Public Law Project

Public Law Project House of Lords Committee Stage briefing on the Judicial Review and Courts Bill

February 2022

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Executive summary

1. Public Law Project ('PLP') is an independent national legal charity. We work through a combination of research, policy work, training and legal casework to promote the rule of law, improve public decision-making and facilitate access to justice.

2. As currently drafted, the Judicial Review and Courts Bill will make this and future governments less accountable for their actions and make it harder for people to require public bodies to obey the law and defend their rights through the courts.

3. Clauses 1 and 2 are of particular concern. Clause 1 weakens a crucial public law remedy (quashing orders) obtained from judicial review that gives effective redress to victims of unlawful acts and Clause 2 abolishes an important judicial check against errors made in the tribunals system. These two changes combined increase the risk that the most vulnerable individuals will be left without effective legal protection and redress when they need it most.

4. This briefing for Committee Stage in the House of Lords supplements PLP's Second Reading, Committee Stage and Report Stage briefings for the House of Commons, and in particular addresses amendments that we would like to be made to this Bill in the House of Lords.

Clause 1

Explanation of 'prospective only' and 'suspended' quashing orders

5. When people have been affected by an unlawful decision made by a public authority, their last resort is judicial review. Through this legal process a judge will determine if the actions by that authority were lawful. Judicial review does not consider whether that decision was wise, politically acceptable or whether the judge personally agrees with the decision. These would be political matters for parliamentarians and not legal matters for a judge.

6. One of the remedies a court can issue in judicial review when it finds that a public authority has acted unlawfully is a quashing order. A quashing order nullifies the unlawful decision as though it had never been taken and is therefore a powerful tool which ensures that unlawful public body decisions can be overturned and those who have suffered the consequences of unlawfulness can obtain real redress. The alternative is that unlawful public decisions will have serious consequences for people's rights and lives despite violating the law.

7. Clause 1 of the Bill creates a presumption that a judge issuing a quashing order should make it 'suspended' or 'prospective only'.

    a) Suspended quashing orders would delay the point in time at which the quashing takes place, so that an unlawful act will not be treated as unlawful until a certain fixed point in the future.
    b) Prospective-only quashing orders would invalidate an unlawful act only from the point of the court order onwards, leaving past conduct, including the conduct complained about by a claimant, untouched.

8. The creation of a binding presumption that makes judges use suspended and prospective only quashing orders would limit the effectiveness of these important remedies when a court finds that a decision is unlawful. The presumption would also interfere with a judge's discretion to make their own

assessment of the appropriate remedy in each individual case. That is why this clause will weaken the accountability of public decision-makers, including this and future governments, and undermines the rule of law.

Why there should be no 'presumption' in favour of suspended or prospective only quashing orders

9. **Redress:** The presumption places victims of unlawful actions in an unfair position. It means that, unless a court finds good reason, a judge must issue a weakened quashing order that will not immediately overturn the unlawful act carried out by the government. By imposing the legal consequences of quashing orders only on future conduct, these remedies place individuals in a situation where, even if they succeed in their judicial review, they could be left with a hollow victory. Using real past cases, PLP has produced a series of examples highlighting how clause one could weaken remedies for vulnerable claimants, which are available here.

10. **Accountability:** If the use of such orders becomes commonplace - which is clearly the intention behind the presumption - remedies will insulate public bodies, including the government, from scrutiny and make it more difficult for decision-makers to be held to account. These weakened remedies would discourage individual claimants from bringing judicial review claims, which are brought as a last resort and often at considerable expense and inconvenience to claimants.

11. **Good administration:** Being judicially reviewed is a strong motivator for public authorities to make good, fair and legal decisions. The potential for bad administrative practices and decision-making may be increased where judicial review is less effective.

12. **Legal certainty:** As senior judges have acknowledged, one of the benefits of the current system of quashing orders is its simplicity. Whilst being presented as a measure which promotes certainty, these new remedies in fact generate significant uncertainty in terms of how they are to operate (such as the "good reasons" that a court will accept for not imposing a weakened quashing order) and are likely to result in expensive post-judgment satellite litigation. This uncertainty, together with increase in costs, will create yet another practical barrier to individual claimants bringing judicial review claims in the first place.

