

# Judicial Review and Courts Bill

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AMENDMENTS  
TO BE MOVED  
IN COMMITTEE OF THE WHOLE HOUSE

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**Clause 1**

LORD PONSONBY OF SHULBREDE

Page 1, line 9, at end insert –

“(1A) Provision under subsection (1) may only be made if the court is satisfied that it is in the interest of justice to do so.”

Page 1, leave out lines 10 and 11

Page 2, line 4, at end insert –

“(5A) Where the impugned act consists in the making or laying of delegated legislation (“the impugned legislation”), subsections (3) and (4) do not prevent any person charged with an offence under or by virtue of any provision of the impugned legislation raising the validity of the impugned legislation as a defence in criminal proceedings.

(5B) Subsections (3) and (4) do not prevent a court or tribunal awarding damages, restitution or other compensation for loss.”

***Member’s explanatory statement***

*This amendment would protect collateral challenges by ensuring that if a prospective-only or suspended quashing order is made, the illegality of the delegated legislation can be relied on as a defence in criminal proceedings. This would prevent individuals from being criminalised under defective and illegal ministerial powers.*

Page 2, line 12, leave out “must” and insert “may”

Page 2, leave out lines 14 and 15

Page 2, line 17, at end insert “including, but not limited to, the interests and expectations of a claimant in receiving a timely remedy”

Page 2, line 19, at end insert “, which are to be identified by the defendant”

**Clause 1 - continued**

Page 2, line 21, leave out “or proposed to be taken”

Page 2, line 23, at end insert –

“(8A) In deciding whether there is a detriment to good administration under subsection (8)(b), the court must have regard to the principle that good administration is administration which is lawful.”

Page 2, leave out lines 24 to 32 and insert –

“(9) Provision may only be made under subsection (1) if and to the extent that the court considers that an order making such provision would, as a matter of substance, offer an effective remedy to the claimant and any other person materially affected by the impugned act in relation to the relevant defect.”

***Member’s explanatory statement***

*This amendment would remove the presumption. In addition, this amendment would make it a precondition of the court’s exercise of the new remedial powers that they should offer an effective remedy to the claimant and any other person materially affected by the impugned act.*

Page 2, leave out lines 31 and 32

**Clause 2**

LORD PONSONBY OF SHULBREDE

Page 3, line 36, leave out “procedurally defective”

***Member’s explanatory statement***

*This amendment seeks to clarify that in order to find a breach of the principles of natural justice, the High Court need not focus only on procedural defects.*

Page 4, line 22, at end insert –

- “(3) The Lord Chancellor must carry out and publish a review of the operation of this section not more than two years after the passing of this Act.
- (4) In respect of the review carried out under subsection (3), the Lord Chancellor must in particular have regard to –
- (a) whether the appeal in section 13(1) of the Tribunals, Courts and Enforcement Act 2007 is providing equivalent protection to claimants,
  - (b) the consequences for individuals or groups with protected characteristics under the Equality Act 2010, and
  - (c) the enforcement of rights protected under the Human Rights Act 1998.”

***Member’s explanatory statement***

*This amendment would require the Lord Chancellor to carry out and publish a review of the operation and consequences of the ouster of Court judicial reviews.*

**Clause 3**

LORD PONSONBY OF SHULBREDE

Page 5, line 34, at end insert –

- “(e) the prosecutor is satisfied that the accused does not have any vulnerabilities and disabilities that impede the ability of the accused to understand or effectively participate in proceedings, having undertaken a physical and mental health assessment.”

***Member’s explanatory statement***

*This amendment would require that all accused persons considered for automatic online convictions are subject to a health assessment, and that only those who do not have any vulnerabilities or disabilities are given the option of being convicted online.*

Page 5, line 37, at end insert “and

- (b) it is not a recordable offence, as specified in the Schedule to the National Police Records (Recordable Offences) Regulations 2000 (S.I. 2000/1139).”

***Member’s explanatory statement***

*This amendment would exclude any offences which are recordable from the automatic online conviction option.*

**After Clause 5**

LORD PONSONBY OF SHULBREDE

Insert the following new Clause –

**“Review of the single justice procedure**

- (1) Within two months beginning with the day on which this Act is passed, the Secretary of State must commission a review and publish a report on the effectiveness of the single justice procedure.
- (2) A review under subsection (1) must consider –
  - (a) the transparency of the single justice procedure in line with the principle of open justice,
  - (b) the suitability of the use of the single justice procedure for Covid-19 offences,
  - (c) prosecution errors for Covid-19 offences under the single justice procedure and what redress victims of errors have.
- (3) The Secretary of State must lay a copy of the report before Parliament.”

