

LORDS AMENDMENTS TO THE
JUDICIAL REVIEW AND COURTS BILL

[The page and line references are to HL Bill 102, the bill as first printed for the Lords]

Clause 1

- 1 Page 1, leave out line 9
- 2 Page 1, leave out lines 15 to 18
- 3 Page 2, line 2, leave out “or (4)”
- 4 Page 2, leave out lines 24 to 32

Clause 2

- 5 Leave out Clause 2 and insert following new Clause –

“Limitation of review of Upper Tribunal’s permission-to-appeal decisions

- (1) In the Tribunals, Courts and Enforcement Act 2007, after section 11 insert –

“11A Finality of decisions in exercise of the supervisory jurisdiction

- (1) Subsection (2) applies in relation to a decision by the Upper Tribunal to refuse permission (or leave) to appeal further to an application under section 11(4)(b).
- (2) Subject to subsections (3) and (4), a decision made by the court of supervisory jurisdiction in relation to any such refusal by the Upper Tribunal, whether such decision of the court of supervisory jurisdiction is to refuse permission to proceed or is to dismiss the substantive claim in the supervisory court or is any other order, is final and cannot be questioned or set aside or reversed whether by way of renewal or appeal or otherwise.

- (3) An appeal lies to the Supreme Court from any such decision of the court of supervisory jurisdiction but only with the leave of the court of supervisory jurisdiction or of the Supreme Court; and such leave may not be granted unless it is certified by the court of supervisory jurisdiction that a point of law of general public importance is involved in the decision and it appears to that court or to the Supreme Court, as the case may be, that the point is one which ought to be considered by the Supreme Court.
- (4) An application to the court of supervisory jurisdiction for leave to appeal to the Supreme Court must be made within the period of 7 days beginning with the date of the decision of the court of supervisory jurisdiction and an application to the Supreme Court for such leave must be made within the period of 7 days beginning with the date on which the application is refused by the court of supervisory jurisdiction.
- (5) In this section –
 - “decision” includes any purported decision;
 - “supervisory jurisdiction” means the supervisory jurisdiction of –
 - (a) the High Court in England and Wales or Northern Ireland, or
 - (b) the Court of Session in Scotland,and “the court of supervisory jurisdiction” is to be read accordingly.”
- (2) The amendment made by subsection (1) does not apply in relation to a decision (including any purported decision) of the Upper Tribunal made before the day on which this section comes into force.”

Clause 13

- 6 Page 34, line 24, leave out “by section 224(1A)(b)” and insert “in respect of the offence by section 224(1)”

After Clause 23

- 7 Insert the following new Clause –

“Power to make certain provision about dispute-resolution services

- (1) This section applies to Online Procedure Rules which provide –
 - (a) for the transfer by electronic means of information held for the purposes of an online dispute-resolution service to a court or tribunal, or
 - (b) for a court or tribunal to take into account, for any purpose, steps that a party to proceedings has or has not taken in relation to an online dispute-resolution service.
- (2) The Rules may be expressed so that their application in relation to a particular service depends on things done by a particular person from time to time.
- (3) The Rules may, for example, refer to such services as –
 - (a) appear from time to time in a list published by a particular person, or

- (b) are from time to time certified by a particular person as complying with particular standards.
- (4) In this section—
- “online dispute-resolution service” means a service accessible by electronic means for facilitating the resolution of disputes without legal proceedings;
 - “particular person” and “particular standards” include, respectively, a person of a particular description and standards of a particular description.”

Clause 38

8 Page 53, line 6, leave out “follows” and insert “set out in subsections (2) and (3)”

9 Page 53, line 12, at end insert—

- “(4) In the following provisions of the Births and Deaths Registration Act 1953, for “revealed by post-mortem examination” substitute “becoming clear before inquest”—
- (a) in section 2(1), paragraph (ii) of the proviso;
 - (b) in section 16(3), paragraph (ii) of the proviso;
 - (c) in section 17(3), paragraph (ii) of the proviso;
 - (d) section 29(3B).
- (5) In section 273(2)(a) of the Merchant Shipping Act 1995, for “revealed by post-mortem examination” substitute “becoming clear before inquest”.
- (6) In Schedule 21 to the Coroners and Justice Act 2009 (which, among other things, makes amendments to the Births and Deaths Registration Act 1953 that have yet to come into force)—
- (a) in paragraph 10(5), in the inserted subsection (2)(b), for “revealed by post-mortem examination” substitute “becoming clear before inquest”;
 - (b) in paragraph 11(2), in the substituted section (A1)(b), for “revealed by post-mortem examination” substitute “becoming clear before inquest”;
 - (c) in paragraph 16(2), in the substituted paragraph (a), for the words from “there has” to “the death,” substitute “—
 - (i) there has been no investigation under Part 1 of the 2009 Act into the death, or
 - (ii) such an investigation has been discontinued under section 4 of the 2009 Act (cause of death becoming clear before inquest) other than as mentioned in paragraph (b),”.

