House of Commons Library

Research Briefing

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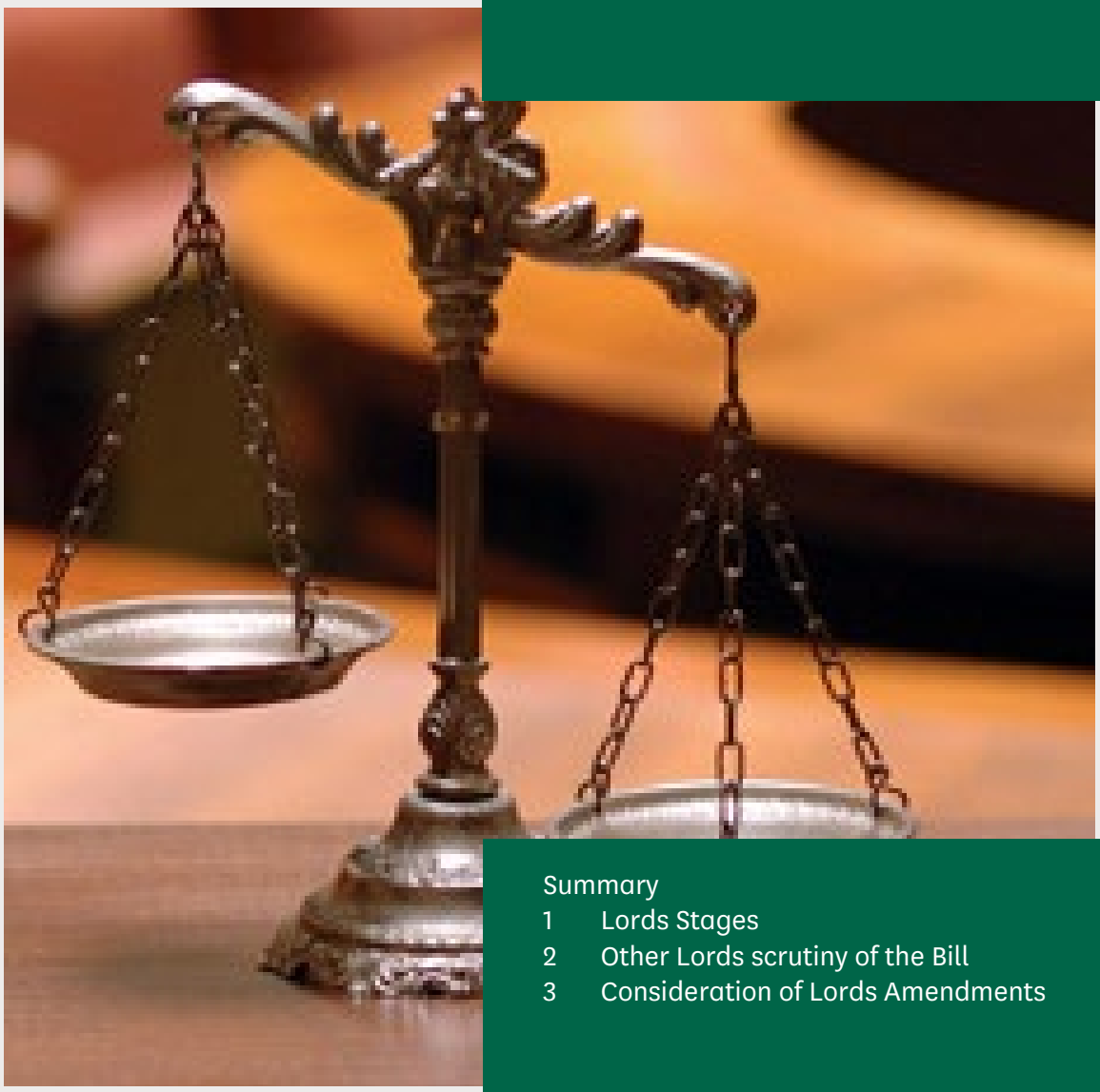
Judicial Review and Courts Bill: Lords Stages and Amendments



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Summary

The Judicial Review and Courts Bill 2021-22 was given its Third Reading by the House of Commons on 25 January 2022. The Bill would make reforms to the law of judicial review throughout the United Kingdom and make a wide range of court and tribunal reforms.

