

Judicial Review and Courts Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 7th February 2022, as follows –

Clauses 1 to 16	Clauses 20 to 30
Schedule 1	Schedule 4
Clauses 17 and 18	Clauses 31 to 33
Schedule 2	Schedule 5
Clause 19	Clauses 34 to 49
Schedule 3	Title.

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 1

LORD PANNICK
LORD PONSONBY OF SHULBREDE
LORD MARKS OF HENLEY-ON-THAMES

1 Page 1, leave out line 9

Member's explanatory statement

The purpose of this amendment, along with amendments to page 1, line 15, and page 2, line 2, in the name of Lord Pannick, is to remove the proposed power for the court to prevent a quashing order from having retrospective effect, thereby validating what would otherwise be quashed as unlawful.

LORD PONSONBY OF SHULBREDE

2 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.”

3 Page 1, leave out lines 10 and 11

Clause 1 - continued

LORD PANNICK
LORD PONSONBY OF SHULBREDE
LORD MARKS OF HENLEY-ON-THAMES

4 Page 1, leave out lines 15 to 18

Member's explanatory statement

The purpose of this amendment, along with amendments to page 1, line 9, and page 2, line 2, in the name of Lord Pannick, is to remove the proposed power for the court to prevent a quashing order from having retrospective effect, thereby validating what would otherwise be quashed as unlawful.

5 Page 2, line 2, leave out “or (4)”

Member's explanatory statement

The purpose of this amendment, along with amendments to page 1, line 9, and page 1, line 15, in the name of Lord Pannick, is to remove the proposed power for the court to prevent a quashing order from having retrospective effect, thereby validating what would otherwise be quashed as unlawful.

LORD PONSONBY OF SHULBREDE

6 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.

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

8 Page 2, leave out lines 14 and 15

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

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

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

Clause 1 - continued

12 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.”

LORD ANDERSON OF IPSWICH
LORD EHERTON
LORD PANNICK
LORD PONSONBY OF SHULBREDE

13 Page 2, leave out lines 24 to 32

Member’s explanatory statement

This amendment would remove the presumption that where a suspended or retrospective-only quashing order would offer adequate redress, such a quashing order should be made in preference to an ordinary quashing order.

BARONESS CHAKRABARTI
LORD PONSONBY OF SHULBREDE

14 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

The amendment would remove the presumption and insert a precondition of the court’s exercise of the new remedial powers that they would offer an effective remedy to the claimant and any other person materially affected by the impugned act.

LORD PONSONBY OF SHULBREDE

15 Page 2, leave out lines 31 and 32

Lord Ponsonby of Shulbrede gives notice of his intention to oppose the Question that Clause 1 stand part of the Bill.

Clause 2

LORD PONSONBY OF SHULBREDE

16 Page 3, line 19, at end insert—

“(1A) Notwithstanding subsection (1), subsections (2) and (3) do not apply where the party refused permission (or leave) to appeal by the Upper Tribunal was the appellant before the First-tier Tribunal and—
(a) that party was without legal representation and the appeal before the First-tier Tribunal was not within legal aid scope;
(b) that party was not of full age or capacity;

Clause 2 - continued

- (c) the appeal before the First-tier Tribunal was not an in-country appeal;
- (d) the appeal before the First-tier Tribunal was subject to any accelerated procedure;
- (e) the decision of the First-tier Tribunal was subject to any statutory restriction or direction concerning how that tribunal was to evaluate the credibility of the appellant or the evidence before it; or
- (f) the application to the Upper Tribunal raises a point of law concerning the construction of any statutory provision for interpretation of an international agreement.”

17 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.

18 Page 3, line 36, leave out “procedurally defective way as amounts to a fundamental” and insert “way as amounts to a material”

Member’s explanatory statement

This amendment would change the test to judicially review a decision of the Upper Tribunal to refuse permission to appeal, from a fundamental breach of the principles of natural justice to a material breach of those principles.

LORD PANNICK
LORD PONSONBY OF SHULBREDE
LORD MARKS OF HENLEY-ON-THAMES
LORD BEITH

19 Page 3, line 37, at end insert “or
(iii) in reliance on a fundamental error of law”

Member’s explanatory statement

The purpose of this amendment is to allow courts to hear a judicial review of a tribunal decision where there is a fundamental error of law, and not just where the tribunal has acted in bad faith or in fundamental breach of natural justice.