13. **Keeping judges out of politics:** Under clause 1, when deciding whether to issue a weakened remedy or to grant an ordinary quashing order, judges will have to consider the likely future actions of the public bodies and would have to speculate about what administrative consequences the order would have. They will need to do this in order to understand whether there are "good reasons" not to impose the weakened order. This in fact risks bringing the judiciary into the political arena because it is difficult to see how these are within the judicial expertise and experience. Indeed, some judges commenting on comparable provisions have previously described these assessments as a job they are 'ill-equipped to undertake.'[1] This would be an especially regrettable and ironic consequence when the Government's avowed aim is to prevent judges stepping into the political realm.

14. **Judicial discretion:** Contrary to claims made by the Minister that Clause 1 would increase the range of remedies available to courts and therefore enhance judicial discretion,[2] the creation of a

[1] John Howell QC sitting as Deputy High Court Judge in R (Cooper) v Ashford Borough Council [2016] EWHC 1525 (Admin) at [86]. See also Blake J in R (Logan) v Havering London Borough Council [2015] EWHC 3193 (Admin) at [59].
[2] See, for example, the Lord Chancellor's speech at the second reading debate of the Judicial Review and Courts Bill, House of Commons Hansard 26 October 2021 Vol. 702 Col. 192: "This Bill simply remedies that measure of inflexibility by giving the

presumption that such remedies should be used does the exact opposite. Presumptions, by definition, reduce flexibility, not increase it.

15. **Existing controls on quashing orders:** It should also be noted that there are already limitations on a court's ability to grant a quashing order. For example, s31(2A) Senior Courts Act 1981 ('SCA') requires the High Court to refuse a remedy if it appears highly likely that the outcome for the applicant would not have been substantially different if the public authority had not acted unlawfully (unless there are reasons of exceptional public interest). S31(6) SCA 1981 also allows the Court to refuse relief on grounds of undue delay 'if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.' Therefore, claimants' access to these orders is already regulated and further legislative action is not justified.

16. **Unjust criminalisation:** The new s.29A(5) undermines a person's right to bring a collateral challenge where the government issues an unlawful statutory instrument. That subsection states that, 'Where…an impugned act is upheld by virtue of subsection (3) or (4), it is to be treated for all purposes as if its validity and force were, and always had been, unimpaired by the relevant defect.' Imagine that one of the statutory instruments issued by the Health Secretary during the coronavirus crisis which created imprisonable criminal offences was declared unlawful by a court. If a court granted one of the new remedies, this subsection would make it as though that imprisonment was always legal. Therefore, a person could not argue in the magistrates or Crown Court that the statutory instrument was invalid as a defence – because this subsection requires a judge to act as if it had been valid. As IRAL noted at 3.66 of its report: 'We readily acknowledge that the law would be in a radically defective state if such collateral challenges to the validity of administrative action were impossible.' We agree and believe that collateral challenges should be expressly preserved in the Bill.

17. **Contrary to IRAL recommendations:** The power to issue quashing orders which only have prospective effect, or that have limited retrospective effect, is a power that goes beyond that which the Independent Review of Administrative Law (IRAL) Report recommended. The panel recommended only the introduction of suspended quashing orders. In addition, the panel made no recommendation about a presumption but favoured leaving these orders to judicial discretion.

Response to committee debates

18. **Accumulation of jurisprudence:** During committee stage of this Bill in the House of Commons, a new argument deployed by the government to justify the presumption is that it is needed to 'accumulate jurisprudence' or encourage the courts to reach early decisions about how they will use the provision and thereby provide clarity in interpretation. However, there is no good reason why the courts need a presumption to consider whether to issue a suspended or prospective-only order. Even without a presumption, a public body can raise the issue in litigation and a court can consider it. Under current arrangements, there is nothing to prevent the accumulation of jurisprudence through ordinary judicial decisions and processes. Ministers are inventing a problem to which there is already an answer.

19. **Unintended consequences**: In committee, the Minister suggested that limiting the retrospective effect of remedies could mitigate the potential negative and unintended consequences that some public interest judicial reviews could have. For example, if a statutory instrument concerning social

judiciary the power to issue a suspended—or, indeed, a prospective—quashing order, allowing the Government a reasonable period of time to review the orders and/or the legislation itself."

security is quashed immediately it could remove all the social security protections provided for in that statutory instrument because they would no longer have any legal effect. This argument is not at all convincing. The mere fact that some judicial review cases could potentially produce unintended consequences does nothing to argue in favour of a presumption. There may well be a case for extending the range of remedies to include suspended quashing orders, but the Government has not effectively made the case for a presumption. In any event, in the vast majority of cases, a court will not issue a quashing order anyway. In most cases, a court merely declares a statutory instrument to be unlawful and leaves it to government to amend the instrument in the way thought necessary by government. Indeed, even where human rights are violated, between 2014 and 2020, the courts only quashed 4 statutory instruments out of 14 successful challenges.[3]

20. **Courts' role is to support Parliament sovereignty**: During the committee debate, it was claimed that through judicial review the judiciary was becoming an 'alternative source of power'[4], trespassing on Parliament's territory as the UK's sovereign lawmaker.