For background, see the Commons Library briefing papers on:

- the Bill as introduced, 12 October 2021
- the progress of the Bill through the Commons, 21 January 2022

The House of Lords Library also prepared a briefing paper ahead of House of Lords Second Reading on 3 February 2022.

The Bill has been agreed to by the House of Lords, subject to amendments made at Lords Committee, Report Stage, and Third Reading:

- the Government made **three amendments** at Lords Committee Stage
- **19 amendments** were made at Lords Report Stage, including six **non-Government** amendments, of which **four were agreed to on a vote**.
- the Government made **one minor drafting amendment** at Lords Third Reading.

For a more detailed analysis of the amendments to Part 1 of the Bill (on judicial review) you may wish to refer to another of our Library briefings:

- The Government's judicial review reforms and the Judicial Review and Courts Bill, 20 April 2022

The House of Commons is expected to consider the Lords Amendments on Tuesday 26 April 2022.

1 Lords Stages

The Lords considered the Judicial Review and Courts Bill over five sitting days.

1.1 First and Second Reading

First Reading took place on Wednesday 26 January 2022.[1]

Second Reading took place on Monday 7 February 2022.[2] The Bill progressed without a division after a debate that focused almost exclusively on **Part 1 of the Bill** (on Judicial Review reform).

1.2 Committee Stage

Committee Stage took place on Monday 21 and Thursday 24 February 2022.[3]

Amendments made in Lords Committee
Thursday 24 February 2022

Amendment No.	Lords Amendment No.	Moved by	Division?	Description
38	7	Government	N/A	New clause 24 on dispute resolution services
46	10	Government	N/A	New clause 44 modifying s23 Births and Deaths Registration Act 1953
52	19	Government	N/A	Commencement arrangements for New Clause 44

The first day focused on **Part 1 of the Bill** (concerned with Judicial Review reform). No amendments were made.

The second day focused on **Part 2 of the Bill** (covering a range of other matters, including reforms to criminal procedure, online procedure,

1 HL Deb 26 January 2022 c359.
2 HL Deb 7 February 2022 cc1342-1384.
3 HL Deb 21 February 2022 cc51-116 and HL Deb 24 February 2022 cc335-435.

employment tribunals and coroners). Three Government amendments were made. Each was made without a division.

Online procedure

Lords Amendment 7 makes technical changes to **Chapter 2 of Part 2 of the Bill**, concerned with a new statutory scheme to govern online court proceedings. The amendment is intended to facilitate closer integration between alternative dispute resolution services and any subsequent online court proceedings. For example, documents relevant to a dispute would not have to be formally resubmitted.

When moving the amendment, Lord Wolfson (the Government Minister) explained that it:

> will enable these pre-action dispute resolution processes to roll over into the online legal processes where that is necessary, saving parties time and cost in preparing a new claim.[4]

Coroners

Government **Lords Amendments 10 and 19** would amend section 23 of the Births and Deaths Registration Act 1953. They were agreed to without division.

Lords Amendment 10 would insert a new clause intended to enable a coroner who has discontinued an investigation into a death without holding an inquest to supply information needed for the death to be registered.[5] The related **Lords Amendment 19** would enable the new clause to be brought into force by regulations. Lord Wolfson said the amendments were "quite technical but none the less important".[6] He set out the current position regarding registration of a death which has been referred to a coroner:

> The current position is that there are provisions that enable a coroner to authorise the disposal of a body so that families may hold a funeral prior to any formal death registration being completed. These provisions are successful in avoiding unnecessary delays. They reduce the stress on the bereaved when the coroner is involved. The problem is that, admittedly in a small number of cases, these provisions seem to have the unintended consequence of taking away the incentive for the death to be registered as it may be perceived, often by the family, that nothing further needs to be done once the funeral has taken place. I understand why people take that approach; it is incorrect, but I understand why they do.
>
> The problem is that, unless the coroner undertakes a full investigation or an investigation is suspended, those deaths can be registered only if an informant qualified to do so by legislation provides the registrar with information relating to the deceased. The qualified informants are primarily family members. That is the problem. The death can be registered only after the coroner has considered whether a full investigation should be carried out or discontinued,

