



Courts and Tribunals (Judiciary and Functions of Staff) Bill [HL]

HL Bill 108 of 2017–19

Summary

The Courts and Tribunals (Judiciary and Functions of Staff) Bill [HL] is a government bill which seeks to make reforms to the rules regarding the deployment of judges and to provide for the undertaking of some judicial functions by HM Courts and Tribunal Service staff. The Bill was introduced in the House of Lords on 23 May 2018 and is due to receive second reading on 20 June 2018.

The Bill contains three substantive clauses and one schedule:

- Clause 1 changes existing legislation to remove restrictions on how judges can be deployed, enabling judges to hear a wider scope of cases.
- Clause 2 makes minor changes to the law concerning some judicial titles.
- Clause 3 and schedule 1 provides for court and tribunal staff to carry out some judicial functions and to provide legal advice to judges. It would establish a unified system for the judicial oversight for staff carrying out these tasks across the various jurisdictions.

These changes form part of an ongoing programme of reform of the courts and tribunal service in the UK. They are similar to some of the provisions previously included in the Prisons and Courts Bill. The Prisons and Courts Bill was introduced by the Government in the House of Commons during the 2016–17 session, however this Bill was dropped due to the calling of the 2017 general election.

The Courts and Tribunals (Judiciary and Functions of Staff) Bill [HL] has been criticised both in parliament and in the press for including only some of the legislative measures to reform the courts and tribunal service that were in the Prisons and Courts Bill. For example, the Bill does not include provisions regarding the increased use of online technology in the courts. The Government has stated that further legislation to reform the courts and tribunal service will follow, as soon as parliamentary time allowed.

Table of Contents

1. Background
2. Introduction of Bill
3. Overview of Bill
4. Reaction
5. Further Reading

Table of Contents

1. Background	1
2. Introduction of Bill	2
3. Overview of Bill	3
3.1 Changes to Deployment of Judges.....	3
3.2 Changes to Judicial Titles	4
3.3 Judicial Functions Undertaken by Court and Tribunal Staff.....	4
4. Reaction	6
5. Further Reading	8

A full list of Lords Library briefings is available on the [research briefings page](#) on the internet. The Library publishes briefings for all major items of business debated in the House of Lords. The Library also publishes briefings on the House of Lords itself and other subjects that may be of interest to Members.

House of Lords Library briefings are compiled for the benefit of Members of the House of Lords and their personal staff, to provide impartial, authoritative, politically balanced briefing on subjects likely to be of interest to Members of the Lords. Authors are available to discuss the contents of the briefings with the Members and their staff but cannot advise members of the general public.

Any comments on Library briefings should be sent to the Head of Research Services, House of Lords Library, London SW1A 0PW or emailed to purvism@parliament.uk.

I. Background

HM Courts and Tribunals Reform Programme

According to the Government, the Courts and Tribunals (Judiciary and Functions of Staff) Bill [HL] forms part of an ongoing programme of reform of the courts and tribunal service in the UK, launched in 2014.¹ The reform programme is intended to streamline existing processes and to make the courts and tribunal service more efficient and more responsive to the needs of both judges and legal professionals as well as the public.² It also seeks to modernise court and tribunal procedures from being primarily paper-based to a new digital-based system, with all cases starting online and some cases being handled entirely online. Alongside these reforms, the courts and tribunal service and the Government have committed to the modernisation of the courts estate.

As part of this programme, two independent reviews have been conducted:

- The President of the Queen's Bench Division, Sir Brian Leveson, conducted a review of criminal court proceedings in which he concluded that the technology available in court should be improved, enabling digital evidence to be more easily presented.³ Specifically, he recommended use of remote hearings in criminal courts.⁴ This, he argued, would improve efficiency and make it easier for vulnerable and intimidated witnesses to give evidence.
- Lord Justice Briggs conducted a review of procedure in the civil courts.⁵ He also recommended improving the way the civil courts operated through the greater use of digital technology.⁶ He argued in favour of the creation of an 'online court' whereby some routine cases which were not contested could be settled entirely online. He also recommended changes to the structure of the judiciary and to judicial terms and conditions.

