
Written evidence submitted by Aftab Ali to the Courts and Tribunals Public Bill Committee (CTB27)

Clauses addressed: Clauses 1-7, Part 1

Status: Original submission - not previously published in any form

Note: A separate written evidence submission was made to the Justice Committee's legislative scrutiny inquiry on 11 March 2026. This is a distinct and original submission to the Public Bill Committee, prepared specifically for clause-by-clause scrutiny.

ABOUT THE SUBMITTER

1. I am an independent researcher with a sustained focus on English constitutional law and the common law tradition. This submission is grounded exclusively in primary legal sources: Magna Carta 1297, the Bill of Rights 1689, Coke's Institutes, Blackstone's Commentaries, and the constitutional case law of the English common law tradition. No political position is advanced. The argument is lawful. The authority is in the books.

SUMMARY

2. Clause 6 of this Bill delegates to a Minister, by negative statutory instrument, the power to extend custodial sentencing without jury to 24 months. That delegation is constitutionally impermissible under *R v Secretary of State for the Home Department ex parte Pierson* [1998] AC 539. The Public Bill Committee should remove it.

3. Clause 7 of this Bill removes the automatic right of appeal by complete rehearing and replaces it with an unguarded permission stage. That removal violates the constitutional right of access to the courts established in *R v Lord Chancellor ex parte Witham* [1998] QB 575 and confirmed in *R (Unison) v Lord Chancellor* [2017] UKSC 51. The Public Bill Committee should add an independent review mechanism.

4. Clauses 1-5 remove the natural person's right to demand trial by peers, guaranteed by Magna Carta 1297 (25 Edw. 1 c. 9), Chapter 29 - a constitutional statute that can be overridden only by express words directed at the statute itself. This Bill does not contain those words. The Public Bill Committee cannot supply them by amendment. The clauses therefore cannot be rendered constitutionally compliant at Committee Stage and should not proceed without the Government first producing the constitutional assessment described at paragraph 24 below.

PART I - CLAUSE 6 AND CLAUSE 7: THE IMMEDIATELY ACTIONABLE CONSTITUTIONAL DEFECTS

Clause 6 - The Pierson Principle

5. Clause 6 increases the maximum custodial sentence a magistrates' court may impose to 18 months. It also confers on a Minister the power to increase that ceiling to 24 months by negative statutory instrument, without further primary legislation and without full parliamentary scrutiny.

6. Lord Browne-Wilkinson stated in *R v Secretary of State for the Home Department ex parte Pierson* [1998] AC 539 at 575:

"A power conferred by Parliament in general terms is not to be taken to authorise the doing of acts by the donee of the power which adversely affect the legal rights of the citizen or the basic principles on which the law of the United Kingdom is based unless the statute conferring the power makes it clear that such was the intention of Parliament."

7. The delegated power in Clause 6 is a power conferred in general terms. The act it authorises - extending the period for which a natural person may be imprisoned without jury trial - directly and adversely affects the fundamental legal right of the citizen not to be condemned except by judgment of peers, guaranteed by Magna Carta 1297, Chapter 29. The statute does not make it clear that Parliament intends to override that right by this mechanism. The *Pierson* principle is therefore triggered by the delegation as drafted.

8. The constitutional damage of the Clause 6 delegation is structural, not merely political. Combined with Clause 1's removal of the defendant's right to elect jury trial, the effect is that a natural person may be imprisoned for up to 24 months in a court where no jury sat and no election was available, at the ceiling set by ministerial instrument rather than by primary Act of Parliament. The scope of jury-free imprisonment becomes a ministerial variable. That is constitutionally impermissible.

9. The remedy available to this Committee is precise and contained: remove the delegated power to extend to 24 months by secondary legislation. Retain the primary legislative provision of 18 months if Parliament so chooses - that is a political judgment this submission does not address. But the delegation of any further increase to ministerial instrument, without the constitutional protection of full parliamentary scrutiny, cannot stand under *Pierson*.

Clause 7 - The Witham/Unison Principle

10. Clause 7 replaces the automatic right of appeal to the Crown Court by way of complete rehearing with a permission stage. A person convicted by a magistrates' court must first obtain permission before their appeal can proceed. No independent review of a refused permission is provided.

11. Laws J held in *R v Lord Chancellor ex parte Witham* [1998] QB 575 that access to the courts is a constitutional right which cannot be abrogated by general words in a statute. The same judge, as Laws LJ, applied and extended this principle in *Thoburn v Sunderland City Council* [2002] EWHC 195 four years later. These are not isolated decisions. They form part of a single continuous line of constitutional development spanning 1998 to 2017.

12. Lord Reed confirmed the full constitutional scope of this right in *R (Unison) v Lord Chancellor* [2017] UKSC 51 at [66]:

"The constitutional right of access to the courts is inherent in the rule of law... Where the right is taken away, there is no access to justice in any meaningful sense."