4 HL Deb 24 February 2022 c397.
5 HL Deb 24 February 2022 cc425-426.
6 HL Deb 24 February 2022 c423.

> by which time a funeral may already have taken place and family members may no longer be interested. As I said, I am not blaming anybody; it is just human nature: the funeral has taken place so they regard the matter as concluded.[7]

Lord Wolfson then spoke of how the Government amendments would address this situation:

> To solve this, the amendments in my name will enable a coroner to provide the registrar with the information required for the registration to take place on the basis of that information. I should make it clear that we are not introducing new duties on coroners or removing the duty on qualified informants to provide information. It is intended to be used in those exceptional circumstances where qualified informants are unable or unwilling …to discharge their duties. The effect will therefore be that the death will not go unregistered.
>
> We think that about 200 of these cases happen a year. They affect the accuracy of records, but there is also the potential for fraudulent use of the identity of an unregistered deceased person, since the identity has not been closed by the death being registered. It is not quite Day of the Jackal territory, but there is potential for fraud there. We want to close that.[8]

1.3 Report Stage

Report Stage took place on Thursday 31 March 2022.[9] A further 19 amendments were made to the Bill. There were four divisions, each on which the Government was defeated.

Judicial review

Five opposition amendments were made to **Part 1 of the Bill**. Three were agreed to on a division, with the other two being consequential amendments.

The Lords has proposed substantial changes to **clause 1** of the bill and to replace outright **clause 2**.

Removing "prospective-only" quashing orders from the Bill

Clause 1 of the Bill provides judges with two types of remedial discretion and regulates the conditions under which those remedies are to be used. Those two types of discretion are:

- to make "suspended" quashing orders (which allow a judge to delay the effect of a finding of illegality); and

7 ibid.
8 HL Deb 24 February 2022 c424
9 HL Deb 31 March 2022 cc1717-1773.

- to make "prospective-only" quashing orders (which allow a judge to limit or remove the retrospective effect of a finding of illegality).

Judicial Review amendments made on Lords Report
Thursday 31 March 2022

Amendment No.	Lords Amendment No.	Moved by	Division?	Description
1	1	Lord Marks (LD)	148-143	Removes "prospective-only" quashing orders from clause 1 of the Bill
2 and 3	2 and 3	Lord Marks (LD)	N/A	Consequential amendments to Amendment 1
4	4	Lord Etherton (CB)	159-134	Removes "the presumption" on use of special quashing orders in clause 1
5	5	Lord Etherton (CB)	146-132	Replaces clause 2. Retains Cart/Eba judicial reviews but restricts further appeals

Lords Amendment 1, and consequential **Lords Amendments 2 and 3** were in the name of Lord Marks of Henley-upon-Thames (Liberal Democrat). They propose to remove from the Bill the provisions that allow a judge to make a "prospective-only" quashing order. These amendments have no effect on the ability of a court to make a suspended quashing order.

Lords Amendment 1 was agreed to on a division (148 Content to 143 Not Content),[10] and consequential **Lords Amendments 2 and 3** were agreed to without any further division.

In debate, Lord Marks objected to prospective-only quashing orders on the grounds that they: "[hand] to judges the power to validate actions of the Executive that the court finds violated the laws passed by Parliament." He suggested that such orders would run the risk of breaching the UK's international obligations, including under the Aarhus Convention of 1998, to provide "adequate and effective" remedies for relevant unlawful acts. Suspended quashing orders, he argued, were more appropriate for dealing with the "hard cases" identified by the Government: those where an ordinary quashing order might cause administrative or third-party inconvenience.[11]

Lord Ponsonby of Shulbrede also reiterated that IRAL had not recommended prospective-only remedies; it had only recommended that courts should be able to suspend quashing orders.[12]

10 HL Deb 31 March 2022 cc1729-1730.
11 HL Deb 31 March 2022 cc1717-1720.
12 HL Deb 31 March 2022 c1725.

In resisting **Lords Amendments 1-3** the Minister, Lord Wolfson of Tredegar, argued that there were adequate safeguards against the inappropriate use of prospective-only quashing orders, and questioned whether there was a "principled distinction" between them and suspended quashing orders:

> I suggest that the matter comes down to this: you are either in favour of remedial flexibility or you are not. Both proposed new remedies seek to give the courts remedial flexibility.[13]

If these amendments are agreed to by the Commons, **clause 1** will be confined to dealing with suspended quashing orders.