After Clause 42

10 Insert the following new Clause –

“Provision of information to registrar when investigation discontinued

In section 23 of the Births and Deaths Registration Act 1953 (furnishing of information by coroner in connection with registration of death), after subsection (3) insert –

- “(4) Where a senior coroner –
- (a) discontinues an investigation under section 4 of the 2009 Act,
 - (b) authorises the disposal of the body, and
 - (c) sends to the registrar, on request by the registrar, a certificate stating any particulars required by this Act to be registered concerning the death (so far as they have been ascertained at the date of the certificate),

the registrar shall in the prescribed form and manner register the death and those particulars, so far as they are not already registered.”

11 Insert the following new 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.””

After Clause 45

12 Insert the following new Clause –

“Payments in respect of pro bono representation

- (1) In section 194 of the Legal Services Act 2007 (payments in respect of pro bono representation in civil proceedings in England and Wales) –
 - (a) in the heading, at the end insert “: civil courts in England and Wales”;
 - (b) in subsection (8), for “by order made by the Lord Chancellor” substitute “under section 194C”;
 - (c) omit subsection (9);

- (d) in subsection (10) –
 - (i) in the definition of “civil court”, omit paragraph (a);
 - (ii) omit the definition of “relevant civil appeal”.
- (2) After section 194 of the Legal Services Act 2007 insert –

“194A Payments in respect of pro bono representation: tribunals

- (1) This section applies to relevant tribunal proceedings in which –
 - (a) a party to the proceedings (“P”) is or was represented by a legal representative (“R”), and
 - (b) R’s representation of P is or was provided free of charge, in whole or in part.
- (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge.
- (3) The tribunal may make an order under this section against a person if the condition in subsection (5) is met in respect of that person (and if subsection (7) does not apply).
- (4) An order under this section is an order for the person to make a payment to the prescribed charity in respect of R’s representation of P (or, if only part of R’s representation of P was provided free of charge, in respect of that part).
- (5) The condition is that, had R’s representation of P not been provided free of charge, the tribunal would have had the power to order the person to make a payment to P in respect of sums payable to R by P in respect of that representation.
- (6) In considering whether to make an order under this section against a person, and the terms of such an order, the tribunal must have regard to –
 - (a) whether, had R’s representation of P not been provided free of charge, it would have made an order against that person as described in subsection (5), and
 - (b) if it would, what the terms of the order would have been.
- (7) The tribunal may not make an order under this section against a person represented in the proceedings if the person’s representation was at all times within subsection (8).
- (8) Representation is within this subsection if it is provided –
 - (a) by a legal representative acting free of charge, or
 - (b) by way of legal aid.
- (9) For the purposes of subsection (8)(b), representation is provided by way of legal aid if it is –
 - (a) provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,
 - (b) made available under Part 2 or 3 of the Legal Aid (Scotland) Act 1986, or
 - (c) funded under Part 2 of the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)).