21. This analysis conflates executive and parliamentary power. Whilst the judiciary does indeed act as a check on the executive by requiring the executive to obey the law as set by Parliament, the courts have no power to review the legality of an Act of Parliament or set aside any decision made by Parliament. The courts have no power to be a challenger to Parliament; indeed, when courts act as a check on the executive, they do so to enforce the will of Parliament.

22. A judge's role in judicial review is to uphold the will of Parliament as expressed in a statute, ensuring that public bodies and government ministers exercise their powers within the law As Lord Reed, President of the UK Supreme Court, put it:

> "In declaring [an executive act] to be invalid…the court is upholding the supremacy of Parliament over the Executive. That is because the court is preventing a member of the Executive from making an order which is outside the scope of the power which Parliament has given him or her by means of the statute concerned." - R (Public Law Project) v Lord Chancellor [2016] UKSC 39

23. Moreover, in their review, IRAL found no evidence of judges stepping into the political realm, asserting that Government and Parliament 'can be confident that the courts will respect institutional boundaries in exercising their inherent powers to review the legality of government action.[5]

24. **Low volume of judicial review:** The Government's assertion - made throughout the Bill's Second Reading and in Committee Stage - was that there is an increase in litigation that crosses over into political terrain.[6] This claim is not born out by the evidence.

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[3] Joe Tomlinson, Lewis Graham and Alexandra Sinclair, 'Does judicial review of delegated legislation under the Human Rights Act 1998 unduly interfere with executive lawmaking?' (UK Constitutional Law Association, 22 February 2021). Available at https://ukconstitutionallaw.org/2021/02/22/joe-tomlinson-lewis-graham-and-alexandra-sinclair-does-judicial-review-of-delegated-legislation-under-the-human-rights-act-1998-unduly-interfere-with-executive-law-making/ (accessed 17 February 2022).

[4] Judicial Review and Courts Bill Deb, 23 November 2021, c402.

[5] Independent Review of Administrative Law, (IRAL) IRAL Report: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970797/IRALreport.pdf [15].

[6] Suella Braverman MP, the Attorney General of England and Wales: Judicial Review Trends and Forecasts 2021: Accountability and the Constitution (Public Law Project, 19 October 2021): https://www.gov.uk/government/speeches/judicial-review-trends-and-forecasts-2021-accountability-and-the-constitution; see also R (on the application of Elan-Cane) (Appellant) v Secretary of State for the Home Department (Respondent) [2021] UKSC 56.

25. There are in fact relatively few judicial reviews brought every year; around 2,000 claims are granted permission. The number of judicial reviews is declining on the Government's own statistics.[7] There are a handful of cases that the Government refers to as having transgressed boundaries between law and politics,[8] and there is no connection between mitigating the impact of those cases and the measures in this Bill.

26. PLP's position remains that **clause 1 should be amended to remove the presumption and make clear that these modified remedies should be restricted to a limited number of cases.**

Supported amendments to clause 1

a) Amendment No.1 tabled by Lord Pannick (CB), Lord Ponsonby of Shulbrede (Labour) and Lord Marks of Henley-on-Thames (Liberal Democrat)

Clause 1, page 1, line 8, leave out from "order" to end of line 9

Explanatory statement: This amendment would remove the provision for making quashing orders prospective-only.

b) Amendment No.2 tabled by Lord Ponsonby of Shulbrede (Labour)

Page 1, line 9, at end insert—

"(1A) Provision under subsection (1) may only be made if the court is satisfied that it is in the interest of justice to do so."

Explanatory statement: This amendment would ensure that courts only exercise their powers to issue a weakened quashing order where it is in the interests of justice to do so.[9]

c) Amendment No.6 tabled by Lord Ponsonby of Shulbrede (Labour)

Page 2, line 4, at end insert—

"(5A) Where the impugned act consists in the making or laying of delegated legislation ("the impugned legislation"), subsections (3) and (4) do not prevent any person charged with an offence under or by virtue of any provision of the impugned legislation raising the validity of the impugned legislation as a defence in criminal proceedings. (5B) Subsections (3) and (4) do not prevent a court or tribunal awarding damages, restitution or other compensation for loss."

