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 The programme aims to modernise and improve court processes by removing outdated procedures and unnecessary hearings and making better use of new technology.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 the making of procedural rules in the employment tribunals (ET) and the employment appeal tribunal (EAT) 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 related measures are aimed at supporting the coroner's courts' post pandemic recovery. The measures will streamline procedures which will help to address the backlog of cases which have accumulated during the pandemic. The measure to allow all participants, including the coroner and any jury, to participate remotely in inquest hearings will put coroner's courts in line with courts in other jurisdictions.
- Through this Bill we are enabling registrars to request information from coroners to facilitate a registration where the coroner has discontinued an investigation and issued their authority for a burial or cremation to take place and a qualified informant is subsequently unable or unwilling to come forward to register.

Pro bono costs orders

- A pro bono costs order is an order to make a payment to a prescribed charity (currently the Access to Justice Foundation) in respect of the representation of a party to proceedings, where that party's representation was provided free of charge. This amendment will allow pro bono costs orders to be made in the First-Tier Tribunal, the Upper Tribunal, an employment tribunal, the Employment Appeal Tribunal and the Competition Appeal Tribunal. It also creates a power for the Lord Chancellor to add further tribunals through secondary legislation.

It will level the playing field between parties where one is represented pro bono and show our support for the work done pro bono by the legal profession across the country.

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.

Magistrates' Courts Sentencing Powers

- Through separate legislation, we are extending magistrates' court sentencing powers from 6 to 12 months for a single triable either way (TEW) offence. This change will apply both to District Judges and Magistrates. This measure will result in a one-off reduction to the Crown Court backlog by about 1,700 cases and it will free up nearly 2,000 sitting days in the Crown Court every year - the equivalent of 500 jury trials.

- Through this Bill, we will be legislating for a power to vary the limit on the length of sentence that the magistrates' court may give to either 6 months or 12 months in the future. This will allow the Government to revert the maximum sentence back to six months if, for example, unsustainable pressures arise on the criminal justice system because of this measure.

The Judicial Review and Courts Bill will:

Criminal Courts

- Enable defendants who are prosecuted for TEW 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 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.

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 procedure for online indication of plea and allocation 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 the EAT from the Secretary of State for BEIS to the TPC.
- 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 First-tier Tribunal (FtT) and Upper Tribunal (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 laying down the statutory framework governing composition of the employment tribunals and EAT. The Senior President of Tribunals will be responsible for determining composition in individual cases. This aligns the procedure with the procedure in the FtT and UT.
- Transfer responsibility for the remuneration of ET judges from the SoS BEIS to the Lord Chancellor (LC). Given that the responsibility for the ET tribunal will be transferring to the LC it is only fitting that renumeration 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 is natural and becomes clear – before an inquestThis provision will allow the coroner to discontinue an investigation (where the cause of death is natural) where the cause of death has been revealed as natural by means other than a post mortem examination.
- To allow inquests to be held without a hearing in non-contentious cases - this provision will allow coroners to conduct an inquest without a hearing where, for example, there is no practical need or public interest in doing so.
- To allow rules to be made pemitting pre-inquest hearings and inquests to take place where all participants participate remotely, including the coroner and any jury – this measure will enable coroners to conduct inquests virtually, without the need for the coroner or any inquest jury to be physically present in the courtroom, thereby bringing coroner's courts into line with courts in other jurisdictions.
- 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 of death, giving coroners the flexibility to decide on whether to hold a jury inquest is required in such cases. This is a time limited provision which will be reviewed after two years.
- To allow the merger of coroner areas within a local authority area where the new coroner area would not constitute the entire local authority area. This measure will enable registrars to request information from coroners to facilitate a registration where the coroner has discontinued an investigation and issued their authority for a burial or cremation to take place and a qualified informant is subsequently unable or unwilling to come forward to register.

