

Judicial Review and Courts Bill Fact Sheet (Courts)

Background

Criminal Courts

- As part of its ongoing criminal court reform programme, the Government is investing over £1 billion to transform the courts and tribunals system and a further £142 million of Covid funding to upgrade court buildings so that they are digitally enabled. This includes the operational roll-out of the new 'Common Platform', a ground-breaking £270m online digital end-to-end case management system. The programme aims to modernise and improve court processes by removing outdated procedures and unnecessary hearings and making better use of new technology.
- The criminal court measures in this Bill will help to realise the full potential of the Common Platform and ensure we continue to deliver vital improvements to the system to increase efficiency. They will make our criminal courts more easily accessible to users and provide greater flexibility for the effective deployment of court resources; saving court time, reducing delays, delivering swifter justice, and supporting court recovery.

Online Procedure Rule Committee

- The increased digitisation of court processes requires a change in our approach to making rules. There will be an increasing need to produce short, concise rules which complement new technology and online working.
- This Bill will therefore create an Online Procedure Rule Committee (OPRC), which will be a separate, independent rule making committee established to make Online Procedure Rules to govern conduct of proceedings online across the civil, family and tribunals jurisdictions.

Employment Tribunals

- In 2016 the Government consulted on reforming the employment tribunal structure and announced the transfer of responsibility for ET and EAT rules from the SoS BEIS to the Tribunal Procedure Committee (TPC).
- The TPC is better placed to make and amend rules for the ETs, given that it is an independent rule-making committee. These arrangements will also allow for a quicker response to the need to introduce, amend or revise ET procedure rules to help address the backlog in outstanding ET claims as well as dealing with other changing circumstances such as the COVID pandemic.
- The bill also makes ancillary changes to support this change and align arrangements between i) the ET and EAT and ii) the unified tribunal structure.

Coroner's Courts

- The coroner's courts measures in the bill are aimed at supporting the system's post pandemic recovery. The measures will reduce unnecessary procedures in coroner's courts and help address the backlog of cases which have accumulated during the pandemic. The bill will also include a measure which will allow all participants, including the coroner to participate remotely, putting coroner's courts in line with criminal courts.

City of London Courthouses

- HMCTS and the City of London have reached agreement on a scheme where two courthouses are to be closed and replaced by a new combined courthouse on a different site within the City of London. This Bill will make amendments to primary legislation regarding provision of courthouses to HMCTS by the City of London Corporation.

The Judicial Review and Courts Bill will:

Criminal Courts

- Enable defendants who are prosecuted for criminal offences to have the option, with the assistance of a legal representative, to engage with a range of pre-trial criminal court proceedings online via the Common Platform (without the need for a hearing at magistrates' court). This includes providing an indication of plea to a magistrates' court and, for TEW cases, engaging with the procedure to establish the most suitable venue to allocate the case for trial.
- Create a new automatic online conviction and standard statutory penalty (AOCSSP) procedure for specified minor summary-only, non-imprisonable offences (e.g. travelling on a train without a ticket) that will give defendants who wish to plead guilty the option of having their entire case completed online, without the involvement of a court.
- Provide greater flexibility for the allocation of criminal cases to magistrates' courts or the Crown Court. This includes enabling magistrates' courts to: decide on the most suitable venue for trial in a defendant's absence when they fail to appear at court without good reason; bypass mandatory procedures that become redundant where a defendant has already decided they want to be tried by a jury in the Crown Court; and direct cases to the Crown Court for trial or sentencing without the need for a prior magistrates' court hearing. The Crown Court will also be able to return suitable cases back to a magistrates' court for trial (with a defendant's consent) or for sentencing in a wider range of circumstances.
- Remove the statutory requirement that magistrates' courts must be divided into separate Local Justice Areas (LJAs) based on geographical location. This will give magistrates courts the flexibility to manage cases more efficiently and list cases where they can be heard with the least delay and at the most convenient location for court users. This will also enable arrangements for the recruitment, training, and management of magistrates to be brought in line with the rest of the judiciary on a national basis in England and Wales.
- Enable the service of documents in criminal cases to be done by electronic means such as e-mail where appropriate.
- Remove the statutory requirement to hold court hearings to determine applications for witness summons and applications to lift reporting restrictions so that decisions can be made on the papers where appropriate.

Q: Will the new online pre-trial procedures prevent defendants from being able to appear at court if they wish to do so?

- No – defendants will need to opt-into the new online procedures, otherwise they will be required to appear at a first hearing at magistrates' court as normal. Furthermore, magistrates' courts will have the discretion to withhold or disapply the new online procedures on a case-by-case basis where it deems that a defendant's appearance at court would be more appropriate.