13. Clause 7 places a state-controlled gate between a convicted natural person and the correction of an unsafe conviction. The gate is operated by the same court system whose decision is being challenged. There is no independent judicial officer to review a refused

permission. A person wrongly convicted by a magistrates' court, refused permission to appeal by that same system, has no further recourse under Clause 7 as drafted. The gate is constitutionally unguarded.

14. A 41% success rate on current appeals is not evidence that the filter is working. It is evidence that the automatic right is working - that the mechanism identifies and corrects substantial errors. The constitutional question is not how many current appeals succeed but how many meritorious future appeals will be stopped at an unguarded gate before they can be assessed on their merits.

15. The remedy available to this Committee is specific: add to Clause 7 an independent review mechanism for refused permissions, operated by a judicial officer with no connection to the magistrates' court whose decision is under challenge. This is not an amendment that requires the Bill to be withdrawn. It is an amendment that makes Clause 7 constitutionally defensible. Without it, the first natural person refused permission has an immediate *Unison/Witham* judicial review claim.

PART II - CLAUSES 1-5: THE CONSTITUTIONAL STATUTE THIS BILL DOES NOT NAME

The Right Being Removed

16. Magna Carta 1297 (25 Edw. 1 c. 9), Chapter 29, remains in statutory force:

"No freeman shall be taken or imprisoned... nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land."

17. *Per judicium parium suorum*: by the judgment of his peers. Clauses 3-5 create a Bench Division in which a single state-appointed judge condemns the natural person to imprisonment of up to three years. Clause 1 removes the right to demand otherwise. The Bill does not name Magna Carta Chapter 29. It does not name this right. That silence is not a drafting oversight. It is the constitutional defect.

18. Coke, *Second Institute* (1642), p. 48, expressly translates *per judicium parium suorum* as judgment by jury. Blackstone, *Commentaries* (1765), Book III, Ch. 23, equates this directly with trial by jury as settled constitutional interpretation continuous from 1215 to the present. Blackstone described it as "the most transcendent privilege which any subject can enjoy or wish for, that he cannot be affected either in his property, his liberty, or his person, but by the unanimous consent of twelve of his neighbours and equals." All three of Blackstone's absolute rights - personal security, personal liberty, and private property - are engaged by Bench Division imprisonment of up to three years.

19. Coke stated in *Second Institute* (1642), p. 51: "This charter hath been confirmed above thirty times... wheresoever any act of Parliament is against Magna Carta, it shall be void." This is not a historical curiosity. It is a constitutional proposition restated from *Dr Bonham's Case* (1610) through *Jackson* [2005].

20. Vaughan CJ identified in *Bushell's Case* (1670) Vaughan 135 the exact constitutional catastrophe Clauses 3-5 normalise: "for then the jury would be but a troublesome formality and the judge would be the real trier." Under Clauses 3-5, the judge *is* the real trier. Two recent cases demonstrate what is lost. In *R v Ponting*, Central Criminal Court (1985), a jury acquitted against the judge's direction, exercising the community's constitutional veto. Under this Bill, that is a Bench Division case: a judge would have convicted. In *R v Colston*, Bristol

Crown Court (2022), defendants were acquitted on public interest grounds. Again a Bench Division case under this Bill.

The Thoburn/HS2 Standard: Express Words Required

21. Laws LJ held in *Thoburn v Sunderland City Council* [2002] EWHC 195 at [63] that a constitutional statute cannot be impliedly repealed and that its override requires words "so specific that the inference of an actual determination to effect the result contended for was irresistible." Lords Neuberger and Mance confirmed in *HS2 Action Alliance Ltd v Secretary of State for Transport* [2014] UKSC 3 at [207], in a judgment agreed by all seven Supreme Court justices, that it is "certainly arguable that there may be fundamental principles... of which Parliament... did not either contemplate or authorise the abrogation." That is the Supreme Court recognising a class of constitutional fundamentals Parliament cannot silently abrogate.

22. This Bill amends the Magistrates' Courts Act 1980 and the Senior Courts Act 1981, which are procedural instruments downstream of Magna Carta Chapter 29, while leaving Magna Carta 1297 standing and un-repealed. That is precisely the indirect implied mechanism of amendment that *Thoburn* prohibits. The determination to override the constitutional guarantee cannot be "irresistible" from a Bill that never names the right, never names the statute, and never acknowledges that any constitutional protection is being removed.

23. This Committee cannot cure this defect by amendment. The *Thoburn/HS2* standard requires express words directed at Magna Carta Chapter 29 itself. That requires a clause in the Bill expressly naming and engaging with Magna Carta 1297, Chapter 29. The Government has not drafted such a clause. Adding it at Committee Stage is a constitutional step of the first order - it requires the Government to acknowledge, expressly and on the parliamentary record, that it is overriding a constitutional statute. That acknowledgement is precisely what *Simms* requires.