LORD MARKS OF HENLEY-ON-THAMES
LORD THOMAS OF GRESFORD

20 Page 3, line 37, at end insert –

“(4A) Subsections (2) and (3) do not apply insofar as the decision is likely to lead to the deportation of the applicant to a country where the applicant is likely to be tortured or subjected to inhuman or degrading treatment.”

Member's explanatory statement

The purpose of this new subsection would be to create an exception to subsections (2) and (3) in cases where the Upper Tribunal's decision refusing permission to appeal would be likely to lead to the applicant's deportation to a country where the applicant would be likely to be tortured or subjected to inhuman or degrading treatment.

LORD PONSONBY OF SHULBREDE

21

Page 4, line 8, at end insert –

““accelerated procedure” means any procedure for which procedure rules permit or require that less time is provided than is the case for another party before the tribunal bringing an appeal under the same statutory right of appeal, and includes an accelerated detained appeal under section 106A(1) of the Nationality, Immigration and Asylum Act 2002;

an appeal is “not an in-country appeal” if the appellant is only permitted to bring or continue the appeal from outside the United Kingdom;

a party is “not of full age or capacity” if that party is –

(a) a child, or

(b) requires the assistance of a third party to understand the procedure or decision of, or issues before, the First-tier Tribunal and communicate effectively with that tribunal (whether or not that assistance is provided save to the extent to which the person requires an interpreter and one is provided);

an appeal is “not within legal scope” if representation before the First-tier Tribunal does not fall within civil legal services under section 9 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“interpreter” means a person whose sole function in proceedings before the tribunal is to translate between the English language and another language spoken by the appellant;

“legally represented” means having legal services as defined by section 8 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which services must be provided by a person who is not prohibited from providing them by any statute, court order or decision of any relevant professional standards body;

“relevant professional standards body” means a designated professional body as defined by section 86 of the Immigration and Asylum Act 1999 or such other body in England and Wales as may be designated by the Lord Chancellor, in Scotland as may be designated by the Scottish Ministers or in Northern Ireland as may be designated by the Department of Justice in Northern Ireland;

“an international agreement” includes the 1951 UN Convention relating to the Status of Refugees;”

22

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.

Clause 2 - continued

- (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 Cart judicial reviews.

LORD ETHERTON

23

Leave out Clause 2 and insert the following new Clause –

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

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

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

- (1) Subsection (2) applies in relation to a decision by the Upper Tribunal to refuse permission (or leave) to appeal further to an application under section 11(4)(b).
- (2) A decision made by the court of supervisory jurisdiction in relation to any such refusal by the Upper Tribunal, whether such decision of the court of supervisory jurisdiction is to refuse permission to proceed or is to dismiss the substantive claim in the supervisory court or is any other order, is final and cannot be questioned or set aside or reversed whether by way of renewal or appeal or otherwise.
- (3) In this section –
 - “decision” includes any purported decision;
 - “the supervisory jurisdiction” means the supervisory jurisdiction of –
 - (a) the High Court in England and Wales or Northern Ireland, or
 - (b) the Court of Session, in Scotland,
 and “the court of supervisory jurisdiction” is to be read accordingly.”
- (2) The amendment made by subsection (1) does not apply in relation to a decision (including any purported decision) of the Upper Tribunal made before the day on which this section comes into force.”

Member’s explanatory statement

These amendments retain the Cart supervisory jurisdiction but bar any appeal from the court exercising the supervisory jurisdiction or any other challenge to decisions of that court whether by way of renewal or otherwise.

BARONESS CHAKRABARTI
LORD PONSONBY OF SHULBREDE
LORD MARKS OF HENLEY-ON-THAMES

The above-named Lords give notice of their intention to oppose the Question that Clause 2 stand part of the Bill.

Member's explanatory statement

This would remove the measure which allows for the exclusion of review of Upper Tribunal's permission-to-appeal decisions from the Bill.

Clause 3

LORD MARKS OF HENLEY-ON-THAMES

24 Page 4, line 28, at end insert –

- “(1) Before this section may come into force, the Secretary of State must –
- (a) commission an independent review of the potential impact, efficacy, and operational issues on defendants and the criminal justice system of the automatic online conviction option and penalty for certain summary offences;
 - (b) lay before Parliament the report and findings of this independent review; and
 - (c) provide a response explaining whether and how such issues which have been identified will be mitigated.”

Member's explanatory statement

This amendment would require a review of the potential impact of Clause 3 before it can come into force.

25 Page 5, line 10, at end insert –

- “(3A) If, within a reasonable period of time, a person to whom subsection (3) applies denies making such a notification, the court must not treat the purported notification as effective without determining that it came from them.”

