HOUSE OF LORDS Library Briefing

Judicial Review and Courts Bill
HL Bill 102 of 2021–22

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On 7 February 2022, the second reading of the Judicial Review and Courts Bill is scheduled to take place in the House of Lords.

The bill is a wide-ranging piece of legislation. It would make several changes to judicial review, and introduce new procedural measures across criminal courts, employment tribunals and coroner's courts, including provisions to streamline court processes and introduce online procedures. The Government has said the bill would strengthen judicial review, modernise the court and tribunal system, and help to address the case backlogs caused by the pandemic.

The bill contains 49 clauses and includes provisions that would:

- prevent a decision of the Upper Tribunal (to refuse an appeal of a first-tier tribunal decision) being judicially reviewed in the High Court (in England and Wales) and the Scottish Court of Session (for Scotland);
- enable courts to impose suspended quashing orders, and to remove or limit the retrospective effect of a quashing order;
- introduce a procedure for certain criminal cases to be dealt with by an automated online procedure;
- enable the maximum prison sentence that a magistrates' court can impose for an either-way offence to be varied between six and 12 months; and
- enable a coroner to discontinue an investigation where the cause of death becomes clear before an inquest has begun.

The bill completed its passage through the House of Commons on 25 January 2022. Government amendments were added to the bill at both committee and report stage. These included a new clause that would enable the sentencing power of magistrates' courts to be varied. Other government amendments included minor changes to criminal procedure clauses and a related schedule, and corrections of some drafting errors.

Several opposition amendments and new clauses were considered during the debates, however all were either withdrawn or defeated on division. Opposition parties raised concerns about several aspects of the bill, including those relating to judicial review and criminal procedure. At third reading, both the Labour Party and Scottish National Party declined to support the bill.

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1. Background to the bill

The Judicial Review and Courts Bill is a government bill that has several purposes.

One of the purposes is to deliver the Government's manifesto commitment on judicial review. In its manifesto ahead of the 2019 general election, the Government said it would ensure that judicial review was available to "protect the rights of the individuals against an overbearing state, while ensuring that it is not abused to conduct politics by another means or to create needless delays".[1]

In the Queen's Speech in May 2021, the Government said that measures would be brought forward to "restore the balance of power between the executive, legislature and the courts".[2] The background briefing note to the speech provided further detail on the judicial review provisions of the bill. The Government stated that the main benefits would be:

- Giving the courts the power to suspend quashing orders in judicial review cases, so as to allow defects to be remedied. This will enable the courts to have more flexibility in judicial review cases. This may help ensure that, for example, a large infrastructure project is not delayed because an impact assessment has not been properly done.
- Reversing the Cart and Eba judicial reviews (whereby certain decisions of the Upper Tribunal became reviewable by the High Court and Scottish Court of Session), which will increase the efficiency of the courts and tribunal system and clarify the status of decisions of the Upper Tribunal. An additional effect will very likely be to reduce delays in the immigration and asylum system.

In addition to provisions on judicial review, the bill would also amend aspects of criminal procedure, as well as online procedure, employment tribunals and coroner's courts, amongst others.

Many of the bill's measures were included in the 2021 Queen's Speech, with some originating in an earlier bill that fell at the dissolution of the previous parliament.

This briefing focuses on the bill's provisions, as well as discussions that took place during the bill's passage through the House of Commons.

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[1] Conservative Party, *Conservative Party Manifesto 2019*, November 2019, p 48.

[2] Prime Minister's Office, *The Queen's Speech 2021*, 11 May 2021, p 144.

2. What the bill would do

This section contains a brief summary of all parts of the bill. More detailed information can be found in the following:

- Explanatory Notes, published 22 January 2022
- Ministry of Justice, 'Judicial Review and Courts Bill', 21 July 2021

The bill contains 49 clauses, split into three parts. It also has five schedules.

2.1 Part 1: judicial review

Background to judicial review reforms

Judicial review is the process by which a court reviews the lawfulness of a decision or action made by a public body.[3] It specifically focuses on how the decision was made, rather than the rights and wrongs of the conclusion reached.