The Simms and Crystal Clear Standards

24. Lord Hoffmann stated in *R v SSHD ex parte Simms* [2000] 2 AC 115: "Fundamental rights cannot be overridden by general or ambiguous words... Parliament must squarely confront what it is doing and accept the political cost." Baroness Hale added in *R (Jackson) v Attorney-General* [2005] UKHL 56 at [159] that the courts would decline to hold Parliament had interfered with fundamental rights unless it had made its intention "crystal clear." That is a higher standard than "squarely confront." This Bill satisfies neither. The ECHR memorandum does not cite Magna Carta Chapter 29, does not apply *Thoburn*, and does not address *Simms*. Parliament has been formally placed on notice. Courts will one day read this record.

RECOMMENDATIONS TO THE COMMITTEE

25. Each recommendation below is framed as a specific amendment or requirement within the competence of this Committee. Each is grounded in binding or persuasive authority. Each creates a constitutional record that is permanent, whether or not the recommendation is accepted.

Recommendation 1 - Remove the Clause 6 delegation. The power to extend custodial sentencing to 24 months by negative statutory instrument (Clause 6(2)) must be removed. The scope of imprisonment without jury is a constitutional ceiling that can only be varied by primary legislation with full parliamentary scrutiny. The *Pierson* principle is triggered by this

delegation as drafted. If the Government retains it, the *Pierson* ground of judicial review is available the moment the secondary instrument is made.

Recommendation 2 - Add an independent review mechanism to Clause 7. Clause 7 must be amended to provide that a person refused permission to appeal under the new permission stage may apply for review of that refusal to an independent judicial officer - one with no connection to the magistrates' court whose decision is under challenge. Without this, Clause 7 as drafted is incompatible with *Witham* and *Unison* and is immediately susceptible to judicial review on the application of the first person refused permission.

Recommendation 3 - Require a formal constitutional assessment of Clauses 1-5. Before Clauses 1-5 proceed further, the Government must produce a formal constitutional assessment - additional to and distinct from the ECHR memorandum - which expressly addresses: (a) whether Magna Carta 1297, Chapter 29 is engaged; (b) whether the *Thoburn/HS2* standard is satisfied; (c) whether Parliament has squarely confronted what it is doing in the *Simms* sense; and (d) whether the intention to override a fundamental right is crystal clear in the *Jackson* sense. If the Government declines to produce this assessment, the record will permanently show that Parliament was placed on formal notice and did not respond.

Recommendation 4 - Require an explanation of HRA s.11. The Government must explain why HRA 1998, s.11 does not separately protect the right guaranteed by Magna Carta 1297, Chapter 29, above and beyond the Article 6 ECHR floor. The Government must either (a) concede that s.11 separately protects the right, requiring different and more explicit authority to override it; or (b) argue that s.11 does not apply - which requires arguing that Magna Carta 1297 is not a law having effect in the United Kingdom, a position that is factually false since it is a statute on the statute book. There is no third answer.

CONCLUSION

26. The Clause 6 delegation is removable by this Committee and its removal is required by *Pierson*. The Clause 7 permission stage can be made constitutionally defensible by this Committee if an independent review mechanism is added, as required by *Witham* and *Unison*. Both amendments are within this Committee's competence and are grounded in binding authority. Clauses 1-5 cannot be made constitutionally defensible at this stage without the Government first producing the constitutional assessment that *Simms* requires and *Thoburn/HS2* demands.

27. Parliament has been formally placed on notice. The authority for what Clauses 1-7 of this Bill propose is not to be found in our books.

It is not law.

AUTHORITIES CITED

Primary Sources

Magna Carta 1297 (25 Edw. 1 c. 9), Ch. 29 - in statutory force. Petition of Right 1628. Bill of Rights 1689, Art. 3.

Sir Edward Coke, Second Institute of the Laws of England (1642), pp. 48, 51.

Sir William Blackstone, Commentaries on the Laws of England (1765), Book III, Ch. 23.

Cases

Bushell's Case (1670) Vaughan 135.

Entick v Carrington (1765) 19 Howell's State Trials 1029.

R v Lord Chancellor ex parte Witham [1998] QB 575, per Laws J.

R v Secretary of State for the Home Department ex parte Pierson [1998] AC 539, per Lord Browne-Wilkinson at 575.

R v SSHD ex parte Simms [2000] 2 AC 115, per Lord Hoffmann.

Thoburn v Sunderland City Council [2002] EWHC 195 (Admin); [2003] QB 151, per Laws LJ at [63].

R (Jackson) v Attorney-General [2005] UKHL 56, per Lord Steyn at [102]; Baroness Hale at [159].

AXA General Insurance Ltd v Lord Advocate [2011] UKSC 46, per Lord Hope at [51].

HS2 Action Alliance Ltd v Secretary of State for Transport [2014] UKSC 3, per Lords Neuberger and Mance at [207].

R (Unison) v Lord Chancellor [2017] UKSC 51, per Lord Reed at [66]-[68].

Legislation

Human Rights Act 1998, ss. 3, 4, 11, 19. Courts and Tribunals Bill 2026, Clauses 1-7. Magistrates' Courts Act 1980, s. 20.

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