Member's explanatory statement

This amendment is to probe the safeguards against fraud in the operation of acceptance of an automatic online conviction.

LORD PONSONBY OF SHULBREDE

26 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.

27★ Page 5, line 34, at end insert –
 “(e) the prosecutor is satisfied that the accused has engaged a legal representative.”

28 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.

BARONESS CHAKRABARTI

Baroness Chakrabarti gives notice of her intention to oppose the Question that Clause 3 stand part of the Bill.

Member’s explanatory statement

This would remove the automatic online conviction and standard statutory penalty provision from the Bill.

Clause 4

LORD PONSONBY OF SHULBREDE

29★ Page 9, line 38, leave out “16” and insert “18”

After Clause 5

LORD PONSONBY OF SHULBREDE

30 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 6

LORD PONSONBY OF SHULBREDE

- 31 Page 11, line 13, at end insert –
 “and has received the advice of a legal representative prior to submitting a plea.”
- 32★ Page 11, line 13, at end insert –
 “and the court has been provided with a physical and mental health assessment of the accused confirming that the written procedure will not impede the ability of the accused to understand or effectively participate in proceedings.”
- 33★ Page 11, line 32, after “plea” insert “and consequences of pleading guilty”

Member’s explanatory statement

The amendment would ensure that an accused person is not only informed about the consequences of giving or failing to give a written indication of plea, but also the potential legal and practical consequences of pleading guilty.

Clause 9

LORD PONSONBY OF SHULBREDE

- 34 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 9

LORD PONSONBY OF SHULBREDE

- 35 Insert the following new Clause –
“Expiry of sections 6 to 9
 (1) Sections 6 to 9 expire at the end of the period of two years beginning with the day on which this Act is passed, subject to subsection (2).
 (2) Sections 6 to 9 continue to have effect if, before the end of the period mentioned in subsection (1), each House of Parliament passes a resolution that they should not expire.”

Clause 13

BARONESS CHAKRABARTI

- 36 Leave out Clause 13 and insert the following new Clause –
“Commencement of Schedule 22 to the Sentencing Act 2020: repeal
 (1) In Part 5 (custodial sentences) of Schedule 22 to the Sentencing Act 2020, omit paragraph 24 (increase in magistrates' court's power to impose imprisonment).

Clause 13 - continued

- (2) Any regulation made pursuant to section 417 of the Sentencing Act 2020 (commencement of Schedule 22) which brings into force paragraph 24 of Schedule 22 to the same Act is revoked.”

Member’s explanatory statement

This amendment would remove the provisions that allow the Secretary of State to vary magistrates’ sentencing powers, and revoke any order made under section 417 of the Sentencing Act 2020 which brings into force paragraph 24 of Schedule 22 of that Act.

After Clause 14

BARONESS CHAKRABARTI

37 Insert the following new Clause—

“Judicial inquiry into the treatment of women and girls in criminal proceedings

- (1) The Secretary of State must cause an inquiry to be held under the Inquiries Act 2005 on the adequacy of the criminal courts in discharging their various duties with regard to women and girls.
- (2) The inquiry must be chaired by a serving or retired senior judge.
- (3) The terms of reference of the inquiry must include—
 - (a) examination of the professional culture, funding, vetting and training of those working in the criminal court system;
 - (b) systems of management, governance, accountability and external scrutiny within the criminal court system; and
 - (c) conduct in proceedings on misogynistic crimes.
- (4) The inquiry must involve a panel of members, to include at least one member with experience in the area of violence against women.
- (5) The inquiry must be established within one month of the commencement of the first provision of this Act to be commenced.”

Member’s explanatory statement

This amendment establishes a judicial inquiry under the Inquiries Act 2005 into the adequacy of criminal courts in their treatment of, and service to, women and girls.

After Clause 23

LORD WOLFSON OF TREDEGAR

38 Insert the following new Clause—

“Power to make certain provision about dispute-resolution services

- (1) This section applies to Online Procedure Rules which provide—
 - (a) for the transfer by electronic means of information held for the purposes of an online dispute-resolution service to a court or tribunal, or
 - (b) for a court or tribunal to take into account, for any purpose, steps that a party to proceedings has or has not taken in relation to an online dispute-resolution service.

After Clause 23 - continued

- (2) The Rules may be expressed so that their application in relation to a particular service depends on things done by a particular person from time to time.
- (3) The Rules may, for example, refer to such services as—
 - (a) appear from time to time in a list published by a particular person, or
 - (b) are from time to time certified by a particular person as complying with particular standards.
- (4) In this section—

“online dispute-resolution service” means a service accessible by electronic means for facilitating the resolution of disputes without legal proceedings;

“particular person” and “particular standards” include, respectively, a person of a particular description and standards of a particular description.”