- (10) Procedure rules may make further provision as to the making of orders under this section, and may in particular—
- (a) provide that such orders may not be made in proceedings of a description specified in the rules;
 - (b) make provision about the procedure to be followed in relation to such orders;
 - (c) specify matters (in addition to those mentioned in subsection (6)) to which the tribunal must have regard in deciding whether to make such an order, and the terms of any order.
- (11) In this section “relevant tribunal proceedings” means proceedings in—
- (a) the First-tier Tribunal,
 - (b) the Upper Tribunal,
 - (c) an employment tribunal,
 - (d) the Employment Appeal Tribunal, or
 - (e) the Competition Appeal Tribunal,
- but does not include proceedings within devolved competence.
- (12) For the purposes of subsection (11), proceedings are within devolved competence if provision regulating the procedure to be followed in those proceedings could be made by—
- (a) an Act of the Scottish Parliament,
 - (b) an Act of Senedd Cymru (including one passed with the consent of a Minister of the Crown within the meaning of section 158(1) of the Government of Wales Act 2006), or
 - (c) an Act of the Northern Ireland Assembly the Bill for which would not require the consent of the Secretary of State.
- (13) The Lord Chancellor may by regulations—
- (a) amend subsection (11) so as to add a tribunal to the list in that subsection, and
 - (b) make consequential amendments of the definition of “procedure rules” in subsection (14).
- (14) In this section—
- “free of charge” means otherwise than for or in expectation of fee, gain or reward;
- “legal representative” means a person who is—
- (a) entitled in accordance with section 13 to carry on the activity of exercising a right of audience or conducting litigation,
 - (b) a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980,
 - (c) a member of the Faculty of Advocates in Scotland,
 - (d) a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,
 - (e) a member of the Bar of Northern Ireland, or
 - (f) a solicitor of the Court of Judicature of Northern Ireland,

irrespective of the capacity in which the person is acting in the proceedings concerned;

“prescribed charity” means the charity prescribed under section 194C;

“procedure rules” means –

- (a) Tribunal Procedure Rules, in relation to proceedings in the First-tier Tribunal or the Upper Tribunal,
- (b) Employment Tribunal Procedure Rules, in relation to proceedings in an employment tribunal or the Employment Appeal Tribunal, or
- (c) rules under section 15 of the Enterprise Act 2002, in relation to proceedings in the Competition Appeal Tribunal;

“tribunal” does not include an ordinary court of law.

- (15) An order under this section may not be made in respect of representation if (or to the extent that) it was provided before section (*Payments in respect of pro bono representation*) of the Judicial Review and Courts Act 2022 came into force.”
- (3) After section 194A of the Legal Services Act 2007 (as inserted by subsection (2)) insert –

“194B Payments in respect of pro bono representation: Supreme Court

- (1) This section applies to proceedings in a relevant civil appeal to the Supreme Court in which –
 - (a) a party to the proceedings (“P”) is or was represented by a legal representative (“R”), and
 - (b) R’s representation of P is or was provided free of charge, in whole or in part.
- (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge.
- (3) The Court may make an order under this section against a person if the condition in subsection (5) is met in respect of that person (and if subsection (7) does not apply).
- (4) An order under this section is an order for the person to make a payment to the prescribed charity in respect of R’s representation of P (or, if only part of R’s representation of P was provided free of charge, in respect of that part).
- (5) The condition is that, had R’s representation of P not been provided free of charge, the Court would have had the power to order the person to make a payment to P in respect of sums payable to R by P in respect of that representation.
- (6) In considering whether to make an order under this section against a person, and the terms of such an order, the Court must have regard to –
 - (a) whether, had R’s representation of P not been provided free of charge, it would have made an order against that person as described in subsection (5), and
 - (b) if it would, what the terms of the order would have been.

- (7) The Court may not make an order under this section against a person represented in the proceedings if the person's representation was at all times within subsection (8).
- (8) Representation is within this subsection if it is –
- (a) provided by a legal representative acting free of charge, or
 - (b) provided by way of legal aid.
- (9) For the purposes of subsection (8)(b), representation is provided by way of legal aid if it is –
- (a) provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
 - (b) funded under Part 2 of the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)).
- (10) Supreme Court Rules may make further provision as to the making of orders under this section, and may in particular –
- (a) provide that such orders may not be made in proceedings of a description specified in the Rules;
 - (b) make provision about the procedure to be followed in relation to such orders;
 - (c) specify matters (in addition to those mentioned in subsection (6)) to which the Court must have regard in deciding whether to make such an order, and the terms of any order.
- (11) In this section –
- “free of charge” means otherwise than for or in expectation of fee, gain or reward;
- “legal representative”, in relation to a party to proceedings, means –
- (a) a person exercising a right of audience, or conducting litigation, on the party's behalf pursuant to an entitlement under section 13, or
 - (b) a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, practising or acting as such on the party's behalf;
- “prescribed charity” means the charity prescribed under section 194C;
- “relevant civil appeal” means an appeal –
- (a) from the High Court under Part 2 of the Administration of Justice Act 1969,
 - (b) from the Upper Tribunal under section 14B(4) of the Tribunals, Courts and Enforcement Act 2007,
 - (c) from the Court of Appeal under section 40(2) of the Constitutional Reform Act 2005 or section 42 of the Judicature (Northern Ireland) Act 1978, or
 - (d) under section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court), other than an appeal from an order or decision made in the exercise of jurisdiction to punish for criminal contempt of court.