Q. How will you ensure that vulnerable and digitally excluded defendants who wish to use the new online procedures are supported to do so?

- We will provide an assisted digital support service for those defendants who may struggle or would otherwise not be able to use the new online procedures. Moreover, defendants will not be able to access the online procedure for indication of plea or trial venue allocation decision directly; they will need to instruct a legal representative to act on their behalf who will of course ensure they fully understand the process and will be able to identify any vulnerabilities. The court must adhere to additional safeguards when dealing with children, such as confirming a parent or guardian is aware the proceedings are taking place online.

Q: How will you ensure that operational agencies, practitioners, and professionals in the criminal justice system are adequately prepared to use these new online procedures?

- The majority of the new online procedures will be commenced by regulation once all the necessary technology, training, guidance and operational changes are in place. Additional information and guidance will also be provided through the Criminal Procedure Rules.

Employment Tribunals

- Transfer responsibility for the making of procedure rules for ETs and EAT from the Secretary of State for BEIS to the Tribunal Procedure Committee.
- Widen the existing power to make rules in the ET and the EAT so that it is equivalent to the TPC's rule making power for the FtT and UT. This will ensure that arrangements for making procedure rules for the ETs and EAT replicate the arrangements for the FtT and UT.
- Provide for two additional members to be appointed to the TPC. To ensure that the membership of the TPC has the necessary skills and experience to fulfil its duties in relation to ETs and the EAT, the legislation will provide for two additional members; one appointed by the Lord Chancellor, who has experience of advising on ET matters; and a second, appointed by the Lord Chief Justice, who has experience as a judicial or non-legal panel member of the ETs.
- Allow for the delegation of judicial functions in the ET and the EAT to legal case officers. This will align the approach taken in the ET and EAT to that taken in the unified tribunal structure.
- Make the Lord Chancellor responsible for determining the composition of the employment tribunals and EAT. This will replicate for the ETs the arrangements used for determining the composition of panels in the FtT and UT, so that they are a judicial function.
- Transfer responsibility for the remuneration of ET judges from the SoS BEIS to the Lord Chancellor. Given that the responsibility for the ET tribunal will be transferring to the LC it is only fitting that remuneration of the ET judiciary should also follow; this will align the ET and EAT with the approach taken in the unified tribunal system.

Q: This measure risks compounding the issues of a slow, overly legalistic system that doesn't reflect the needs of business. How will the government ensure that the needs of the employment and business community are considered when rules are being created?

- A: Ensuring that Tribunal users, including the business community, can resolve their disputes quickly and effectively remains the primary aim of the Employment Tribunal and an essential rationale for this transfer. The COVID-19 pandemic has shown the importance of moving

swiftly to amend procedures, processes and forms to help the Tribunal to respond flexibly to the challenges it faces and needs of Tribunal users. An appropriate representative from the employment sector would be appointed to sit on the Committee so that the needs of the wider employment sector continue to be represented in the rule-making process. The Tribunal Procedure Committee are also able to request external expertise to support the development of rules, including a representative to reflect the needs of business.

Q: With waiting times expected to exceed 2 years, how will this measure help to address the backlog in the Employment Tribunal?

- Transferring rule-making powers to the Tribunal Procedures Committee will help the Tribunal to respond more swiftly and flexibly to the challenges it faces through operational changes and rulemaking. As has been the case with other Tribunals in the Unified Tribunal System, the rules will be kept under constant review and changes to make them simpler and more user-friendly will be considered; the change will also enable the development of unified rules. The transfer will also allow the judiciary to manage their workloads more flexibly, which is an important factor to help maximise the capacity of the Employment Tribunal. This measure is one of a number which have been introduced by MoJ and BEIS to maximise capacity and efficiency in the Employment Tribunal to help respond to growing demand.

Coroner's Courts

- To allow a coroner investigation to be discontinued where the cause of death becomes clear. This provision will allow the coroner to discontinue an investigation (where the cause of death is natural) where the cause of death has been revealed otherwise than through a post-mortem examination and will remove the need for a post-mortem examination in such cases.
- To allow inquests to be held without a hearing in non-contentious cases. This provision will allow coroners to determine when an inquest can be without a hearing, which could be where there is no practical need or public interest to do so.
- To allow pre-inquest hearings and inquests to take place where all participants participate remotely, including the coroner, bringing coroner's courts in line with criminal courts. This measure will enable coroners to conduct inquests virtually without the need for the coroner or inquest jury to be physically present in the courtroom.
- To disapply the requirement for an inquest to be held with a jury where COVID-19 (a notifiable disease) is suspected to be the cause, giving coroners the flexibility to decide on whether to hold a jury inquest where Covid-19 is suspected to be the cause of death. This will be a temporary provision which will be reviewed after 2 years.
- To allow the merger of coroner areas within a local authority area where the new coroner area would not be the entire local authority area. This measure is to permit two coroner areas to combine, by order of the Lord Chancellor, into one coroner area which consists of only part of the area of the local authority.

