



Public Law Project

Judicial Review and Courts Bill – Second Reading – Clause 2

A ‘Cart’ judicial review is where the High Court can – in exceptional circumstances – review a decision of the Upper Tribunal to refuse permission to appeal. The purpose of Clause 2 is to ‘oust’ this type of judicial review.

Cart judicial reviews are mostly used in immigration and social security cases to identify serious errors in law. They have prevented the removal of people to hostile regimes where they risked torture and murder, and brought justice to benefit claimants who had been treated unlawfully.

Jo Hickman, Director of the Public Law Project said: “Cases where Cart JRs have been used concern matters of life and death. They are a vital safeguard and cost a relatively tiny amount of money.”

- Without Cart JRs, errors of law and their consequences will go uncorrected and bad law will be fossilised in the tribunal system.
- The Government agreed that there should be judicial supervision of the decisions of the Upper Tribunal, particularly in relation to refusals of permission to appeal,¹ but cited the ‘significant cost’ as a reason to abolish Cart JRs.
- The total cost saved is estimated at just £364,000-£402,000 per year. In 2019-20, the Department for Digital, Culture, Media and Sport spent more on its art collection.² The Cart JR procedure is restricted and streamlined. The use of judicial resource is limited and proportionate.
- The recommendation to scrap Cart JRs was also based on success rate data which the Government has acknowledged was incorrect. By the Government’s own figures³, Cart JRs are 15 times more successful than initially thought.
- Clause 2 has explicitly been designed as a prototype clause to create more ‘ouster clauses’. These are clauses which place public authorities beyond reach of the courts, even if they behave in a way that would be regarded as unlawful.

Jo Hickman said: “Ouster clauses are a *carte blanche* for unlawful decisions and actions by the state. Clause 2 should be removed from the Bill.”

¹ The Government Response to the Independent Review of Administrative Law, March 2021, Para 51
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975301/judicial-review-reform-consultation-document.pdf

² The Daily Mail, <https://www.dailymail.co.uk/news/article-8975691/Major-probe-reveals-public-sector-squanders-5-6bn-cash.html>

³ The Government estimate is that 3.4% are successful. Neither is figure correct. The success rate is nearer 5.7%. Paragraph 19