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 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 rules to be made permitting coroners to conduct partially or wholly virtual hearings so that they are on the same footing as other courts and tribunals. A separate measure in the Police, Crime Sentencing and Courts Act 2022, when implemented, will 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 does not wish to 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?

- This measure replicates the provisions of section 30 of the Coronavirus Act 2020 which was implemented in March 2020 and will continue in force until the implementation of the replacement measure.
- As COVID-19 is 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 .
- Coroners can still hold a jury inquest in to a death thought to be caused by Covid-19 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 time limited measure.

Q – How often will coroners have to provide information to the registrar pursuant to the new measure introduced by the Act?

- A – It is envisaged that this will only happen occasionally. Currently across the whole of England and Wales we see approximately 200 deaths per year which may require use of this provision.

Q – When will a coroner get involved?

- A – It is envisaged that the registrar will only ask the coroner to provide information after exhaustive attempts have been made to obtain a 'qualified informant' (usually a family member) to step forward and provide that information.

Q – What kind of information will the coroner need to provide?

- A – The provision does not impose a duty on the coroner. The coroner will be enabled to provide to the registrar any information which may be required to allow a death registration to take place, if such information has been gathered by the coroner at the time the investigation is discontinued. This does not affect the duties the coroner may have under other provisions to provide information relating to the cause of death.

Q – How will the information be provided?

- A – It is envisaged that the information will be collected on a certificate, provided for this specific purpose and that the certificate will be transferred to the register office (this may be done electronically)

Q – Will the coroner have to attend at the register office?

- A – No. See above

Q – Will the coroner be responsible for anything else by undertaking this role?

- A – The provision does not impose any duty on the coroner. The coroner may provide information for the registration to take place, if such information is available.

Q – Can a coroner's officer provide the information?

- A – No. Although it is envisaged that the coroner's office (including their officer) may get involved collating the relevant information, as with coroner's certificates and notifications which are already at present sent to the registrar, the coroner will ultimately certify the information provided to the registrar.

Q – Will the family of the deceased be informed that the coroner will be acting in these cases and if so, who will tell them?

- A – It is envisaged that every attempt will be made to engage with family members to try and persuade them to fulfil any statutory duty they may have to act as informants, so that a death may be registered. If these efforts are unsuccessful, it is envisaged that the registrar will inform them that the death may be registered on the basis of information obtained from the coroner. In some of these cases there may not be any relevant contact details for the family.

Q – What happens if the family later objects to the registration?

- A – It is expected that any registration will be made in accordance with the provisions of the Births and Deaths Registration Act 1953, and that clear policy will be laid out to ensure family members are kept informed if possible. An entry in the register of deaths may be corrected in accordance with existing legislation if errors of fact or substance are found to exist in the entry (see below).

Q – What happens if there is incorrect information, can the family change the registration?

- A – There is currently comprehensive statutory provision for the correction of errors in death entries on the register of deaths. If it can be shown that an error exists it will be possible to use the current statutory provisions to correct it.

Pro bono costs orders

- Section 194 of the Legal Services Act 2007 allows pro bono costs orders to be made in the civil courts. A pro bono costs order is an order to make a payment to a prescribed charity (currently the Access to Justice Foundation) in respect of the representation of a party to proceedings, where that party's representation was provided free of charge.

- This amendment would extend the effect of section 194 by allowing the same sort of pro bono costs order to be made in the First-Tier Tribunal, the Upper Tribunal, an employment tribunal, the Employment Appeal Tribunal and the Competition Appeal Tribunal, by adding further sections to the 2007 Act. It also creates a power whereby the Lord Chancellor can add further tribunals to the list of tribunals in which pro bono costs orders can be made through secondary legislation.

How and why is this amendment different to that proposed by Lord Etherton?

- The government's amendment specifies the tribunals in which pro bono costs orders shall be permitted. This avoids any unintended consequences, whereby a tribunal not operated by

the Government, for example, the General Medical Council, might be forced to make a provision for pro bono costs orders.