Removing "the presumption" in favour of making special quashing orders

Under the Government's proposals, judges are not given absolute discretion about whether and when to make a suspended quashing order, or to limit a quashing order's retrospective effects. If certain conditions apply, there is a statutory "presumption" that those powers must be used.

The conditions are that:

- such an order would, "as a matter of substance, offer adequate redress" for an illegal act or omission; and
- there is not some other "good reason" not to suspend or limit the retrospective effects of the unlawful act.

Lords Amendment 4, moved by Lord Etherton, proposes completely to remove "the presumption" from the Bill. There would still be statutory guidance to judges about the factors to be taken into account when deciding whether to make a quashing order, and if so, on what terms. However, there would be no default statutory expectation that a quashing order should be suspended and/or that it should be deprived of any retrospective effects.

Lords Amendment 4 was agreed following a division (159 Content to 134 Not Content).[14]

Lord Etherton was particularly critical of "the presumption", describing it as:

> constitutionally dangerous and inappropriate as providing a precedent for interference by the Executive with the exercise of judicial discretion. Furthermore, it is contrary to the rule of law in so far as it limits the remedies which are available to set right the unlawfulness of conduct by the state.[15]

Lord Faulks doubted whether the presumption, in practice, would fetter the discretion of judges, but acknowledged it was therefore less clear why it had been included in the Bill.[16]

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13 HL Deb 31 March 2022 c1726.

14 HL Deb 31 March 2022 cc1732-1733.

15 HL Deb 31 March 2022 c1720.

16 HL Deb 31 March 2022 cc1721-1722.

In defending "the presumption" Lord Wolfson insisted that it was only "low-level". It was there to:

> nudge the court to consider and use these new remedies where they are appropriate, and to build up a strong body of case law to increase legal certainty.[17]

He referred to the use of similar special remedies in Canada under "Schachter categories", through which the courts have developed guidelines for when suspended and prospective-only orders are appropriate.[18]

Abolishing Cart/Eba judicial reviews – an alternative proposal

Having adopted IRAL's recommendation that Cart/Eba judicial reviews should be abolished, the Government included **clause 2** in the Bill. That provision, with very narrow exceptions (e.g. for bad faith decision-making) removes the possibility of a judicial review (in the High Court) against any refusal of permission (by the Upper Tribunal) to appeal against a first instance decision of the First-tier Tribunal.

Concerns had been raised in both Houses about the impact of this proposed change, especially for litigants with protected characteristics and those appealing against decisions of the Immigration and Asylum Tribunal. The evidence base for IRAL's original recommendation (regarding case success rates) had also been repeatedly questioned.[19]

Lord Etherton, Crossbencher and former Master of the Rolls, proposed a compromise amendment, to reduce the amount of time and resources consumed by Cart/Eba judicial reviews in the appellate courts.

Lords Amendment 5 would replace **clause 2** and was agreed to on a division (146 Content to 132 Not Content).[20]

Instead of abolishing Cart judicial reviews, a new restriction would be imposed on subsequent challenges beyond the High Court in England and Wales or in Northern Ireland.[21] If the High Court dismissed a judicial review of the Upper Tribunal's decision, there would be no further possibility of challenge to the Court of Appeal.

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17 HL Deb 31 March 2022 c1727.

18 The "Schachter categories" on remedial discretion were developed by the Supreme Court of Canada in *Schachter v Canada* [1992] 2 S.C.R. 679. No "presumption" is found in the Constitution Act 1982 itself.

19 Joe Tomlinson and Alison Pickup, Putting the Cart before the horse? The Confused Empirical Basis for Reform of Cart Judicial Reviews, UK Constitutional Law Association, 29 March 2021; Joanna Bell, Digging for information about Cart JRs, UK Constitutional Law Association, 1 April 2021; Impact Assessment, Judicial Review and Courts Bill: Judicial Review Reform (PDF), 21 July 2021

20 HL Deb 31 March 2022 cc1743-1744.

21 In Scotland, instead of abolishing Eba reviews, further challenge from the Outer House of the Court of Session to the Inner House would be prohibited.