Explanatory statement: This amendment would protect collateral challenges by ensuring that if a prospective-only or suspended quashing order is made, the illegality of the delegated legislation can be relied on as a defence in criminal proceedings. This would prevent individuals from being criminalised under defective and unlawful ministerial powers.

[7] The latest quarterly judicial review statistics from 2 September 2021, for instance, indicate that the number of claims has declined by 16% compared to the same period in 2020: https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-april-to-june-2021/civil-justice-statistics-quarterly-april-to-june-2021

[8] In her speech noted above, the Attorney General mentioned: Adams [2020] UKSC 19, Miller I [2017] UKSC 5, Miller II [2019] UKSC 41, Evans [2015] UKSC 21, UNISON [2017] UKSC 51, and Privacy International [2019] UKSC 22.

[9] This amendment is an alternative to the amendment prior to it in this list. It would provide weaker protection than the previous amendment because a standard of "interests of justice" is lower than a standard of "effective remedy". We support both being debated, however, so that the issue achieves the widest possible consideration and so that their Lordships have various options of varying strengths to choose from.

d) Amendment No.7 tabled by Lord Ponsonby of Shulbrede (Labour)

Page 2, line 12, leave out "must" and insert "may"

Explanatory statement: This amendment would ensure that the factors considered by a court prior to issuing a weakened quashing order would be a matter for the court's discretion, rather than imposed by the legislation.

e) Amendment No.11 tabled by Lord Ponsonby of Shulbrede (Labour)

Page 2, line 21, leave out "or proposed to be taken"

Explanatory statement: This amendment would prevent a court from taking account of remedial actions that a public body merely proposed to take, rather than actions that the public body actually had taken. Such proposed actions are too speculative and nebulous to be a serious legal basis for offering a weakened quashing order.

f) Amendment No.12 tabled by Lord Ponsonby of Shulbrede (Labour):

Page 2, line 23, at end insert—

"(8A) In deciding whether there is a detriment to good administration under subsection (8)(b), the court must have regard to the principle that good administration is administration which is lawful."

Explanatory statement: This amendment would clarify that references to "good administration" in this Bill would be interpreted to mean references to lawful administration. This is important as public bodies are not entitled to act outside the law, even if this would be administratively convenient and expedient.

g) Amendment No.13 tabled by Lord Anderson (CB), Lord Etherton (CB), Lord Pannick (CB) and Lord Ponsonby of Shulbrede (Labour)

Page 2, leave out lines 24 to 32

Explanatory statement: This amendment would remove the presumption that where a suspended or retrospective-only quashing order would offer adequate redress, such a quashing order should be made in preference to an ordinary quashing order.

h) Amendment No.14 tabled by Lord Ponsonby of Shulbrede (Labour)

Page 2, leave out lines 24 to 32 and insert—

"(9) Provision may only be made under subsection (1) if and to the extent that the court considers that an order making such provision would, as a matter of substance, offer an effective remedy to the claimant and any other person materially affected by the impugned act in relation to the relevant defect."

Explanatory statement: This amendment would remove the presumption. In addition, this amendment would make it a precondition of the court's exercise of the new remedial powers that they should offer an effective remedy to the claimant and any other person materially affected by the impugned act.

Clause 2

Explanation of Cart JRs

27. 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 a decision by the First-tier Tribunal. The purpose of Clause 2 is to 'oust' – or abolish – this type of judicial review.

28. 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. Cases where Cart JRs have been used concern matters of life and death. They are a vital safeguard and cost a relatively modest amount of money.

29. Clause 2 would effectively scrap *Cart* judicial reviews. The Government has not made the case for removing this vital safeguard, especially when the consequences for leaving these legal errors uncorrected are so great. In a series of real case studies, PLP has illustrated the jeopardy of some of the most vulnerable people without the possibility of Cart judicial reviews. Clause two would remove legal protection from those who need it most at the time they need it most.

30. At report stage in the House of Commons, the Lord Chancellor moved a new amendment to clause 2 which would narrow the small number of exceptions to the abolition of *Cart* judicial reviews even further. In particular, the consequences of the amendment are that a legal error made by a tribunal would only be regarded as a fundamental breach of natural justice if that breach related to a "procedural defect". PLP opposes this amendment and we encourage peers to remove it from the Bill.