The Government established the Independent Review of Administrative Law (IRAL) in July 2020. This followed high profile court cases that challenged the Government and increased discussion about the judicial review process. For example, in January 2017 the Supreme Court held that an act of parliament was required before government ministers could give formal notice of the UK's decision to withdraw from the EU.[4] More than two years later in September 2019, the Supreme Court held that the prorogation of Parliament had been unlawful.[5]

During a January 2019 debate on leaving the EU, the then Attorney General, Geoffrey Cox, said the Government wanted to determine whether the judicial review process could be made more efficient and streamlined.[6] The following year in December 2020, the then Secretary of State for Justice, Robert Buckland, announced that the Government would launch several independent reviews on the UK's constitution, including the IRAL.[7]

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[3] Courts and Tribunals Judiciary, 'Judicial review', accessed 1 February 2022.

[4] The Supreme Court, 'R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union: Press summary', 24 January 2017.

[5] The Supreme Court, 'R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) et al [2019] UKSC 41', 24 September 2019.

[6] HC *Hansard*, 16 January 2020, col 1143.

[7] House of Commons Public Administration and Constitutional Affairs Committee, *Oral Evidence: The Government's Constitution, Democracy and Rights Commission, HC829*, 8 December 2020, Q89–130.

Chaired by Lord Faulks, the IRAL considered options for reform to the judicial review process. The IRAL published its final report on 18 March 2021.[8] It made two key recommendations for legislative changes to the way judicial review operates:

- Giving courts the option of imposing suspended quashing orders. A quashing order is a type of remedy that courts can impose following a judicial review. It nullifies or 'quashes' the decision made by a public body. A suspended quashing order would automatically take effect after a certain period of time, if certain specified conditions were not met. This would allow the public body time to make any necessary redress before the quashing order took effect.
- Legislating to reverse the effect of so-called Cart and Eba judicial reviews. These cases established that a decision from the Upper Tribunal to refuse an appeal of a first-tier tribunal decision could be judicially reviewed in the High Court (for England and Wales) or the Scottish Court of Session (for Scotland).

The IRAL also made several other recommendations for procedural reform.

The Government set out its intention to accept the IRAL recommendations in a report published in March 2021.[9]

Bill provisions on judicial review

Part 1 of the bill (clauses 1 and 2) contains provisions relating to quashing orders and Upper Tribunal decisions.[10]

- Clause 1 would give courts discretion to suspend a quashing order for a period of time. This would see the quashing order not take effect until a later date as specified in the order. Expanding on the IRAL recommendations in the Government's response to the IRAL review, the clause would also enable courts to remove or limit the retrospective effect of a quashing order, creating a so-called 'prospective-only quashing order'. It would also create a presumption for courts to use these new variations of quashing orders, unless there is a good reason not to.
- Clause 2 would make certain decisions of the Upper Tribunal final and prevent such decisions being reviewed by any other

[8] Lord Faulks et al, *The Independent Review of Administrative Law*, 18 March 2021, CP 407.
[9] Ministry of Justice, *Judicial Review Reform: The Government Response to the Independent Review of Administrative Law*, March 2021, CP 408, p 11.
[10] Explanatory Notes, pp 22–7.

court. This would abolish so-called Cart judicial reviews. Exceptions to this would include where the Upper Tribunal did not have the necessary jurisdiction or had acted in bad faith.

2.2 Part 2: courts, tribunals and coroners

Part 2 consists of five chapters which contain provisions relating to criminal procedure, online procedure, employment tribunals, coroners and other court provisions.

Background to criminal procedure reform

The efficiency of the England and Wales court system has been considered for several years. The Government said in the explanatory notes that the bill would deliver on more recommendations from earlier reviews of the criminal court system by Lord Justice Auld and Lord Justice Leveson in 2001 and 2015 respectively.[11] It said the criminal court measures in the bill would also form part of HM Courts and Tribunals Service's (HMCTS) criminal court reform programme.[12]

Most of the bill's criminal court measures were previously contained in the Prisons and Courts Bill that fell at the dissolution of Parliament in 2017. The bill aims to improve the criminal court system and modernise the delivery of justice.[13] This includes digitising and streamlining preliminary court procedures. The Government also said that the measures would make criminal courts more accessible, and reduce delays caused by the backlog across criminal courts.

