

Judicial Review and Courts Bill

AMENDMENTS TO BE MOVED ON REPORT

Clause 13

LORD WOLFSON OF TREDEGAR

Page 34, line 24, leave out “by section 224(1A)(b)” and insert “in respect of the offence by section 224(1)”

Member’s explanatory statement

This amendment allows subsection (3) of Clause 13 to operate before and after the other provisions of that Clause come into force (see the amendment in the name of Lord Wolfson of Tredegar at page 59, line 4).

Clause 39

LORD WOLFSON OF TREDEGAR

Page 53, line 27, leave out “follows” and insert “set out in subsections (2) and (3)”

Member’s explanatory statement

This amendment is consequential on the amendment at page 53, line 33 in the name of Lord Wolfson of Tredegar.

Page 53, line 33, at end insert –

- “(4) In the following provisions of the Births and Deaths Registration Act 1953, for “revealed by post-mortem examination” substitute “becoming clear before inquest” –
- (a) in section 2(1), paragraph (ii) of the proviso;
 - (b) in section 16(3), paragraph (ii) of the proviso;
 - (c) in section 17(3), paragraph (ii) of the proviso;
 - (d) section 29(3B).
- (5) In section 273(2)(a) of the Merchant Shipping Act 1995, for “revealed by post-mortem examination” substitute “becoming clear before inquest”.
- (6) In Schedule 21 to the Coroners and Justice Act 2009 (which, among other things, makes amendments to the Births and Deaths Registration Act 1953 that have yet to come into force) –

Clause 39 - continued

- (a) in paragraph 10(5), in the inserted subsection (2)(b), for “revealed by post-mortem examination” substitute “becoming clear before inquest”;
- (b) in paragraph 11(2), in the substituted section (A1)(b), for “revealed by post-mortem examination” substitute “becoming clear before inquest”;
- (c) in paragraph 16(2), in the substituted paragraph (a), for the words from “there has” to “the death,” substitute “—
 - (i) there has been no investigation under Part 1 of the 2009 Act into the death, or
 - (ii) such an investigation has been discontinued under section 4 of the 2009 Act (cause of death becoming clear before inquest) other than as mentioned in paragraph (b),”.

Member’s explanatory statement

This amendment adds consequential amendments to Clause 39.

After Clause 47

LORD WOLFSON OF TREDEGAR

Insert the following new Clause —

“Payments in respect of pro bono representation

- (1) In section 194 of the Legal Services Act 2007 (payments in respect of pro bono representation in civil proceedings in England and Wales) —
 - (a) in the heading, at the end insert “: civil courts in England and Wales”;
 - (b) in subsection (8), for “by order made by the Lord Chancellor” substitute “under section 194C”;
 - (c) omit subsection (9);
 - (d) in subsection (10) —
 - (i) in the definition of “civil court”, omit paragraph (a);
 - (ii) omit the definition of “relevant civil appeal”.
- (2) After section 194 of the Legal Services Act 2007 insert —

“194A Payments in respect of pro bono representation: tribunals

- (1) This section applies to relevant tribunal proceedings in which —
 - (a) a party to the proceedings (“P”) is or was represented by a legal representative (“R”), and
 - (b) R’s representation of P is or was provided free of charge, in whole or in part.
- (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge.
- (3) The tribunal may make an order under this section against a person if the condition in subsection (5) is met in respect of that person (and if subsection (7) does not apply).
- (4) An order under this section is an order for the person to make a payment to the prescribed charity in respect of R’s representation of P (or, if only part of R’s representation of P was provided free of charge, in respect of that part).