- The government's amendment will ensure that, where the tribunal is reserved and provision regulating the tribunal's procedure could not be made by any of the devolved administrations, they can make a pro bono costs order regardless of where they are sitting within the United Kingdom.

Why not allow pro bono costs orders in every tribunal?

- The government's amendment will cover the majority of cases heard in tribunals where the Foundation and its partners support pro bono work.

- The amendment does not cover all tribunals, as there are several tribunals which are not administered by the government. For example, the Solicitors Disciplinary Tribunal or the Medical Practitioners Tribunal Service. It would not be appropriate for the government to dictate the rules of these tribunals through legislation, with no consultation or consideration of the specifics of the tribunals in question.

Why not allow pro bono costs orders in all tribunals administered by the government?

- There are other tribunals administered by the government but not included in the amendment. These are small tribunals and unlikely to have a material impact on the funds raised in favour of the Foundation. In the time available we have not been able to consider the appropriateness of extending this measure to those tribunals or consulted with the relevant minister.

- The amendment will create a power allowing the Lord Chancellor to bring additional tribunals in scope through secondary legislation. This can be used in appropriate cases to add additional tribunals to the list of tribunals in which pro bono costs orders can be made.

Why has the government waited for Lord Etherton to make an amendment to resolve this issue?

- We are grateful to Lord Etherton for bringing forwards this amendment and look forward to implementing pro bono costs orders in tribunals as soon as possible through this bill.

- We have worked quickly to bring forwards a workable amendment which will generate funds; level the playing field and raise the profile of the valuable work the Foundation and its partners do.

Why is the government creating a new power for the Lord Chancellor through this amendment?

- We recognise that we may wish to include more tribunals in scope in the future, including any tribunals for which the Lord Chancellor may become responsible. We think it would be efficient to add further tribunals via secondary legislation. We do not consider doing so would amount to insufficient parliamentary scrutiny, given that the current pro bono costs concept, as well as the framework adding tribunals in principle to this framework, would already have been approved via primary legislation.

- It is standard in the regulation of courts for primary legislation to provide that procedure rules can govern the finer detail of procedural matters such as costs orders.

Why not add other courts/the Court of Protection?

- Pro bono costs orders are already possible in the Civil Courts. This amendment is focused on the tribunal system, where (aside from the Competition Appeals Tribunal), pro bono costs orders could not previously be made. This matches the ambition of Lord Etherton's proposed amendment.

- Extending pro bono costs orders to additional courts would need to be dealt with under the existing section 194 of the Legal Services Act, rather than the new section 194A introduced by this amendment.

- In the time available, we have not been able to consider the impact on other courts and or conduct the necessary stakeholder engagement to extend to the provision.

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.

How will the creation of the OPRC help to ensure flexibility in the future for the justice system?

A cross-jurisdictional rules committee, dedicated to making rules for online services, will help to support the pursuit of harmonised processes across the justice system and facilitate a coherent transfer of data across online services. Establishing this committee is necessary in order to facilitate a cultural shift away from the existing rule making processes and move towards a more agile approach to rule making to help litigants to navigate online systems. The OPRC is specifically designed to be responsive, and this will help changes in the future, for instance in response to other pandemics or civil emergencies, to happen more speedily and efficiently.

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.

Magistrates' Courts Sentencing Powers

- Legislate for a power to vary the limit on the length of sentence that the magistrates' court may give to either 6 months or 12 months in the future.

Why are you implementing this change?

- We are implementing the change because it will support Crown Court recovery in two ways. First, this new power will move up to 8,000 sentencing hearings from the Crown Court to the magistrates' court, resulting in a reduction in the Crown Court backlog of about 1,700 cases. Secondly, because those 8,000 cases no longer have to be heard in the Crown Court, we will free up approximately 1,800 sitting days a year for other work which, if used for trial work, would provide for an extra 500 jury trials a year.

Will defendants still have the power to elect?

- Yes - defendants charged with TEW offences will retain the right to elect for their case to be heard at the Crown Court.