Bill provisions on criminal procedure

Chapter one (clauses 3 to 18) relates to criminal procedure reform.

- Clause 3 would introduce a new automatic online conviction and standard statutory penalty procedure for certain summary-only, non-imprisonable offences. A summary-only offence is a less serious offence that is normally tried in the magistrates' court. This clause would give defendants who wish to plead guilty the option of having their entire case completed online with no involvement of the magistrates' court.
- Clause 4 would extend existing procedures for pleading guilty by

[11] Explanatory Notes, p 11; Lord Justice Auld, *Criminal Courts Review*, September 2001; Lord Justice Leveson, *Review of Efficiency in Criminal Proceedings*, January 2015.
[12] Explanatory Notes, p 11; HMCTS, 'The HMCTS reform programme', last updated 20 October 2021.
[13] Explanatory Notes, p 11.

post. Currently, prosecutors can give defendants who have been prosecuted for summary-only offences (and are aged 16 years or over) the option to plead guilty in writing, either online or by post. They also have the option to choose for the magistrates' court to try, convict and sentence in their absence, without the defendant or other parties needing to attend. The law currently limits this procedure to prosecutions that have been initiated against a defendant away from a police station (either by postal requisition or summons). Clause 4 would extend this and allow prosecutors to apply this procedure to defendants who have been charged in person at a police station and granted police bail to appear at a magistrates' court for a first hearing.

- Clause 5 would extend the single justice procedure (SJP) to clarify that it can be used to prosecute corporations, as well as individuals. The SJP enables defendants prosecuted for lesser, non-imprisonable offences to plead guilty and have their case heard by a magistrates' court without needing to attend in person.
- Clause 6 would allow a magistrates' court to give adult defendants (who are being prosecuted for a triable either-way offence) the option to indicate their plea and engage with the allocation decision in writing rather than in court. A triable either-way offence is an offence that can be heard in either the magistrates' or crown court. An allocation decision refers to the process of deciding the most suitable mode of trial.
- Clause 7 would allow magistrates' courts to give a defendant charged with an either-way offence an earlier opportunity to elect for a jury trial at the crown court.
- Clause 8 would enable a child or young person charged with an either-way offence to indicate their plea in writing (including online), rather than in court. This is similar to the adult provisions in clause 6.
- Clause 9 concerns plea-before-venue, in which a defendant gives an indication of plea in a magistrates' court, and allocation hearings. It would allow a magistrates' court to proceed in the absence of an adult defendant charged with an either-way offence who fails without good cause to appear at court for their hearing. A magistrates' court could only proceed in this way if at least one condition (as provided by the clause) was met. Conditions include that the defendant's legal representative is present and has been instructed by the defendant to consent to the hearing in the defendant's absence.
- Clause 10 would allow a magistrates' court to send indictable-only and either-way offences to the crown court for a jury trial or sentencing, without the need for a first hearing at the magistrates' court. Indictable-only offences are the most serious offences and can only be tried in the crown court but currently require a hearing in the magistrates' court first.

- Clause 11 would give crown courts the power to send certain cases back to the magistrates' court for trial (where a defendant consents) or for sentencing (where magistrates' court sentencing powers are adequate) in a wider range of circumstances. This would not apply to defendants being prosecuted for indictable-only offences.
- Clause 12 would enable a youth court to send a defendant to the adult magistrates' court or the crown court if the defendant reaches the age of 18 before the start of the trial.
- Clause 13 would enable the maximum prison sentence that a magistrates' court can impose for either-way offences to be varied between six and 12 months. The Government added this provision as a new clause during the bill's report stage in the House of Commons.
- Clause 14 considers the involvement of a parent or guardian in written proceedings against a defendant under 18 years of age. If a defendant is 16 years or over, a court would have the discretion to notify a parent or guardian when proceedings are to be conducted in writing or online if they are unaware. However, if a defendant is under 16 years, the court would be required to notify a parent or guardian that the proceedings are written or online if they are unaware. A court would not do this if it would be unreasonable to do so having regards to the circumstances of the case.
- Clause 15 would enable a crown court to determine an application for a witness summons in criminal proceedings without a hearing. It would also remove certain statutory requirements in criminal proceedings for the court to hold a hearing before lifting reporting restrictions.
- Clause 16 would give effect to schedule 1 of the bill. This would amend various provisions in existing legislation to enable the service and delivery of documents in certain criminal proceedings to be in accordance with the existing criminal procedure rules.
- Clause 17 is a Henry VIII clause that would give the lord chancellor the power to make consequential or supplementary provisions in relation to the bill's criminal procedure measures. This would enable the lord chancellor to make regulations that could amend, repeal or revoke certain primary or secondary legislation.
- Clause 18 would introduce schedule 2, which would make consequential and related amendments to criminal procedure.