After Clause 47 - continued

- (5) The condition is that, had R's representation of P not been provided free of charge, the tribunal would have had the power to order the person to make a payment to P in respect of sums payable to R by P in respect of that representation.
- (6) In considering whether to make an order under this section against a person, and the terms of such an order, the tribunal must have regard to—
 - (a) whether, had R's representation of P not been provided free of charge, it would have made an order against that person as described in subsection (5), and
 - (b) if it would, what the terms of the order would have been.
- (7) The tribunal may not make an order under this section against a person represented in the proceedings if the person's representation was at all times within subsection (8).
- (8) Representation is within this subsection if it is provided—
 - (a) by a legal representative acting free of charge, or
 - (b) by way of legal aid.
- (9) For the purposes of subsection (8)(b), representation is provided by way of legal aid if it is—
 - (a) provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,
 - (b) made available under Part 2 or 3 of the Legal Aid (Scotland) Act 1986, or
 - (c) funded under Part 2 of the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)).
- (10) Procedure rules may make further provision as to the making of orders under this section, and may in particular—
 - (a) provide that such orders may not be made in proceedings of a description specified in the rules;
 - (b) make provision about the procedure to be followed in relation to such orders;
 - (c) specify matters (in addition to those mentioned in subsection (6)) to which the tribunal must have regard in deciding whether to make such an order, and the terms of any order.
- (11) In this section "relevant tribunal proceedings" means proceedings in—
 - (a) the First-tier Tribunal,
 - (b) the Upper Tribunal,
 - (c) an employment tribunal,
 - (d) the Employment Appeal Tribunal, or
 - (e) the Competition Appeal Tribunal,but does not include proceedings within devolved competence.
- (12) For the purposes of subsection (11), proceedings are within devolved competence if provision regulating the procedure to be followed in those proceedings could be made by—
 - (a) an Act of the Scottish Parliament,

After Clause 47 - continued

- (b) an Act of Senedd Cymru (including one passed with the consent of a Minister of the Crown within the meaning of section 158(1) of the Government of Wales Act 2006), or
 - (c) an Act of the Northern Ireland Assembly passed without the consent of the Secretary of State.
- (13) The Lord Chancellor may by regulations –
- (a) amend subsection (11) so as to add a tribunal to the list in that subsection, and
 - (b) make consequential amendments of the definition of “procedure rules” in subsection (14).
- (14) In this section –
- “free of charge” means otherwise than for or in expectation of fee, gain or reward;
- “legal representative” means a person who is –
- (a) entitled in accordance with section 13 to carry on the activity of exercising a right of audience or conducting litigation,
 - (b) a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980,
 - (c) a member of the Faculty of Advocates in Scotland,
 - (d) a person having a right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990,
 - (e) a member of the Bar of Northern Ireland, or
 - (f) a solicitor of the Court of Judicature of Northern Ireland, irrespective of the capacity in which the person is acting in the proceedings concerned;
- “prescribed charity” means the charity prescribed under section 194C;
- “procedure rules” means –
- (a) Tribunal Procedure Rules, in relation to proceedings in the First-tier Tribunal or the Upper Tribunal,
 - (b) Employment Tribunal Procedure Rules, in relation to proceedings in an employment tribunal or the Employment Appeal Tribunal, or
 - (c) rules under section 15 of the Enterprise Act 2002, in relation to proceedings in the Competition Appeal Tribunal;
- “tribunal” does not include an ordinary court of law.
- (15) An order under this section may not be made in respect of representation if (or to the extent that) it was provided before section (*Payments in respect of pro bono representation*) of the Judicial Review and Courts Act 2022 came into force.”
- (3) After section 194A of the Legal Services Act 2007 (as inserted by subsection (2)) insert –

“194B Payments in respect of pro bono representation: Supreme Court

- (1) This section applies to proceedings in a relevant civil appeal to the Supreme Court in which –