Member’s explanatory statement

This new clause enables Online Procedure Rules to allow thing done by third parties to determine the application of the Rules to particular online dispute-resolution services.

After Clause 28

LORD PONSONBY OF SHULBREDE
LORD MARKS OF HENLEY-ON-THAMES

39 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.

After Clause 28 - continued

- (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

BARONESS CHAKRABARTI
LORD PONSONBY OF SHULBREDE
LORD THOMAS OF GRESFORD

40

Page 53, line 12, at end insert –

“(4) After subsection (2), insert –

“(2A) The coroner is not to decide that the investigation should be discontinued unless –

- (a) the coroner is satisfied that no outstanding evidence that is relevant to the death is available,
- (b) the coroner has considered whether Article 2 of the European Convention on Human Rights is engaged and is satisfied that it is not,
- (c) there are no ongoing investigations by public bodies into the death,
- (d) the coroner has invited and considered representations from any interested person known to the coroner named at section 47(2)(a) or (b) of this Act (“interested person”), and
- (e) all interested persons known to the coroner named at section 47(2)(a) or (b) of this Act consent to discontinuation of the investigation.

(2B) If a coroner is satisfied that subsection (1) applies, and has complied with the provisions at subsection (2A)(a) to (d), prior to discontinuing the investigation, the coroner must –

- (a) inform each interested person known to the coroner named at section 47(2)(a) or (b) of this Act of the coroner’s intended decision and provide a written explanation as to the reasons for this intended decision,
- (b) explain to each interested person known to the coroner named at section 47(2)(a) or (b) of this Act that the investigation may only be discontinued if all such interested persons consent, and
- (c) invite each interested person known to the coroner named at section 47(2)(a) or (b) of this Act to consent to the discontinuation of the investigation.””

Member's explanatory statement

This amendment would ensure that certain safeguards are met before a coroner can discontinue an investigation into a death and that family members and personal representatives of the deceased are provided with the coroner's provisional reasons for why the coroner considers that the investigation should be discontinued, helping ensure that family members make an informed decision as to whether to consent to the discontinuation.

LORD PONSONBY OF SHULBREDE
LORD THOMAS OF GRESFORD

41 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 39

BARONESS CHAKRABARTI
LORD PONSONBY OF SHULBREDE
LORD THOMAS OF GRESFORD

42 Page 53, line 32, at end insert –

“(e) the coroner has considered the views of any of the interested persons named at section 47(2)(a) or (b) of this Act (“interested person”) who are known to the coroner,

(f) all of the interested persons named at section 47(2)(a) or (b) of this Act who are known to the coroner consent to a hearing in writing.”

Member's explanatory statement

This amendment will ensure that inquests are not held without a hearing if that is against the wishes of the deceased's family.

Clause 40

BARONESS CHAKRABARTI
LORD PONSONBY OF SHULBREDE
LORD THOMAS OF GRESFORD

43 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 specify that, other than for any pre-inquest hearing, such a hearing may only be held if –

(a) all interested persons known to the coroner named at section 47(2)(a) or (b) of this Act (“interested person”) consent to such a hearing,

Clause 40 - continued

- (b) the coroner is satisfied, and continues to be satisfied until the conclusion of any such hearing, that such a hearing is in the interests of justice, considering all the circumstances of the case,
 - (c) the coroner has considered the likely complexity of the inquest, and
 - (d) the coroner has considered the ability of interested persons known to the coroner to engage effectively with the hearing by way of electronic transmission of sounds or images.
- (2C) Coroners rules that provide for the conduct of hearings wholly or partly by way of electronic transmission of sounds or images must require coroners to set out to all interested persons the reasons why such a hearing, other than for any pre-inquest hearing, is to be held wholly or partly by way of electronic transmission –
- (a) at the conclusion of any pre-inquest hearing where any such hearing is ordered, if applicable, and
 - (b) in writing as soon as practicable after a decision has been taken for such a hearing to be held and prior to the commencement of the hearing.”

Member’s explanatory statement

This amendment would ensure that certain safeguards are met before a remote inquest hearing is held and that interested persons are provided with the reasons why a remote hearing is to be held.

LORD PONSONBY OF SHULBREDE
LORD THOMAS OF GRESFORD

44 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.