Bill provisions on online procedure, employment tribunals, coroner's courts, and other court provisions

Chapter two (clauses 19 to 32) relates to online procedure.

- Clauses 19 to 21 would establish a framework for online procedure rules in courts and tribunals. This would enable parties to civil, family or tribunal proceedings to use online procedure. The rules would apply to proceedings specified in regulations made by the lord chancellor. Clause 19 would introduce schedule 3, which would make provision about practice directions in relation to online procedure rule proceedings.
- Clauses 22 to 24 would establish an online procedure rule committee. This would provide the committee's scope, powers, remit, and procedure for appointing members. The Government said in the explanatory notes that the committee would be independent and would be made up of members of the judiciary and those with expertise in the lay advice sector and IT.[14] The lord chancellor would have the power to make regulations that could change certain requirements relating to the committee, including its composition. In this situation, the lord chancellor would be required to obtain agreement from the lord chief justices and senior president of tribunals.
- Clause 25 would provide the process for making online procedure rules. This includes that rules must be signed by at least half of the committee's members including the chair, or the majority of the members in any other case. The rules would then be submitted to the lord chancellor or secretary of state for approval.
- Clauses 26 to 29 would provide the lord chancellor with various regulation-making powers to amend primary or secondary legislation, or to make consequential or supplementary provisions to the online procedure rules. The lord chancellor would be required to ensure the provision of support for individuals using online procedures, and have the power to give the committee written notice to make online procedure rules.
- Clause 30 would introduce schedule 4 of the bill. This would make amendments to other pieces of legislation and specifically exclude the applicable standard rules from cases where the online procedure rules apply.
- Clause 31 provides an explanation of what judicial agreement would be required if the lord chancellor made regulations under this chapter of the bill.
- Clause 32 provides the definitions of terms used within chapter 2, and in schedules 3 and 4.

Chapter three of the bill (clauses 33 to 37) focuses on employment tribunals and the employment appeal tribunal.

[14] Explanatory Notes, p 5.

- Clause 33 would enable the tribunal procedure committee to make employment tribunal procedure rules. This would replace the powers of the secretary of state and lord chancellor to make employment tribunal procedure regulations and employment appeal tribunal rules. The clause would also introduce schedule 5. This would provide further provisions for employment tribunal procedure rules.
- Clause 34 would replace existing provisions that define the composition of an employment tribunal and the employment appeal tribunal with new arrangements that would make the lord chancellor responsible for regulating their composition.
- Clause 35 would ensure an appropriate transition between existing procedural regulations and new employment tribunal procedure rules.
- Clause 36 would amend the Tribunal, Courts and Enforcement Act 2007. This would ensure that the ability of authorised case officers to exercise certain judicial functions (as authorised by tribunal procedure rules) is extended to include case officers that are authorised by employment tribunal procedure rules.
- Clause 37 would amend the Employment Tribunals Act 1996. This would transfer the responsibility for the remuneration of members of the employment tribunal and employment appeals tribunal from the secretary of state for business, energy and industrial strategy to the lord chancellor.

Chapter four of the bill (clauses 38 to 42) focuses on the coroner's court.

- Clause 38 would extend the circumstances in which a coroner could discontinue an investigation. This would include where the cause of death became clear before an inquest had begun.
- Clause 39 would give coroners the power to conduct non-contentious inquests in writing. The Government's explanatory notes state that the Coroners (Inquests) Rules 2013 provide for a 'documentary' inquest that includes a limited public hearing but is otherwise entirely conducted in writing. According to the Government, the amendments made by clause 39 would be a "natural extension of the existing arrangement".[15]
- Clause 40 would enable the use of audio or video links at inquests.
- Clause 41 would continue (on a temporary basis) the provision first enacted in section 30 of the Coronavirus Act 2020 that disapplies the requirement for a coroner to conduct an inquest with a jury in a case where a death is suspected to have been caused by Covid-19. This provision would expire after two years

[15] Explanatory Notes, p 16.

unless the lord chancellor made regulations to extend this provision.