Prisons and Courts Bill

On 23 February 2017, the Government introduced the Prisons and Courts Bill in the House of Commons. The Bill included a series of legislative changes intended to support the implementation of the courts and tribunals reform programme. Alongside these changes, the Bill also included reforms to prisons and to the law on whiplash compensation cases.

¹ Ministry of Justice and HM Courts and Tribunals Service, '[Joint Letter on Court Reform Programme](#)', 28 March 2014; and '[Transforming Our Justice System](#)', 15 September 2016.

² *ibid*, p 6.

³ Sir Brian Leveson, '[Review of Efficiency in Criminal Proceedings](#)', January 2015.

⁴ *ibid*, p 13.

⁵ Lord Justice Briggs, '[Civil Courts Structure Review: Final Report](#)', July 2016.

⁶ *ibid*, pp 115–24.

The measures in the Bill intended to support reform of the court and tribunal system included:

- An expansion of the use of technology in the criminal courts.
- The introduction of new online procedures and online dispute resolution for the civil courts, family courts and tribunals.
- Changes to judicial terms and conditions and the role of the Judicial Appointments Commission.
- Changes to the law on the deployment of judges and the remuneration of Employment Tribunal Members.

The Bill reached part way through committee stage in the Commons during the 2016–17 session. However, the Bill did not complete its stages due to the calling of an early election in 2017 and therefore fell.⁷

2. Introduction of Bill

Following the 2017 general election, the Government committed to re-introducing the legislative reforms to the courts and tribunal service included in the Prisons and Courts Bill.⁸ The 2017 Queen’s Speech included reference to a bill to “modernise the courts system”, to be introduced during the 2017–19 session.⁹ The Government said that this Bill would include measures to introduce new online procedures and extend the use of virtual hearings.¹⁰ It would also include reforms to the way that the judicial career was structured and changes to the way judges were deployed.

The Government subsequently faced criticism for not committing to when a new bill would be introduced. In April 2018, concerns were raised by members of the House of Lords Constitution Committee, during an oral evidence session with the Lord Chief Justice, Lord Burnett of Maldon.¹¹ Lord Burnett stated that he hoped the reforms to the courts and tribunal service included in the Prisons and Courts Bill would return to Parliament “fairly soon”.

⁷ Further information on the provisions of the Prisons and Courts Bill relating to reforms of courts and tribunals is provided in the House of Commons Library briefing, [The Prisons and Courts Bill: Court Reform](#) (15 March 2017).

⁸ The 2017 Queen’s Speech did not include proposals to reintroduce the provisions of the Prisons and Courts Bill concerning prisons. Further information on prison reform is included in the House of Commons Library briefing, [Prison Reform: Recent Developments](#) (5 December 2017). Provisions regarding whip-lash claims have been introduced as part of the [Civil Liability Bill \[HL\]](#).

⁹ [HL Hansard, 21 June 2018, col 6](#).

¹⁰ Prime Minister’s Office, [Queen’s Speech and Associated Background Briefing](#), 21 June 2017, p 40.

¹¹ House of Lords Constitution Committee, [Corrected Oral Evidence: The Lord Chief Justice](#), 25 April 2018.

In May 2018, the National Audit Office reported that some progress had been made by HM Courts and Tribunal Service in those aspects of the reform programme that did not require changes to legislation. However, it warned that this programme risked being either delayed or its benefits reduced unless the Government gave a commitment to introducing the necessary legislative changes soon.¹²

The Courts and Tribunals (Judiciary and Functions of Staff) Bill [HL] was introduced in the House of Lords on 23 May 2018. The Bill included some of the provisions in the Prisons and Courts Bill regarding the deployment of judges and amended the rules regarding the judicial functions that could be undertaken by courts and tribunal staff. However, the Bill did not include other measures such as those regarding the increased use of online technology in the courts.

In his statement to accompany the publication of the Bill, the Lord Chancellor, David Gauke, described it as being part of an ongoing programme of reforms.¹³ He argued that the purpose of the Bill was to underpin this reform agenda and that further legislation would follow as soon as parliamentary time allowed.