- (12) An order under this section may not be made in respect of representation in proceedings in a relevant civil appeal –
- (a) from a court in Northern Ireland, or
 - (b) from the Upper Tribunal under section 14B(4) of the Tribunals, Courts and Enforcement Act 2007,
- if (or to the extent that) the representation was provided before section (*Payments in respect of pro bono representation*) of the Judicial Review and Courts Act 2022 came into force.”
- (4) After section 194B of the Legal Services Act 2007 (as inserted by subsection (3)) insert –

“194C Sections 194 to 194B: the prescribed charity

- (1) The Lord Chancellor may by order prescribe a registered charity for the purposes of sections 194 to 194B.
- (2) The charity must be one which provides financial support to persons who provide, or organise or facilitate the provision of, legal advice or assistance (by way of representation or otherwise) which is free of charge.
- (3) In this section –
 - “free of charge” means otherwise than for or in expectation of fee, gain or reward;
 - “registered charity” means a charity registered in accordance with –
 - (a) section 30 of the Charities Act 2011,
 - (b) section 3 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10), or
 - (c) section 16 of the Charities Act (Northern Ireland) 2008 (c. 12 (N.I.)).
- (4) An order under section 194(8) that was in force immediately before section (*Payments in respect of pro bono representation*) of the Judicial Review and Courts Act 2022 came into force –
 - (a) remains in force despite the amendment by that section of section 194(8),
 - (b) has effect as if its prescription of a charity for the purposes of section 194 were the prescription of that charity under this section for the purposes of sections 194 to 194B, and
 - (c) may be amended or revoked by an order under this section.”
- (5) For the purposes of sections 194A and 194C of the Legal Services Act 2007 (as inserted by subsections (2) and (4)), sections 204 and 206 of that Act extend to Scotland and Northern Ireland as well as England and Wales.
- (6) In paragraph 17(1) of Schedule 4 to the Enterprise Act 2002 (rules that may be made about procedure of Competition Appeal Tribunal), omit paragraph (ha).
- (7) In paragraph 32 of Schedule 8 to the Consumer Rights Act 2015 (amendments of paragraph 17 of Schedule 4 to the Enterprise Act 2002), omit sub-paragraph (a).”

Clause 47

- 13 Page 57, line 24, leave out “and” and insert “to”
- 14 Page 57, line 32, at end insert –
- “(3A) Section (*Payments in respect of pro bono representation*)(3) extends to England and Wales and Northern Ireland.
- (3B) Section (*Payments in respect of pro bono representation*)(2) and (4) extends to England and Wales, Scotland and Northern Ireland.”

Clause 48

- 15 Page 58, line 3, at end insert –
“(za) section 11;”
- 16 Page 58, line 4, leave out paragraphs (a) and (b) and insert –
“(a) section 13(3);”
- 17 Page 58, line 9, at end insert –
“(ba) paragraphs 12 to 14 of Schedule 2, and section 18 so far as relating to those paragraphs;”
- 18 Page 58, line 10, at end insert –
- “(1A) If paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (as it was enacted) has been brought in force in relation to either-way offences before the passing of this Act, the following provisions come into force on the day after the day on which this Act is passed –
- (a) section 13 (except subsection (3));
- (b) paragraphs 16 to 20 of Schedule 2, and section 18 so far as relating to those paragraphs.”
- 19 Page 58, line 15, at end insert “, except section (*Provision of information to registrar when investigation discontinued*)”
- 20 Page 58, line 15, at end insert –
“(d) section (*Payments in respect of pro bono representation*).”
- 21 Page 58, line 21, at end insert –
- “(5A) The coming into force of paragraph 20(b) of Schedule 2 results in the provision it inserts becoming subject to section 417(1) of the Sentencing Act 2020 (power to commence Schedule 22 to that Act).”

Schedule 2

- 22 Page 75, line 4, at end insert –
- “19A In section 42 of the Gambling Act 2005 (offence of cheating at gambling) –
- (a) in subsection (4)(b), for “51 weeks” substitute “the general limit in a magistrates’ court”;
- (b) in subsection (5), for “51 weeks” substitute “the general limit in a magistrates’ court”.”

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Judicial Review and Courts Bill

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