- Clause 42 would allow the merging of two or more coroner areas in certain circumstances.

Chapter five of the bill (clauses 43 to 45) would provide other provisions about courts.

- Clause 43 would remove local justice areas for magistrates' courts in England and Wales. The explanatory notes state that this would provide magistrates' courts with more flexibility to manage their caseloads and deal with cases sooner and in more convenient places.[16]
- Clause 44 would amend primary legislation regarding the provision of courthouses to HMCTS by the City of London Corporation. The explanatory notes state that HMCTS and the City of London have agreed where two courthouses and accommodation are to be closed and replaced with a new combined courthouse and accommodation.[17] The clause would make technical changes to legislation to remove provisions that currently place duties on the corporation to provide county and magistrates' court capacity at the current locations.

2.3 Part 3: final provisions

Part 3 of the bill (clauses 46 to 49) contains provisions on regulations, extent, commencement and transitional provision, as well as the bill's short title. Clause 47 would provide the extent of the bill provisions. Apart from several exceptions listed in clause 47, the majority of the provisions would extend to the UK.

3. House of Commons stages

3.1 Second reading

The bill's second reading debate took place on 26 October 2021. Introducing the debate, the Lord Chancellor and Secretary of State for Justice, Dominic Raab, said that the bill would enable the Government to meet its manifesto commitments to reform judicial review and ensure the justice system was effective.[18]

Referring to judicial review reforms in the bill that would prevent so-called

[16] Explanatory Notes, p 13.
[17] ibid, p 6.
[18] HC *Hansard*, 26 October 2021, col 189.

Cart reviews, the lord chancellor set out the Government's concerns with the current judicial review system:

> […] allowing such a large volume of flawed challenges just skews the system. Allowing a legal war of attrition—not just against the Government, but, as in this case, against the judiciary themselves—undermines the integrity of the two-tier tribunal process, which was set up precisely to deal both fairly and efficiently with immigration cases. That wastes court time and taxpayers' money, which should be focused on reviewing more serious and credible cases.[19]

The lord chancellor said that the bill's reform of quashing orders would give the judiciary flexibility and would strike a balance between judicial accountability over the executive and the ability of a government to deliver its mandate lawfully.[20] He also spoke of the bill's provisions for online procedure rules for civil and family proceedings and tribunals, stating that the rules would enable online services to be straightforward and easy to follow for people using the justice system.[21]

Responding on behalf of the Opposition, David Lammy, the then Shadow Lord Chancellor, expressed concerns about the bill's judicial review provisions. He argued that judicial review reforms were unnecessary and questioned why the Government had prioritised this over other justice issues such as crown court case delays.[22]

Referring to provisions that would increase the use of online procedures and technology in the court system, the shadow minister said the Opposition would support measures that make the justice system "more efficient", but warned that safeguards were needed to prevent injustices.[23] On the coroner's court, he raised concerns about an absence of provisions in the bill to address the "inequality" in the inquest system and provide further legal aid support for bereaved families. In conclusion, he said the Labour Party would vote against the bill because it was "unnecessary and unwanted at a time of crisis in the justice system".[24]

Responding on behalf of the Scottish National Party (SNP), Anne McLaughlin, the Shadow SNP Spokesperson for Justice, said that the SNP would also vote against the bill.[25] This followed SNP concerns about the reversal of Cart judicial reviews, and the impact that suspended quashing orders and

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[19] HC *Hansard*, 26 October 2021, cols 189–90.
[20] ibid, col 191.
[21] ibid, col 193.
[22] ibid, col 196.
[23] ibid, col 200.
[24] ibid, col 201.
[25] ibid, col 211.

prospective-only remedies could have on people in Scotland.[26]

The bill passed second reading on division by 321 votes to 220.[27] A money resolution was agreed to without debate at the conclusion of the second reading debate.[28]

3.2 Committee stage

A public bill committee sat 11 times between 2 and 18 November 2021.[29] The committee took evidence from expert witnesses for the first two sittings and considered evidence submitted by external stakeholders.