How will these provisions support the coronial system to recover from the effects of the pandemic and ensure standards and consistency in the system?

- The provisions are intended to reduce unnecessary procedures in the coroner court system, making processes more efficient and providing more support to coroners as they address

- their backlogs. We also expect that the Chief Coroner will issue guidance to accompany any law changes to ensure that coroners are applying the measures consistently.

Will these measures allow the media to participate and stream live proceedings?

- The purpose of the provision is to allow coroners to conduct partially or wholly virtual hearings so that they are on the same footing as other courts and tribunals. If the Police, Crime Sentencing and Courts Bill is implemented, this would allow the media to access coroners' court proceedings remotely

Doesn't allowing inquests to take place without a hearing means that justice is not "being seen to be done"?

- The provision is intended only for non-contentious inquests where the bereaved family would not attend. In practice, many hearings are already held in a completely empty courtroom with the coroner conducting the hearing to no-one (other than a recording device).
- The Chief Coroner will provide guidance to coroners accompanying any law change to make sure that 'paper' inquests are conducted fairly and that cases which genuinely need a full public hearing continue to have one. For example, inquests which require a jury would continue to be heard in public, as well as cases where there are contentious issues to be aired such as failures of care in a hospital or care home.

Why are you disapplying the requirement for an inquest to be held with a jury where Covid-19 is suspected to be the cause?

- As COVID-19 is now a notifiable disease, had we kept the requirement for jury inquests in cases where COVID-19 is suspected, hundreds, possibly thousands of individuals would have been required to serve on COVID-19 inquest juries and coroner services would have been overwhelmed with the logistics. Coroners can still hold a jury inquest if they feel it appropriate.
- The measure only affects those deaths reported to coroners where it is believed that the deceased died from Covid-19 and is a temporary measure.

Online Procedure Rule Committee

- This measure will create an Online Procedure Rule Committee (OPRC), which will be a separate, independent rule making committee established to make Online Procedure Rules to govern conduct of proceedings online across the civil, family and tribunals jurisdictions. This will include the development of new rules designed to promote more conciliatory approaches to dispute resolution which will be accessible to non-lawyers.

Q. Why is the OPRC necessary?

A. The new committee, with the ability to provide for online procedure across different jurisdictions, will be better able than existing rule committees to keep pace with the design of HMCTS online services, and the opportunities that emerging technology will present to enable users to navigate the justice system. Investing in technology and digital access is a core component of the court reform programme. This will help to drive the recovery of the court system and support cultural change for HMCTS, judges and users. A cross-jurisdictional rules committee, which will include expertise in design and use of online services will help to support the pursuit of harmonised process and procedure and will build greater flexibility in HMCTS for how it can respond to future external events such as Covid 19.

What will you be doing to support Courts users who are not able to engage technology on the new civil online platform? What type of support will be available?

- We recognise that not everyone who needs to use the courts and tribunals will want to access digital services, and that others may need some help and support to do so.
- There will continue to be a need for some people to use traditional paper-based routes, so users including any litigant who wishes to submit their claim, application or appeal on paper will still be able to do so.

City of London Courthouses

- The HMCTS and the City of London have reached agreement on a scheme where two courthouses and accommodation are to be closed and replaced by a new combined courthouse and accommodation on a different site. The new court building will provide significantly improved court provision in the Square Mile, suitable for the needs of modern justice. Technical changes to legislation are required to repeal provisions which currently place duties on the Corporation to provide county and magistrates court capacity at the current locations.

Why is legislation needed for this?

- Primary Legislation needs to be amended to remove obligations in the statute book requiring the City of London Corporation to provide county and magistrates court capacity at the current locations. There will be a transitional period when HMCTS is occupying existing sites and has taken on the lease of the new building and is completing fit out works. Court hearings will then move to the new site when it is ready for occupation; at this stage the duty on the City of London regarding the existing buildings will cease. Obligations in relation to the replacement courthouse and accommodation will be governed by contractual arrangements rather than by statute.

What impact will this have on court services?

- The new court will significantly improve provision in the form of a purpose built 18 room centre suitable for the needs of modern justice and will provide significant benefits to all court users. The new court will provide modern facilities and increase court room capacity. The new court is expected to be operational in 2026 and in the meantime the existing buildings will continue to be used with no gap in provision.