After Clause 47 - continued

- (a) a party to the proceedings (“P”) is or was represented by a legal representative (“R”), and
 - (b) R’s representation of P is or was provided free of charge, in whole or in part.
- (2) This section applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge.
 - (3) The Court may make an order under this section against a person if the condition in subsection (5) is met in respect of that person (and if subsection (7) does not apply).
 - (4) An order under this section is an order for the person to make a payment to the prescribed charity in respect of R’s representation of P (or, if only part of R’s representation of P was provided free of charge, in respect of that part).
 - (5) The condition is that, had R’s representation of P not been provided free of charge, the Court would have had the power to order the person to make a payment to P in respect of sums payable to R by P in respect of that representation.
 - (6) In considering whether to make an order under this section against a person, and the terms of such an order, the Court must have regard to—
 - (a) whether, had R’s representation of P not been provided free of charge, it would have made an order against that person as described in subsection (5), and
 - (b) if it would, what the terms of the order would have been.
 - (7) The Court may not make an order under this section against a person represented in the proceedings if the person’s representation was at all times within subsection (8).
 - (8) Representation is within this subsection if it is—
 - (a) provided by a legal representative acting free of charge, or
 - (b) provided by way of legal aid.
 - (9) For the purposes of subsection (8)(b), representation is provided by way of legal aid if it is—
 - (a) provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
 - (b) funded under Part 2 of the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)).
 - (10) Supreme Court Rules may make further provision as to the making of orders under this section, and may in particular—
 - (a) provide that such orders may not be made in proceedings of a description specified in the Rules;
 - (b) make provision about the procedure to be followed in relation to such orders;
 - (c) specify matters (in addition to those mentioned in subsection (6)) to which the Court must have regard in deciding whether to make such an order, and the terms of any order.
 - (11) In this section—
 - “free of charge” means otherwise than for or in expectation of fee, gain or reward;

After Clause 47 - continued

“legal representative”, in relation to a party to proceedings, means –

- (a) a person exercising a right of audience, or conducting litigation, on the party’s behalf pursuant to an entitlement under section 13, or
- (b) a member of the Bar of Northern Ireland, or a solicitor of the Court of Judicature of Northern Ireland, practising or acting as such on the party’s behalf;

“prescribed charity” means the charity prescribed under section 194C;

“relevant civil appeal” means an appeal –

- (a) from the High Court under Part 2 of the Administration of Justice Act 1969,
- (b) from the Upper Tribunal under section 14B(4) of the Tribunals, Courts and Enforcement Act 2007,
- (c) from the Court of Appeal under section 40(2) of the Constitutional Reform Act 2005 or section 42 of the Judicature (Northern Ireland) Act 1978, or
- (d) under section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court), other than an appeal from an order or decision made in the exercise of jurisdiction to punish for criminal contempt of court.

- (12) An order under this section may not be made in respect of representation in proceedings in a relevant civil appeal –
- (a) from a court in Northern Ireland, or
 - (b) from the Upper Tribunal under section 14B(4) of the Tribunals, Courts and Enforcement Act 2007,

if (or to the extent that) the representation was provided before section (*Payments in respect of pro bono representation*) of the Judicial Review and Courts Act 2022 came into force.”

- (4) After section 194B of the Legal Services Act 2007 (as inserted by subsection (3)) insert –

“194C Sections 194 to 194B: the prescribed charity

- (1) The Lord Chancellor may by order prescribe a registered charity for the purposes of sections 194 to 194B.
- (2) The charity must be one which provides financial support to persons who provide, or organise or facilitate the provision of, legal advice or assistance (by way of representation or otherwise) which is free of charge.
- (3) In this section –
 - “free of charge” means otherwise than for or in expectation of fee, gain or reward;
 - “registered charity” means a charity registered in accordance with –
 - (a) section 30 of the Charities Act 2011,
 - (b) section 3 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10), or

After Clause 47 - continued

- (c) section 16 of the Charities Act (Northern Ireland) 2008 (c. 12 (N.I.)).
- (4) An order under section 194(8) that was in force immediately before section (*Payments in respect of pro bono representation*) of the Judicial Review and Courts Act 2022 came into force—
- (a) remains in force despite the amendment by that section of section 194(8),
 - (b) has effect as if its prescription of a charity for the purposes of section 194 were the prescription of that charity under this section for the purposes of sections 194 to 194B, and
 - (c) may be amended or revoked by an order under this section.”
- (5) For the purposes of sections 194A and 194C of the Legal Services Act 2007 (as inserted by subsections (2) and (4)), sections 204 and 206 of that Act extend to Scotland and Northern Ireland as well as England and Wales.
- (6) In paragraph 17(1) of Schedule 4 to the Enterprise Act 2002 (rules that may be made about procedure of Competition Appeal Tribunal), omit paragraph (ha).
- (7) In paragraph 32 of Schedule 8 to the Consumer Rights Act 2015 (amendments of paragraph 17 of Schedule 4 to the Enterprise Act 2002), omit sub-paragraph (a).”