In summary, only minor amendments were made to the bill by the committee. [30] This included government amendments to two criminal procedure clauses and a related schedule that were agreed to without division. Amongst other things, these amendments extended the scope of clause 9 to cover plea-before-venue hearings and allocation hearings.[31] Other minor government amendments to address drafting errors were also agreed to without division.

Other areas of debate included provisions on judicial review, criminal procedure, and coroner's courts. Several divisions were held on opposition amendments and new clauses. For example, Labour tabled several amendments to clauses 1 and 2 relating to judicial review. The amendments aimed to ensure court discretion over whether to use new remedies provided for by the bill (such as suspending quashing orders), and to limit the rule that decisions of the Upper Tribunal could not be reviewed. [32] The opposition amendments were unsuccessful and clauses 1 and 2 were approved without amendment. There were also several divisions on clauses standing part of the bill, which the Government won.[33]

3.3 Report stage

The bill's report stage took place on 25 January 2022.

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[26] HC *Hansard*, 26 October 2021, col 210.
[27] ibid, cols 237–40.
[28] ibid, col 240.
[29] UK Parliament, 'Judicial Review and Courts Bill: committee stage', accessed 28 January 2022.
[30] For more detail, see House of Commons Library, *Judicial Review and Courts Bill 2021–2022: Progress of the Bill*, 21 January 2022.
[31] House of Commons Library, *Judicial Review and Courts Bill 2021–2022: Progress of the Bill*, 21 January 2022, p 5.
[32] ibid, p 6.
[33] ibid, p 11. For more detail, see House of Commons Library, *Judicial Review and Courts Bill 2021–2022: Progress of the Bill*, 21 January 2022.

3.3.1 Government amendments

There were several government amendments made and a new clause inserted into the bill without division.

The Government's new clause 1 (clause 13 of the bill as introduced into the House of Lords) would provide powers to vary the maximum prison sentence that magistrates' courts could give for an either-way offence.[34] This would form part of the Government's plan to extend magistrates' sentencing powers and reduce the crown court case backlog, as announced on 18 January 2022.[35] During the debate, James Cartlidge, the Parliamentary Under Secretary of State for Justice, said the clause would enable the magistrates' maximum sentencing power to be reduced to six months, and subsequently restored to 12 months, by regulations, if needed. [36] He said this would ensure that the sentencing powers could be changed back to a maximum of six months in the future "in the event that any unsustainable adverse impacts materialise".

On behalf of the Opposition, Alex Cunningham, the Shadow Minister for Justice, said he was unconvinced that increasing the sentencing powers of magistrates would have a "measurable impact" on the case backlog.[37] He questioned the Government's rationale for this change and referred to an opinion by Jo Sidhu QC, the Chair of the Criminal Bar Association, that it could lead to an increase in crown court appeals and in turn increase the case backlog. The shadow minister argued that the case backlog would continue until the Government addressed shortages in judges, criminal practitioners and court spaces.[38]

In conclusion, the government minister set out the potential impact of the sentencing powers extension on the case backlog:

> That extension will help us to retain more cases in the magistrates' courts, reducing the flow of cases into the crown court, and will help to support recovery in the crown court, where it is so important. It is estimated that it will save around 2,000 crown court sitting days per year, which is the equivalent of 500 jury trials, allowing us to reduce the backlog more quickly.[39]

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[34] House of Commons, *Report Stage: Judicial Review and Courts Bill: Amendment Paper*, 25 January 2022, pp 12–14.
[35] Ministry of Justice, 'Magistrates' courts given more power to tackle backlog', 18 January 2022.
[36] HC *Hansard*, 25 January 2022, cols 928–29.
[37] ibid, col 930.
[38] ibid, col 932.
[39] ibid, col 963.

New clause 1 was read a second time and added to the bill as clause 13.

There were several other technical and consequential government amendments made to the bill without division. This included inserting provisions that would enable new clause 1 to extend to England and Wales only and come into force following royal assent.[40]

3.3.2 Divisions

Several new clauses and amendments from opposition parties were tabled during the report stage debate. However, all opposition amendments were defeated on division.