There would be a very limited right of appeal directly from the High Court to the UK Supreme Court, but subject to its higher permission threshold.[22] Such a "leapfrog" appeal (whereby an appellate court is "skipped") is already a feature of the legal system in England and Wales and in Northern Ireland, but would be novel to Scotland.[23]

Lord Etherton and others argued that the Government had substantially exaggerated the amount of court time that would be saved from abolishing Cart/Eba reviews. This was especially the case given the exceptions in **original clause 2** and the potential satellite litigation that could result from them. Lord Etherton argued that this compromise approach was more "proportionate" and would protect meritorious claims:

> the Cart jurisdiction has been successfully invoked in between 40 to 50 cases on average each year, and on being remitted to the Upper Tribunal for reconsideration of permission to appeal, the overwhelming majority are then given permission to appeal.[24]

In explaining why the amendment included a limited right to a "leapfrog appeal" to the Supreme Court, Lord Etherton explained that the lower courts and High Court were sometimes forced to reach a particular outcome by precedents of the Court of Appeal. For those precedents to be able to be challenged, even on a limited basis, a limited form of appellate jurisdiction would need to be retained.[25]

Lord Faulks defended IRAL's original recommendation to abolish Cart/Eba judicial reviews. He pointed to the fact that the original clause already provided safeguards against bad faith decisions of the Upper Tribunal or fundamental breaches of the principles of natural justice. He described the amendment as a "fudge" and doubted that it would deter "hopeless" judicial review challenges.[26]

Lord Wolfson, in explaining why the Government was unprepared to accept Lord Etherton's "half-way house" argued that the main burden of Cart judicial reviews rests on the High Court, rather than the Court of Appeal. The compromise would therefore, he said, have very little impact on court resources. More broadly, he said the policy position of the Government was to "trust the Upper Tribunal to get these decisions right" and that the Cart judgment was a "misstep" by the Supreme Court that ought, on principle to be corrected.[27]

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22 Appeals to the UK Supreme Court are more onerous than those for other appellate courts. An applicant does not just have to demonstrate that there is an "arguable point of law", but also that it is on a matter of "general public importance".

23 At the moment, all appeals against first instance decisions of the Outer House are appealed to the Inner House of the Court of Session. See also UK Supreme Court Practice Directions 1 and 3.

24 HL Deb 31 March 2022 c1735.

25 HL Deb 31 March 2022 cc1735-1736. The earlier version of this amendment debated in Committee (then Amendment 23) did not include any further right of appeal to the UK Supreme Court.

26 HL Deb 31 March 2022 c1736.

27 HL Deb 31 March 2022 c1741.

Criminal procedure

Seven Government amendments were made to, or in connection with, **Chapter 1 of Part 2 of the Bill** (on Criminal procedure). Each was agreed to without a division and minimal if any debate. These are minor technical amendments dealing with commencement and drafting anomalies.

Criminal Procedure amendments made on Lords Report
Thursday 31 March 2022

Amendment No.	Lords Amendment No.	Moved by	Division?	Description
16	6	Government	N/A	Enables clause 13(3) to have effect before the rest of clause 13 comes into force
32 and 34	15 and 17	Government	N/A	Clause 11 (and related provisions) will come into force on Royal Assent instead of by commencement regulations
33, 35 and 38	16, 18 and 21	Government	N/A	Make further arrangements for entry into force of clause 13, aligning it with provisions in the Sentencing Act 2020
39	22	Government	N/A	Brings the maximum prison sentence for "either way" gambling offences into line with other "either way" offences

Coroners

Three further amendments were made to **Chapter 3 of Part 2 of the Bill** (on Coroners). Two of these were Government amendments, whereas one was an Opposition amendment. The latter was agreed to on a division.