3. Overview of Bill

3.1 Changes to Deployment of Judges

Clause 1 of the Bill makes changes to existing legislation to allow for greater flexibility in the deployment of judges. This, the Government has argued, would enable judges to be deployed more efficiently in response to changes in business demand and allow for the smoother transaction of judicial business.¹⁴ The Government has also argued that this would widen the scope of the types of cases that judges might hear, enhancing their career prospects.¹⁵

Under the provisions in the clause 1 of the Bill:

- Temporary appointed deputy High Court judges would be able to sit on any court of tribunal to which a deputy High Court judge could usually be deployed.
- The restriction on a judge being the president of more than one chamber of the First-tier Tribunal or Upper Tribunal would be removed.

¹² National Audit Office, [Early Progress in Transforming Courts and Tribunals](#), 9 May 2018, HC 1001 of session 2017–19, p 23.

¹³ House of Commons, [Written Statement: Courts Update](#), 23 May 2018, HCWS715.

¹⁴ Ministry of Justice, [Impact Assessment: Judiciary Measures](#), 22 May 2018, p 1.

¹⁵ *ibid*, p 7.

- Recorders would be able to sit as judges in the Upper Tribunal and senior employment judges to sit as judges in the First-tier Tribunal and Upper Tribunal.
- A wider range of High Court judges would be able to sit as judge-arbitrators.
- The President of the Employment Tribunals in England and Wales and Scotland would be able to sit in the Employment Appeal Tribunal.¹⁶

Some of these changes had previously been included in clause 57 of the Prisons and Courts Bill. However, some additions have been made subsequently by the Government. The provisions that would enable judges to be president of more than one chamber of the First-tier Tribunal or Upper Tribunal are new.¹⁷ The Prisons and Courts Bill also only extended flexibility to Recorders—who currently sit in the First-tier Tribunal—to enable them to hear cases in the Upper Tribunal. The Courts and Tribunals (Judiciary and Functions of Staff) Bill [HL] now extends this flexibility to presidents of the employment tribunals (England and Wales, and Scotland), the vice president of employment tribunals (Scotland) and regional employment judges.¹⁸

3.2 Changes to Judicial Titles

Clause 2 of the Bill provides for changes to the titles of some judges. Normally, changes to the titles of judges would not require primary legislation, however, this clause addresses exceptions to that rule. Clause 2(1) changes the title of the ‘Chief Bankruptcy Registrar’ to ‘Chief Insolvency and Companies Court Judge’, to match a change to the titles of other judges in that court.¹⁹ Clause 2(2) enables the changing of titles of other senior masters and district judges of the senior courts in future by secondary legislation. These provisions were not previously included in the Prisons and Courts Bill.

3.3 Judicial Functions Undertaken by Court and Tribunal Staff

Clause 3(1) and schedule 1 of the Bill provides for court and tribunal staff to carry out some judicial functions and to enable a wider group of staff to provide legal advice to judges. Clause 3(2)–(4) of the Bill also gives the Secretary of State the power to make regulations in relation to schedule 1.

¹⁶ [Explanatory Notes](#), p 3. Guides to the current structure of the Courts and Tribunal Service are provided in the HM Courts and Tribunals Service publications, [The Structure of the Courts](#) (July 2015) and [Tribunals Structure Chart as of May 2018](#) (May 2018).

¹⁷ [Courts and Tribunals \(Judiciary and Functions of Staff\) Bill \[HL\]](#), clause 1(4) and (5).

¹⁸ [Prisons and Courts Bill](#), clause 57(2); [Courts and Tribunals \(Judiciary and Functions of Staff\) Bill \[HL\]](#), clause 1(2).

¹⁹ The change of the title of ‘Registrar in Bankruptcy of the High Court’ to ‘Insolvency and Companies Court Judge’ was previously enacted by the Alteration of Judicial Titles (Registrar in Bankruptcy of the High Court) Order 2018.

Delegation of Judicial Functions

The Bill would enable staff across the criminal, civil and family courts and tribunals to undertake some judicial functions. The Government has argued enabling the increased delegation of some routine judicial tasks to appropriately trained staff would increase the efficiency of the courts, ensuring that case management and preparation issues are handled at an appropriate level, and enable judges to focus attention on areas more relevant to their expertise.²⁰ This change was also recommended by Lord Justice Briggs in his review of civil courts structure.²¹

The delegation of some judicial functions to court and tribunal staff already takes place in most jurisdictions.²² There are exceptions to this, however, including the High Court. The Government has argued that there is currently a large degree of variation across jurisdictions in the way in which oversight of these tasks is provided.²³ The Bill would introduce a new unified system of safeguards across the jurisdictions. This would govern the judicial supervision for court and tribunal staff undertaking judicial tasks and ensure that the necessary independence is maintained.