Coroner's inquests: Publicly funded legal representation for bereaved individuals (opposition new clause 4)

A division took place on new clause 4, tabled by the Opposition, that would have ensured bereaved people such as family members were entitled to publicly funded legal representation in inquests where public bodies (such as the police or a hospital trust) were legally represented. Moving new clause 4, the Shadow Solicitor General, Andy Slaughter, described the current funding system for the bereaved during coroners' inquests as "unfair". He said that state bodies have "unlimited access to public funding for the best legal teams and experts, while families are often forced to pay large sums towards legal costs or to represent themselves".[41] The shadow minister said the bill presented an opportunity to establish a legal principle of "equality of arms" between families and public authorities. New clause 4 would have ensured that bereaved people would be entitled to publicly funded legal representation at inquests where public bodies were legally represented.

In response, the Parliamentary Under Secretary of State for Justice, James Cartlidge, said expanding legal aid access at inquests might be unnecessary as the majority of inquests did not require legal representation.[42] He also said that new clause 4 could risk making the process more difficult for bereaved families. Urging the shadow minister to withdraw the clause (along with other new opposition clauses that were not subsequently divided on), the minister said the Government was working on measures to make inquests more sympathetic to bereaved people. He said this included engagement with the chief coroner on training, and new coroner service guidance for the bereaved.

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[40] HC *Hansard*, 25 January 2022, cols 961–63.

[41] ibid, col 892.

[42] ibid, col 908.

New clause 4 was defeated on division by 315 votes to187.[43]

Quashing orders (opposition amendment 25)

Amendment 25 was an opposition amendment that sought to remove the presumption in clause 1(9) of the bill that courts should use suspended or prospective-only quashing orders. The Opposition also sought to make it a precondition that courts should offer an "effective" remedy to the claimant.

Moving amendment 25, Shadow Solicitor General Andy Slaughter said that the IRAL had not recommended the introduction of prospective-only quashing orders, nor the presumption that courts would use them in most cases.[44] He also raised concerns about the impact of this presumption on the judiciary, stating that it would undermine the independence and discretion of the court.

In response, the Parliamentary Under Secretary of State for Justice, James Cartlidge, said that it was misleading to characterise the presumption as seeking to control the courts or remove their discretion.[45] He said the presumption would help to ensure the decision making-process was "consistent and thorough".

Amendment 25 was defeated on division by 313 votes to 228.[46] The Opposition also tabled several other amendments relating to quashing orders that were not pushed to a division.

Judicial Review (Scottish National Party amendment 43)

Amendment 43 was an SNP amendment that sought to ensure that clause 2 of the bill (that made changes to Cart and Eba judicial reviews) did not extend to Scotland. Referring to clause 2, the Shadow SNP Spokesperson for Justice, Anne McLaughlin, said "we in Scotland do not want it, the legal profession does not want it, the Scottish Government does not want it, and I guarantee that the people of Scotland do not want it".[47]

However the Parliamentary Under Secretary of State for Justice, James Cartlidge, argued that amendment 43, if made, could create inconsistencies within the UK's unified tribunal framework:

> […] the unified tribunal system, created by the Tribunals, Courts and

[43] HC *Hansard*, 25 January 2022, cols 914–916.
[44] ibid, col 889.
[45] ibid, col 910.
[46] ibid, cols 918–20.
[47] ibid, col 896.

> Enforcement Act 2007, is a reserved matter where it relates to matters of reserved policy. The measures on Cart and, particularly in relation to Scotland, the Eba case will apply to the unified tribunal system within the UK, but it will not apply to matters heard that would fall inside the legislative competence of the Scottish Parliament and it will also not apply to devolved tribunals. […] If the measure did not extend to Scotland even on matters that are not within the legislative competence of the Scottish Parliament, that would create an inconsistency within the unified tribunal framework based purely on geography.[48]

Amendment 43 was defeated on division by 316 votes to 61.[49]

Automatic online convictions (opposition amendment 20)

Amendment 20 was an opposition amendment that sought to amend clause 3 of the bill (automatic online conviction and penalty for certain summary offences). The amendment would have required all persons considered for automatic online convictions to be subject to a health assessment, with only those with no vulnerabilities or disabilities to be given the option of being convicted online.[50] Speaking to the amendment, the Shadow Minister for Justice, Alex Cunningham, stated that the Equality and Human Rights Commission recognised that remote justice was unsuitable for people with certain disabilities and mental health conditions, amongst others.[51] He said the commission had identified that remote proceedings reduced the chances to identify a court user's additional needs and make appropriate adjustments. As such, the shadow minister said that the amendment would offer an additional safeguard.