Coroners amendments made on Lords Report
Thursday 31 March 2022

Amendment No.	Lords Amendment No.	Moved by	Division?	Description
19 and 20	8 and 9	Government	N/A	Consequential on Commons clause 38, updating the language of related statutes
25	11	Official Opposition	136-112	New clause to make publicly funded legal representation available to bereaved families at inquests where other parties are legally represented

Government amendments

Clause 38 of the Bill as passed by the Commons would amend section 4 of the Coroners and Justice Act 2009 (the 2009 Act) to enable a coroner to discontinue an investigation if:

- the coroner is satisfied that the cause of death has become clear in the course of that investigation; and
- an inquest into the death has not yet begun.

There would no longer be a specific reference to the cause of death having been revealed by a post-mortem examination.

Lord Wolfson of Tredegar moved **Lords Amendments 8 and 9** which, he said, were "minor and technical" and consequential on that clause.[28] He said they would "remove some obsolete references to post-mortems from existing legislation".[29]

Both amendments were agreed without division.[30]

28 HL Deb 31 March 2022 c1754.
29 HL Deb 31 March 2022 cc1759-1760.
30 HL Deb 31 March 2022 c1759-1760.

Opposition amendment on publicly-funded legal representation

Following a debate on a similar amendment at Committee Stage,[31] at Report Stage, Lord Ponsonby of Shulbrede, Shadow Spokesperson for Home Affairs and Justice, moved **Lords Amendment 11**. This was a new clause intended to ensure that bereaved people (such as family members) would be entitled to publicly funded legal representation in inquests where public bodies (such as the police or a hospital trust) are legally represented.[32]

Lord Ponsonby said the charity Inquest, and others, had warned the new coroners' provisions would "exacerbate the difficulties already faced by bereaved families who are not eligible for legal aid during the inquest process". He added:

> It is therefore more imperative than ever that an amendment be accepted to finally introduce equality of arms to inquests and provide automatic, non-means-tested public funding for bereaved families and people where the state is an interested person.[33]

Lord Ponsonby set out why he considered change to the current arrangements was needed:

> The current funding scheme allows state bodies unlimited access to public funds for the best legal teams and experts, while families often face a complex and demanding funding application process. Many are forced to pay large sums of money towards legal costs or represent themselves during this process; others use crowdfunding. The Bill represents a timely opportunity to positively shape the inquest system for bereaved people by establishing in law the principle of equality of arms between families and public authority interested persons. It is no longer conscionable to continue to deny bereaved families publicly funded legal representation where public bodies are legally represented.[34]

Lord Thomas of Gresford (Liberal Democrat) supported the amendment and said it was a myth that an inquest is inquisitorial in procedure and not adversarial.

Lord Thomas of Cwmgiedd (Crossbench) also supported the amendment:

> It cannot be right that, where the state is involved and has heavy representation, the bereaved family is not also provided for by the state. The coroner cannot remedy that. It is a myth to say that he can do this through his inquisitorial powers; that is simply not possible when you need expert and other evidence, and trained lawyers.[35]

31 HL Deb 24 February 2022 cc426-432.
32 HL Deb 31 March 2022 c1760.
33 HL Deb 31 March 2022 c1761.
34 ibid.
35 ibid.

Baroness Jones of Moulsecoomb (Green Party) said the lack of public funding for bereaved families at inquests and inquiries "just compounds their suffering" adding:

> It is also very inefficient, because the point of having competent lawyers in court is that they can assist the court in the administration of justice.[36]

Lord Wolfson of Tredegar resisted the amendment. He reiterated the Government's view that "bereaved families should be at the heart of any inquest process", but said, with some exceptions, "legal representation and legal aid are not required for the vast majority of inquests".[37]

Lord Wolfson set out the potential effect of Amendment 25 and two further amendments, which were not moved:

> Amendments 25, 26 and 27 all seek to expand access to legal aid at inquests. However, the amendments would also make that access to legal aid entirely non-means-tested. That would lead to significant and potentially open-ended cost to the taxpayer. It would also go against the principle of targeting legal aid at those who need it most, because these amendments would provide public funding for those who could, in fact, afford the cost themselves.[38]

He did not agree that having more lawyers at an inquest would provide an improved experience for the bereaved:

> Indeed, it could have the unintended consequence of turning an inquisitorial event into a complex defensive case, which would likely prolong the distress of bereaved families.[39]

Lord Wolfson recognised that bereaved families need support and guidance and set out what the Government had done:

> We have been working on several measures to make inquests more sympathetic to the needs of bereaved people. That includes publishing new guidance on the coroner service for bereaved families, engaging with the chief coroner on training for coroners and developing a protocol. I think this goes to the point made by the noble Lord, Lord Thomas of Gresford, that, where the state is represented, the protocol now is that the state will consider the number of lawyers instructed, so as to support the underlying inquisitorial approach to inquests.[40]

Lord Wolfson then spoke of current availability of legal aid:

> First, legal help is available under the legal aid scheme, subject to a means and merits test, which bereaved families can access if they require advice and assistance. Further, where certain criteria are met, legal aid for legal representation may be available under the exceptional case funding scheme. Where these criteria are met, we are of the view that that process should be as straightforward as possible. Therefore, as of January this year, there is no

36 HL Deb 31 March 2022 c1762.
37 ibid.
38 ibid
39 ibid.
40 HL Deb 31 March 2022 cc1762-1763.

> means test for an exceptional case funding application in relation to representation at an inquest or for legal help at an inquest where representation is granted.
>
> Thirdly, we considered our approach to initial access to legal help at inquests in our recently published Legal Aid Means Test Review. … There, we have proposed to remove the means test for legal help in relation to inquests which relate to a possible breach of rights under the ECHR—it is generally Article 2, but not exclusively—or where there is likely to be significant wider public interest in the individual being represented at the inquest. We published that review on 15 March; a full consultation is currently open and will close on 7 June.[41]

Amendment 25 was agreed on division by 136 votes to 112. This appears as **clause 45** in the Bill as amended on Lords Report.[42]

Pro bono legal costs in tribunals

A new clause was added to **Chapter 5 of Part 2 of the Bill**, which amends the Legal Services Act 2007. The new clause would enable pro bono costs to be awarded in tribunal proceedings. This was agreed to without a division. Three consequential amendments were also made in connection with it.

Pro bono costs amendments made on Lords Report
Thursday 31 March 2022

Amendment No.	Lords Amendment No.	Moved by	Division?	Description
29	12	Government	N/A	New clause allowing pro bono costs to be awarded in tribunals cases
30 and 31	13 and 14	Government	N/A	Consequential amendments to Amendment 29
36	20	Government	N/A	The new clause comes into force two months after Royal Assent

What is "pro bono" representation?

If legal services are provided "pro bono" this means they are being provided free of charge. Barristers and solicitors might act on a "pro bono basis" for a client if, for example, the client is unable to pay for legal services and is not eligible for legal aid. They might also choose to act pro bono in public interest litigation.

Typically courts and tribunals award costs based on who wins a case. The unsuccessful party pays the costs, including the legal costs, of the successful

41 HL Deb 31 March 2022 c1763.
42 HL Bill 146 (PDF).

party. In this context, a pro bono litigant is anomalous: there are no legal costs to recover even if they win a case.

Awarding "pro bono costs"

Under the Legal Services Act 2007, notional costs can be awarded in respect of a successful pro bono party. Instead of being paid to the pro bono litigant, however, these costs are awarded to the Access to Justice Foundation (a legal charity). The purpose of this arrangement is to support efforts of the legal profession to widen accessibility to its services. This special arrangement on pro bono costs currently only applies to litigants in the civil and family courts in England and Wales.

Lord Etherton's proposal

Lord Etherton, Crossbencher and former Master of the Rolls, had proposed in Lords Committee that the "pro bono costs" arrangement should be extended beyond those courts to cover a wide range of tribunals.

The Government's new clause

The Government supported the principle of Lord Etherton's proposals. However, Lord Wolfson identified two issues with the drafting of Lord Etherton's original amendment.

- Firstly, it would inadvertently regulate certain specialist tribunals for which the UK Government is not responsible (e.g. the General Medical Council's professional disciplinary bodies).
- Secondly, it was flawed as to its territorial extent. As drafted, Lord Etherton's amendment would have both:
  - purported to regulate devolved tribunals in Wales; and
  - not regulated reserved tribunals in Scotland or Northern Ireland.[43]

The Government promised to revisit this issue on Report. To that end, **Lords Amendment 12** was moved by the Lord Wolfson. It addressed those drafting issues, and was agreed to without a division.