Member’s explanatory statement

This new Clause allows certain tribunals to order a person to make a payment to a legal assistance charity where a party to proceedings has been represented pro bono and the person would otherwise be liable for that party’s costs. It also allows the Supreme Court to make such orders in appeals from Northern Ireland or from the Upper Tribunal.

Clause 49**LORD WOLFSON OF TREDEGAR**

Page 58, line 24, leave out “and” and insert “to”

Member’s explanatory statement

This amendment is consequential on the amendment at page 58, line 32 in the name of Lord Wolfson of Tredegar.

Page 58, line 32, at end insert—

- “(3A) Section (*Payments in respect of pro bono representation*)(3) extends to England and Wales and Northern Ireland.
- (3B) Section (*Payments in respect of pro bono representation*)(2) and (4) extends to England and Wales, Scotland and Northern Ireland.”

Member’s explanatory statement

This amendment provides for the provisions inserted by the new clause after Clause 47 in the name of Lord Wolfson of Tredegar to extend to Scotland or Northern Ireland as necessary.

Clause 50

LORD WOLFSON OF TREDEGAR

Page 59, line 3, at end insert –

“(za) section 11;”

Member’s explanatory statement

This amendment provides for Clause 11 to come into force on Royal Assent.

Page 59, line 4, leave out paragraphs (a) and (b) and insert –

“(a) section 13(3);”

Member’s explanatory statement

This amendment results in clause 13 and its associated amendments, except for subsection (3) of the clause, coming into force by regulations rather than on Royal Assent (subject to the amendment in the name of Lord Wolfson of Tredegar at page 59, line 10).

Page 59, line 9, at end insert –

“(ba) paragraphs 12 to 14 of Schedule 2, and section 18 so far as relating to those paragraphs;”

Member’s explanatory statement

This amendment is consequential on the amendment in the name of Lord Wolfson of Tredegar at page 59, line 3, and provides for amendments related to Clause 11 to come into force on Royal Assent.

Page 59, line 10, at end insert –

“(1A) If paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (as it was enacted) has been brought in force in relation to either-way offences before the passing of this Act, the following provisions come into force on the day after the day on which this Act is passed –

(a) section 13 (except subsection (3));

(b) paragraphs 16 to 20 of Schedule 2, and section 18 so far as relating to those paragraphs.”

Member’s explanatory statement

This amendment brings Clause 13 and its associated amendments into force the day after Royal Assent if the provisions to which it relates are in force by then.

Page 59, line 15, at end insert –

“(d) section (*Payments in respect of pro bono representation*).”

Member’s explanatory statement

This amendment provides for the new Clause after Clause 47 in the name of Lord Wolfson of Tredegar to come into force two months after Royal Assent.

Page 59, line 21, at end insert –

“(5A) The coming into force of paragraph 20(b) of Schedule 2 results in the provision it inserts becoming subject to section 417(1) of the Sentencing Act 2020 (power to commence Schedule 22 to that Act).”

Member’s explanatory statement

This amendment clarifies the prospective effect of paragraph 20(b) of Schedule 2.

Schedule 2

LORD WOLFSON OF TREDEGAR

Page 76, line 4, at end insert –

“19A In section 42 of the Gambling Act 2005 (offence of cheating at gambling) –

- (a) in subsection (4)(b), for “51 weeks” substitute “the general limit in a magistrates’ court”;
- (b) in subsection (5), for “51 weeks” substitute “the general limit in a magistrates’ court”.”

Member’s explanatory statement

This amendment brings the maximum term of imprisonment on summary conviction of an either-way offence under section 42 of the Gambling Act 2005 into line with the maximum term generally available in such cases.

Judicial Review and Courts Bill

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TO BE MOVED
ON REPORT

18 March 2022
