether exercising or failing to exercise the power would constitute an effective remedy for the claimant;”		

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Andy Slaughter	Not called	36
Clause 1, page 2, leave out lines 14 and 15		
Andy Slaughter	Not called	33
Clause 1, page 2, leave out lines 14 to 22		
Andy Slaughter	Not called	37
Clause 1, page 2, line 17, at end insert "including, but not limited to, the interests and expectations of a claimant in receiving a timely remedy"		
Andy Slaughter	Not called	38
Clause 1, page 2, line 19, at end insert "which are to be identified by the defendant"		
Andy Slaughter	Not called	20
Clause 1, page 2, line 21, leave out "or proposed to be taken"		
Andy Slaughter	Not called	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."		
Andy Slaughter	Not called	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."		
Andy Slaughter	Not called	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."

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Andy Slaughter **Negatived on division** 22  
 Clause 1, page 2, leave out lines 24 to 32

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Andy Slaughter **Not called** 34  
 Clause 1, page 2, line 27, leave out "adequate redress" and insert "effective remedy to the claimant"

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Anne McLaughlin **Not called** 27  
 Angela Crawley  
 Clause 1, page 2, line 29, leave out from "court" to end of line 30 and insert "may exercise the powers in that subsection accordingly"

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Anne McLaughlin **Not selected** 25  
 Angela Crawley  
 Andy Slaughter  
 Page 1, line 3, leave out Clause 1  
*Clause agreed to on division.*

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#### *FIFTH AND SIXTH SITTINGS*

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Andy Slaughter **Withdrawn after debate** 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.”

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Andy Slaughter

**Not called**    **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.”

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Andy Slaughter

**Not called**    **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.”

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Anne McLaughlin **Not selected** 26  
 Angela Crawley  
 Andy Slaughter

Page 3, line 14, leave out Clause 2

*Clause agreed to on division.*

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Alex Cunningham **Withdrawn after debate** 45

Clause 3, page 4, line 29, at beginning insert—

- “(1) Before this section 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”.

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Alex Cunningham **Withdrawn after debate** 46

Clause 3, page 4, line 29, at beginning insert—

- “(1) Before this section 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.”

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Alex Cunningham	<b>Negated on division</b>	<b>47</b>
Clause 3, page 4, line 29, at beginning insert—		
“(1) Before this section 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.”		
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Alex Cunningham	<b>Not called</b>	<b>48</b>
Clause 3, page 5, line 32, at end insert—		
“(e) the prosecutor is satisfied that the accused has engaged a legal Representative”.		
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Alex Cunningham	<b>Not called</b>	<b>57</b>
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.”		
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Alex Cunningham	<b>Negated on division</b>	<b>49</b>
Clause 3, page 5, leave out lines 33 to 35 and insert—		
“(4) 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).”		
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Alex Cunningham	<b>Not called</b>	<b>50</b>
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.”		
<i>Clause agreed to on division.</i>		

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<hr/> <p>Alex Cunningham</p> <p>Clause 4, page 9, line 34, leave out "16" and insert "18"</p> <p><i>Clause agreed to.</i></p> <p><i>Clause 5 agreed to.</i></p>	<p><b>Withdrawn after debate</b></p>	<p><b>51</b></p>
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<hr/> <p>Alex Cunningham</p> <p>Clause 6, page 11, line 10, at end insert—</p> <p style="padding-left: 40px;">“(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”.</p>	<p><b>Withdrawn after debate</b></p>	<p><b>52</b></p>
<hr/> <p>Alex Cunningham</p> <p>Clause 6, page 11, line 10, at end insert—</p> <p style="padding-left: 40px;">“(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.”</p>	<p><b>Negatived on division</b></p>	<p><b>53</b></p>
<hr/> <p>Alex Cunningham</p> <p>Clause 6, page 11, line 29, after “plea” insert “and consequences of pleading guilty”</p>	<p><b>Not called</b></p>	<p><b>54</b></p>
<hr/> <p>Alex Cunningham</p> <p>Clause 6, page 11, line 36, at end insert—</p> <p style="padding-left: 40px;">“(4A) The prosecutor must obtain proof of receipt by the accused of the information outlined in subsection (3)”.</p>	<p><b>Not called</b></p>	<p><b>55</b></p>
<hr/> <p>Alex Cunningham</p> <p>Clause 6, page 18, line 5, at end insert—</p> <p style="padding-left: 40px;">“(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—</p>	<p><b>Not called</b></p>	<p><b>56</b></p>

- (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”.

*Clause agreed to on division.*

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James Cartlidge

**Agreed to** 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).”

*Clause agreed to.*

**Adjourned until Tuesday 16 November at 9.25 am**

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## Glossary

**Added:** New Clause agreed without a vote and added to the Bill.

**Agreed to:** agreed without a vote.

**Agreed to on division:** agreed following a vote.

**Negated:** rejected without a vote.

**Negated on division:** rejected following a vote.

**Not called:** debated in a group of amendments, but not put to a decision.

**Not moved:** not debated or put to a decision.

**Question proposed:** debate underway but not concluded.

**Withdrawn after debate:** moved and debated but then withdrawn, so not put to a decision.

**Not selected:** not chosen for debate by the Chair.

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