While the Lord Chief Justice and the Senior President of Tribunals would be ultimately responsible for the role undertaken by these staff, the specific tasks will be decided by the relevant Procedure Rule Committees. The Government has provided the following list of examples of the kinds of task that might be undertaken:

In future, we expect that authorised staff will be able to carry out a range of functions and responsibilities, including case management powers and some mediation roles. These will be characterised as interlocutory or preparatory in nature, such as issuing a summons; taking pleas; extending time for service of (various) applications; or considering applications for variations of directions made in private or public law cases.²⁴

The Government has said these tasks are unlikely to involve any matters that are contested.²⁵

²⁰ Ministry of Justice, [Factsheet: Authorised Court and Tribunal Staff: Legal Advice and Judicial Functions](#), 24 May 2018, p 1.

²¹ Lord Justice Briggs, [Civil Courts Structure Review: Final Report](#), July 2016, p 65.

²² [Explanatory Notes](#), p 3.

²³ Ministry of Justice, [Factsheet: Authorised Court and Tribunal Staff: Legal Advice and Judicial Functions](#), 24 May 2018, p 1.

²⁴ *ibid*, p 2.

²⁵ *ibid*.

Justices' Clerks and Advisory Roles

In addition to these reforms, the Bill will also make changes to the post of justices' clerks.²⁶ Currently, under the Courts Act 2003, justices' clerks operate in the family courts overseeing the provision of legal advice. This is limited to the work of magistrates. While the functions carried out by justices' clerks would continue, the Bill would remove this role from statute. The Government has stated this change to legislation will enable a similar advisory role to be undertaken by legal staff in other jurisdictions.²⁷

Prisons and Courts Bill: Clause 50 and Schedule 11

The provisions in clause 3 and schedule 1 are similar to those previously included in clause 50 and schedule 11 of the Prisons and Courts Bill. Following the publication of the Prisons and Courts Bill, the Bar Council of England and Wales raised concerns regarding what safeguards would be in place to ensure that the independence of the judiciary and the nature of the UK's adversarial system of justice were not undermined.²⁸ These concerns had previously been raised when proposals to expand the role of case officers had been proposed by Lord Justice Briggs in his review of the civil courts.²⁹ The Bar Council recommended that more detail was needed from the Government regarding what roles were to be performed by court and tribunal staff.³⁰

4. Reaction

Following the publication of the Courts and Tribunals (Judiciary and Functions of Staff) Bill [HL], the Lord Chief Justice, Lord Burnett of Maldon, and the President of Tribunals, Sir Ernest Ryder, issued the following statement in which they welcomed the measures in the new Bill, while referring to the need for further reforms:

We are pleased that the Government is showing a commitment to progressing reforms of the justice system. Enabling court staff to deal with these matters will allow judges to concentrate on concerns which need their skill. While there is still much work to do, the introduction of this Bill is a positive first step in legislation to deliver reform.³¹

²⁶ [Courts and Tribunals \(Judiciary and Functions of Staff\) Bill \[HL\]](#), schedule 1.

²⁷ Ministry of Justice, [Factsheet: Authorised Court and Tribunal Staff: Legal Advice and Judicial Functions](#), 24 May 2018, p 1.

²⁸ Bar Council, [Parliamentary Briefing: Prisons and Courts Bill House of Commons, Second Reading](#), 20 March 2017, p 3.

²⁹ Lord Justice Briggs, [Civil Courts Structure Review: Final Report](#), July 2016, p 65.

³⁰ Bar Council, [Parliamentary Briefing: Prisons and Courts Bill](#), March 2017, p 3.

³¹ Courts and Tribunals Judiciary, ['Courts and Tribunals \(Judiciary and Functions of Staff\) Bill Introduced'](#), 24 May 2018.

Writing for the *Law Society Gazette*, the legal commentator Joshua Rozenberg argued that the provisions in the Bill were “a little too late and quite a lot too little”.³² He argued that the Government had introduced a narrowly drafted bill to ensure that it could get through Parliament—with a view to introducing further legislation in due course—while avoiding amendments regarding other contested issues such as reforms to legal aid. Mr Rozenberg argued that the Government’s approach constituted “legislative drip-feed”.