45 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

LORD WOLFSON OF TREDEGAR

46 Insert the following new Clause –

“Provision of information to registrar when investigation discontinued

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

“(4) Where a senior coroner –

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

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

Member’s explanatory statement

This new Clause enables a coroner who has discontinued an investigation into a death without holding an inquest to supply information needed for the death to be registered.

BARONESS CHAKRABARTI

LORD THOMAS OF GRESFORD

LORD PONSONBY OF SHULBREDE

47 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.

48 Insert the following new Clause—

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

- (1) Schedule 1 to 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.

49 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 to 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.

LORD THOMAS OF GRESFORD
LORD MARKS OF HENLEY-ON-THAMES

50 Insert the following new Clause—

“Right of address

- (1) Rule 27 of the Coroners (Inquests) Rules 2013 is repealed.
- (2) Before a verdict is reached, a coroner may allow a person or a person’s representative to address the coroner or jury as to the facts of who the deceased was and how, when and where the deceased came by his or her death unless it is in the interests of justice not to do so.”

Member’s explanatory statement

The current coroners rules prevent bereaved families or their representatives from addressing an inquest. This amendment repeals that provision and replaces it with a positive intention to permit such an address.

After Clause 45

LORD ETHERTON

51 Insert the following new Clause—

“Pro Bono Representation: Tribunals

Payments in respect of pro bono representation: tribunals

- (1) Section 194 of the Legal Services Act 2007 (payments in respect of pro bono representation) is amended as follows.
- (2) In subsection (1) after “civil court” insert “or tribunal”.
- (3) In subsection (3)—
 - (a) after “the court” insert “or tribunal”; and
 - (b) after “in respect of that part)” insert “, but so that no award made under this subsection may exceed the amount that the court or tribunal could order to be paid in respect of R’s representation of P, had such representation not been provided free of charge in whole or in part”.
- (4) In subsection (4) after “the court” insert “or tribunal”.
- (5) In subsection (5) after “the court” insert “or tribunal”.
- (6) In subsection (7)—
 - (a) after “Rules of court” insert “and tribunal rules of procedure”;
 - (b) omit the word “civil”; and
 - (c) after “the court” insert “or tribunal”.
- (7) In subsection (10)—
 - (a) in the definition of “legal representative” for “exercising a right of audience or conducting litigation on the party's behalf” substitute “, who has a right of audience or has the right to conduct litigation in relation to any class of proceedings in any part of the Senior Courts of England and Wales, or all proceedings in county courts or magistrates’ courts, whether or not the person is exercising such right in the particular proceedings”;
 - (b) in the definition of “relevant civil appeal”, after paragraph (a) insert—
 - “(aa) from the Upper Tribunal in accordance with permission granted under section 14B(3) of the Tribunals, Courts and Enforcement Act 2007 (appeal to Supreme Court),”; and
 - (c) after the definition of “relevant civil appeal” insert—
 - ““tribunal” means—
 - (a) the First-tier Tribunal;
 - (b) the Upper Tribunal;
 - (c) an employment tribunal;
 - (d) the Employment Appeal Tribunal;
 - (e) the Competition Appeal Tribunal; and
 - (f) any other body, established under or recognised by any enactment, which performs the function of determining matters, which are not criminal in nature, including but not limited to regulatory and disciplinary issues, and which has the power to make an order for the payment of costs.””

Member's explanatory statement

These new provisions will confer on tribunals the same power as civil courts and the Supreme Court currently have to order an unsuccessful legally represented party to pay pro bono costs to the prescribed charity the Access to Justice Foundation where the successful party has been represented pro bono.

Clause 48

LORD WOLFSON OF TREDEGAR

- 52 Page 58, line 15, at end insert “, except section (*Provision of information to registrar when investigation discontinued*)”

Member's explanatory statement

This amendment provides for the new Clause after Clause 42 in the name of Lord Wolfson of Tredegar to be brought into force by regulations.

LORD PONSONBY OF SHULBREDE

LORD THOMAS OF GRESFORD

- 53 Page 58, line 18, at end insert –

“(4A) 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.

LORD PONSONBY OF SHULBREDE

- 54 Page 58, line 18, at end insert –

“(4A) Before section 43 may be commenced, the Lord Chancellor must –

- (a) undertake a consultation with relevant stakeholders regarding the proposed abolition of local justice areas under that section, considering in particular the impact on the principle of local justice,
- (b) lay before Parliament the Report and the findings of such consultation, and
- (c) provide a response explaining whether and how such issues which have been identified would be mitigated.”

Judicial Review and Courts Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

17 February 2022