Under the new clause, pro bono legal costs can be awarded in relation to reserved tribunal proceedings.

Two consequential **Lords Amendments 13 and 14** were also agreed without a division.

Lords Amendment 20, also agreed without a division, provides that the new clause will come into force two months after Royal Assent.

[43] HL Deb 24 February 2022 cc434-435.

1.4 Third Reading

Lords Third Reading took place on Wednesday 6 April 2022.[44] The Bill was agreed to with one further amendment and without any division.

The amendment adjusts the drafting of **new clause 49** (on pro bono legal costs in the tribunals) as it relates to Northern Ireland.[45]

[44] HL Deb 6 April 2022 cc2088-2091.

[45] This does not appear as a separate Lords Amendment as it amends the text of a previous amendment made at Lords Report Stage.

2 Other Lords scrutiny of the Bill

Three Parliamentary Committees have published reports on the Judicial Review and Courts Bill:

- the Joint Committee on Human Rights (in December 2021);[46]
- the Lords Delegated Powers and Regulatory Reform Committee (in February 2022);[47] and
- the Lords Constitution Committee (in March 2022).[48]

[46] Joint Committee on Human Rights, Legislative Scrutiny: Judicial Review and Courts Bill (PDF), HC 884 HL Paper 120, 7 December 2021.

[47] Delegated Powers and Regulatory Reform Committee, 20th Report of Session 2021–22 (PDF), HL Paper 158, 10 February 2022; Government Response published in 22nd Report of Session 2021-22 (PDF), HL Paper 172, 10 March 2022.

[48] Constitution Committee, Judicial Review and Courts Bill (PDF), HL Paper 160, 18 February 2022.

3 Consideration of Lords Amendments

The House of Commons will consider the Lords Amendments to the Bill on Tuesday 26 April 2022.

The Government has tabled motions to disagree with five of the six Opposition Lords Amendments.[49] These concern:

- **Lords Amendments 1-3** (on prospective-only quashing orders);
- **Lords Amendment 5** (on whether to abolish Cart/Eba judicial reviews); and
- **Lords Amendment 11** (on publicly funded legal assistance at inquests).

However, the Government has decided to accept **Lords Amendment 4** (removing "the presumption" from the Bill).

As part of its proposal to reject **Lords Amendment 5** (thereby reinstating **original clause 2**) the Government has also offered a further drafting amendment. The new language more accurately reflects the devolution settlement in Northern Ireland, and the definition of reserved matters.

[49] Judicial Review and Courts Bill: Motions relating to Lords Amendments) (PDF), 20 April 2022.

Lords Amendments for Commons Consideration

To be debated 21 April 2022

Lords Amendment No.	Description	Briefing Page(s)
1	Removes "prospective-only" quashing orders from clause 1 of the Bill	8-9
2 and 3	Consequential to Lords Amendment 1	8-9
4	Removes from clause 1 "the presumption" in favour of judges suspending or limiting the retrospective effects of a quashing order	9-10
5	Retains Cart/Eba judicial reviews to the High Court/Outer House of the Court of Session but prevents further appeals to Court of Appeal/Inner House of the Court of Session	10-11
6	Enables clause 13(3) to have effect before the rest of clause 13 comes into force	12
7	New clause on dispute resolution services	6
8 and 9	Consequential on Commons clause 38, updating language of related statutes	13
10	New clause modifying section 23 Births and Deaths Registration Act 1953	5-7
11	New clause to make publicly funded legal representation available to bereaved families at inquests where other parties are legally represented	14-16
12	New clause allowing pro bono costs to be awarded in tribunals cases	16-17
13 and 14	Consequential to Lords Amendment 12	16-17
15 and 17	Clause 11 (and related provisions) will come into force on Royal Assent instead of by commencement regulations	12
16, 18 and 21	Make further arrangements for entry into force of clause 13, aligning it with provisions in the Sentencing Act 2020	12
19	Commencement arrangements for new clause inserted by Lords Amendment 10	5-7
20	New clause in Lords Amendment 12 comes into force two months after Royal Assent	12
22	Brings the maximum prison sentence for "either way" gambling offences into line with other "either way" offences	12

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