During an oral question in the House of Lords on the Government’s proposals, Lord Beith (Liberal Democrat) criticised the Bill on the basis that it only included some of the reform measures in the Prisons and Courts Bill and fell short of what had been promised in the 2017 Queen’s Speech.³³ The Government Spokesperson for the Ministry of Justice, Lord Keen of Elie, responded by restating that the Bill was the “first step” in implementing the wider reform package and that the Government was committed to introducing further court reform legislation as soon as parliamentary time allowed.³⁴

³² Joshua Rozenberg, ‘[Sitting in Judgement on Flexible Courts](#)’, *Law Society Gazette*, 5 June 2018.

³³ [HL Hansard, 6 June 2018, col 1305](#).

³⁴ *ibid.*

5. Further Reading

Ministry of Justice Documents Accompanying the Bill

- Ministry of Justice and HM Courts and Tribunals Service, '[New Legislation Will Modernise the Courts](#)', 23 May 2018
- Ministry of Justice, '[Courts and Tribunals \(Judiciary and Functions of Staff\) Bill—European Convention on Human Rights Memorandum](#)', 24 May 2018
- Ministry of Justice, '[Courts and Tribunals \(Judiciary and Functions of Staff\) Bill—Equalities Statement: Authorised Staff: Legal Advice and Judicial Functions](#)', 24 May 2018
- Ministry of Justice, '[Courts and Tribunals \(Judiciary and Functions of Staff\) Bill—Equalities Statement: Flexible Deployment of the Judiciary and Judicial Titles Measures](#)', 24 May 2018
- Ministry of Justice, '[Impact Assessment: Authorised Court and Tribunal Staff: Legal Advice and Judicial Functions](#)', 22 May 2018
- Ministry of Justice, '[Impact Assessment: Judicial](#)', 22 May 2018
- Ministry of Justice, '[Impact Assessment: Overarching Impact Assessment](#)', 22 May 2018
- Ministry of Justice, '[Factsheet: Authorised Court and Tribunal Staff: Legal Advice and Judicial Functions](#)', 24 May 2018
- Ministry of Justice, '[Factsheet: Judiciary Measures](#)', 24 May 2018

Press Coverage

- *Times* (£), '[Court Officials Take On 'Routine Tasks' To Free Judges' Time](#)', 24 May 2018
- John Hyde, '["We're not Replacing Judges", says HMCTS, as Reform Cost-Benefit Published](#)', *Law Society Gazette*, 25 May 2018
- Joshua Rozenberg, '[Sitting in Judgement on Flexible Courts](#)', *Law Society Gazette*, 5 June 2018

HM Courts and Tribunal's Reform Programme

- Ministry of Justice and HM Courts and Tribunals Service, '[Joint Letter on Court Reform Programme](#)', 28 March 2014
- Ministry of Justice and HM Courts and Tribunals Service, '[Transforming Our Justice System](#)', September 2016.
- Ministry of Justice, '[Transforming our Justice System: Summary of Reforms and Consultation](#)', September 2016, Cm 9321

- Ministry of Justice and HM Courts and Tribunals Service, [Transforming Our Justice System: Assisted Digital Strategy, Automatic Online Conviction and Statutory Standard Penalty, and Panel Composition in Tribunals: Government Response](#), February 2017, Cm 9391
- Ministry of Justice, [Modernising Judicial Terms and Conditions: Government Response](#), 8 February 2017
- Lord Justice Briggs, [Civil Courts Structure Review: Final Report](#), July 2016
- Sir Brian Leveson, [Review of Efficiency in Criminal Proceedings](#), January 2015
- National Audit Office, [Early Progress in Transforming Courts and Tribunals](#), 9 May 2018, HC 1001 of session 2017–19

Prisons and Courts Bill

- House of Commons Library, [Prisons and Courts Bill: Court Reform](#), 15 March 2017
- John Hyde, [‘Prisons and Courts Bill: Reforms Will Create ‘User-Friendly’ Courts, Minister Insists’](#), *Law Society Gazette*, 20 March 2017