**Clause 9**

LORD PONSONBY OF SHULBREDE

Page 26, line 1, leave out subsection (5)

***Member’s explanatory statement***

*This amendment would remove cases involving children and young people from the provisions of Clause 9.*

### After Clause 28

LORD PONSONBY OF SHULBREDE

Insert the following new Clause –

**“Online procedural assistance**

- (1) Online procedural assistance must be made available and accessible to any party or potential party to proceedings governed by Online Procedure Rules that requires it.
- (2) In delivering this duty, the Lord Chancellor must have due regard to the intersection of digital exclusion with other factors, such as age, poverty, disability and geography, and deliver support services accordingly.
- (3) Online procedural assistance must include assistance to enable such a party or potential party to have a reasonable understanding of the nature of the proceedings, the procedure applicable under Online Procedure Rules and how to access and navigate such procedure.
- (4) For the purpose in subsection (3), online procedural assistance must provide both advice and technical hardware, as appropriate, and must provide assistance to such individuals throughout the course of their proceedings.
- (5) Anyone who requires online procedural assistance must have the option of receiving it via either remote appointments or in-person appointments at a site local to them.
- (6) Online procedural assistance must include, for a party or potential party whose first language is not English, assistance, by interpretation or translation as appropriate, in a language that is familiar to the party or potential party.
- (7) The delivery of online procedural assistance must be evaluated at yearly intervals by an independent evaluation team.
- (8) For the purposes of such evaluations, data must be routinely collected relating to the protected characteristics of those using the service, outcomes of cases that used online procedural assistance, and the frequency and location of the appointments provided; and such data must be made publicly available.”

***Member’s explanatory statement***

*This new Clause clarifies the nature of online procedural assistance.*

### Clause 38

LORD PONSONBY OF SHULBREDE

Page 53, line 12, at end insert –

- “(4) In section 43(3) of the Coroners and Justice Act 2009 (coroners regulations), after paragraph (a) insert –
- “(aa) provision for the establishment of an appeals process for interested persons who disagree with the decision to discontinue an investigation under the provision in section 4;”.”

***Member’s explanatory statement***

*This amendment provides that the Lord Chancellor should establish an appeal process for families who disagree with the decision to discontinue an investigation.*

**Clause 40**

LORD PONSONBY OF SHULBREDE

Page 54, line 24, at end insert –

“(2B) Coroners rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must not allow the conduct of hearings wholly or partly by sound only.”

***Member’s explanatory statement***

*The purpose of this amendment is to prevent an inquest from being conducted by telephone or other means which are audio only.*

Page 54, line 24, at end insert –

“(2B) Coroners rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must provide for such hearings to comply with, and be subject to, Rule 11 of the Coroners (Inquests) Rules 2013 (Inquest hearings to be held in public).”

***Member’s explanatory statement***

*This amendment would ensure that remote inquest hearings and pre-inquest hearings are still held in a manner accessible to the public.*

**After Clause 42**

BARONESS CHAKRABARTI

Insert the following new Clause –

**“Publicly funded legal representation for bereaved people at inquests**

- (1) Section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (2) In subsection (1), after “(4)” insert “or (7).”
- (3) After subsection (6), insert –
  - “(7) This subsection is satisfied where –
    - (a) the services consist of advocacy at an inquest where the individual is an interested person pursuant to section 47(2)(a), (b) or (m) of the Coroners and Justice Act 2009 because of their relationship to the deceased; and
    - (b) one or more public authorities are interested persons in relation to the inquest pursuant to section 47(2) of the Coroners and Justice Act 2009 or are likely to be designated as such.
- (8) For the purposes of this section “public authority” has the meaning given by section 6(3) of the Human Rights Act 1998.””

***Member’s explanatory statement***

*This new Clause would ensure that bereaved people (such as family members) are entitled to publicly funded legal representation in inquests where public bodies (such as the police or a hospital trust) are legally represented.*

Insert the following new Clause—

**“Removal of the means test for legal help prior to inquest hearing**

- (1) Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (2) In paragraph 41, after sub-paragraph (3), insert—
  - “(4) For the purposes of this paragraph, the “Financial resources” provisions at section 21 and in the Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013 do not apply.”

***Member’s explanatory statement***

*This new Clause would remove the means test for legal aid applications for legal help for bereaved people at inquests.*

Insert the following new Clause—

**“Eligibility for bereaved people to access legal aid under existing provisions**

- (1) Section 10 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (2) In subsection (4)(a), after “family”, insert “or where the individual is an interested person pursuant to section 47(2)(m) of the Coroners and Justice Act 2009 because of their relationship with the deceased”.
- (3) In subsection (6), after paragraph (c), insert—
  - “(d) or they fall within any of the groups named at section 47(2)(a), (b) or (m) of the Coroners and Justice Act 2009.”.
- (4) Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is amended as follows.
- (5) In paragraph 41, after sub-paragraph (3)(c), insert—
  - “(d) or they fall within any of the groups named at section 47(2)(a), (b) or (m) of the Coroners and Justice Act 2009.”.

***Member’s explanatory statement***

*This new Clause would bring the Legal Aid, Sentencing and Punishment of Offenders Act 2012 into line with the definition of family used in the Coroners and Justice Act 2009.*

**Clause 48**

LORD PONSONBY OF SHULBREDE

Page 58, line 17, at end insert—

- “(3A) Before section 40 may be commenced, the Lord Chancellor must—
- (a) commission an independent review, including a consultation, of the potential impact of the conduct of inquest hearings wholly or partly by way of electronic transmission of sounds or images, considering in particular the impact on the participation of interested persons, and open justice;
  - (b) lay before Parliament the report and findings of such review; and
  - (c) provide a response explaining whether and how such issues which have been identified would be mitigated.”

***Member's explanatory statement***

*This amendment would require a review, including a consultation, of the potential impact of remote inquest hearings before Clause 40 comes into effect.*

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*9 February 2022*

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