In response, the Parliamentary Under Secretary of State for Justice, James Cartlidge, said there was no requirement for a mental or health assessment under existing criminal court procedures.[52] He argued amendment 20 could "considerably diminish" the impact of the new procedure in clause 3 which would otherwise provide defendants with the chance of having their cases dealt with quickly online.

Amendment 20 was defeated on division by 310 votes to 184.[53]

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[48] HC *Hansard*, 25 January 2022, col 912.
[49] ibid, cols 922–4.
[50] ibid, col 926.
[51] ibid, col 932.
[52] ibid, cols 947–8.
[53] ibid, cols 950–3.

Powers to proceed if accused absent from allocation hearing (opposition amendment 22)

Amendment 22 was an opposition amendment that would have prevented clause 9 (powers to proceed if accused is absent from allocation hearing) from applying to cases involving children and young people. Moving the amendment, the Shadow Minister for Justice, Alex Cunningham, raised concerns that clause 9 would allow courts to proceed if a child defendant was absent.[54]

In response, the Parliamentary Under Secretary of State for Justice, James Cartlidge, said that clause 9 recognised the increased vulnerability of children in the criminal justice system. [55] He said it provided more stringent conditions than those prescribed for adults that a court would have to meet before proceeding in the absence of a child defendant. The minister also noted that it might not be deemed appropriate to proceed in the majority of child cases, however the clause would provide "an important means of progressing cases and avoiding unnecessary delays".

Amendment 22 was defeated on division by 316 votes to 176.[56]

Online Procedure Committee (SNP amendment 41)

Amendment 41 was an SNP amendment that sought to require the membership of the online procedure rule committee to include a person with experience of the Scottish legal system. Moving the amendment, the Shadow SNP Spokesperson for Justice, Anne McLaughlin, raised concerns about a lack of representation from Scotland on the committee.[57] To address this, amendment 41 would have ensured that the lord president of the court would have to appoint a person with knowledge of the Scottish legal system to sit on the committee.

The minister noted that the bill already included provisions that would allow the committee membership to be changed, if needed. [58] He said that requiring a Scottish law expert from the outset was therefore unnecessary.

Amendment 41 was defeated on division by 315 votes to 220.[59]

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[54] HC *Hansard*, 25 January 2022, col 933.
[55] ibid, col 948.
[56] ibid, cols 954–6.
[57] ibid, col 939.
[58] ibid, col 946.
[59] ibid, cols 958–61.

3.4 Third reading

Third reading took place immediately after report stage on 25 January 2022.

Commending the bill to the House, the Parliamentary Under Secretary of State for Justice, James Cartlidge, said that the bill would strengthen judicial review, modernise the court and tribunal system and help to address the case backlog caused by the pandemic.[60]

However, the Shadow Minister for Justice, Alex Cunningham, spoke against several of the bill's provisions. He argued that changes to judicial review were unnecessary.[61] The shadow minister also expressed concern about certain provisions, including the coroners aspects of the bill and an absence of legal aid protection for bereaved families at inquests where the state has legal representation. He acknowledged that improvements to the court system were needed, but said the Labour Party would not support the bill.

Third reading was subsequently agreed to on division by 310 votes to 211.[62]

4. Read more

- House of Commons Library, *Judicial Review and Courts Bill 2021–2022: Progress of the Bill*, 21 January 2022
- House of Commons Library, *Judicial Review and Courts Bill*, 12 October 2021
- House of Commons Library, 'Judicial review reform', 1 April 2021
- House of Lords Library, 'Judicial review: Time for change?', 18 January 2021

[60] HC *Hansard*, 25 January 2022, col 963.
[61] ibid, col 964.
[62] ibid, cols 968–71.

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