31. The amendment is problematic because it would exclude courts from considering issues such as actual or perceived bias in a tribunal or a tribunal's failure to assess obviously relevant considerations in its decision-making. These might relate to natural justice but not necessarily to procedural defects per se. The tribunal might have followed statutory procedures but still be objectively perceived as biased, for example. Therefore, the Lord Chancellor's amendment would reduce the narrow protections in Clause 2 even further and this amendment should be removed from the Bill.

Why Cart JRs should remain

32. **Volume:** The proposal to oust the provision was first made by the IRAL panel. It made that recommendation on the basis of its analysis that only 0.22% of Cart judicial review applications succeed. PLP and others pointed out that this analysis was seriously flawed[10] – a criticism which attracted the support of the Office for Statistics Regulation[11] and which the Government has now accepted. Its own analysis suggests that at least 3.4% [12] (or 15 times as many cases) are successful.

[10] Joe Tomlinson and Alison Pickup, 'Putting the Cart before the horse: The Confused Empirical Basis for Reform of Cart Judicial Reviews (UK Constitutional Law Association, 29 March 2021): https://ukconstitutionallaw.org/2021/03/29/joe-tomlinson-and-alison-pickup-putting-the-cart-before-the-horse-the-confused-empirical-basis-for-reform-of-cart-judicial-reviews/

[11] Public Law Project, "Government Judicial Review Numbers are wrong: Stats regulator concurs", available at: https://publiclawproject.org.uk/latest/the-governments-judicial-review-numbers-are-wrong-stats-regulator-agrees/ See the analysis at Annex E of Judicial Review Reform: Government Response and in the Impact Assessment accompanying the Bill.

[12] Impact Assessment, §55

33. **Cost:** Despite acknowledging the fundamentally flawed basis for the IRAL recommendation, and despite opposition from a majority of those who responded to the consultation,[13] by clause 2 of the Bill the Government seeks to implement that recommendation. This is primarily said to be because these cases are – in the Government's view – 'a disproportionate use of valuable judicial resource' with *Cart* cases taking up' 180 days of court time.'[14]

34. However, the costs are not great. The total cost saved by abolishing the *Cart* jurisdiction is estimated at £364,000-£402,000 per year, which is a materially low sum in comparison the Department for Digital, Culture, Media and Sport spending on its art collection in 2019-20.[15] Moreover, this figure is inflated because it includes the cost of the Upper Tribunal rehearing the appeal in a successful case. This would constitute a cost saving resulting from allowing unlawful decisions to stand: those costs would only be saved because the Upper Tribunal's unlawful refusal of permission to appeal was immunised from challenge.

35. **Proportionate use of resource:** There is a restrictive permission test for Cart JRs[16], and a special streamlined procedure[17] is followed which means they make limited and proportionate use of judicial resource. As a result, Cart JRs make relatively limited use of judicial resource and provide a proportionate means of achieving their aim – which the Government commends[18] – of ensuring 'some overall judicial supervision of the decisions of the Upper Tribunal… in order to guard against the risk that errors of law of real significance slip through the system.'

36. **Criminal courts backlog:** The inclusion of clause 2 in the Bill was further justified by the Minister during committee because of the criminal courts backlog.[19] The conflation of Cart judicial reviews with the criminal courts backlog is straightforwardly wrong. It is difficult to see how Cart is causing any backlog, given it has nothing to do with criminal trials. Criminal cases are dealt with by two courts in England and Wales: magistrates court and Crown Courts. High Court judges, who hear judicial reviews, never sit in the magistrates court and only rarely sit in the Crown Court to preside over very serious and complex jury trials or sentencing when they are on circuit. Ordinarily, a lower-level circuit judge presides over Crown Court cases. Therefore, it is not obvious how *Cart* judicial reviews are promoting even slightly a criminal case backlog.

37. **Bites of the cherry:** To date, many parliamentarians debating the Bill have assumed that Cart judicial reviews represent a "third bite of the cherry" – that is, where a claimant has already had two separate hearings but wishes illegitimately to have a third. This is not an accurate or fair representation of how the process works. A claimant can only pursue such a judicial review when the First-tier Tribunal has made a serious error of law and when the Upper Tribunal has wrongly refused permission to appeal against that error of law. In other words, the Upper Tribunal has taken no steps to correct a serious

[13] Judicial Review Reform: Government Response, §30-31 (p13)
[14] Judicial Review and Courts Bill Deb, 9 November 2021, c173.
[15] The Daily Mail, https://www.dailymail.co.uk/news/article-8975691/Major-probe-reveals-public-sector-squanders-5-6bn-cash.html
[16] CPR 54.7A requires both an arguable case with a realistic prospect of success that both the First-tier Tribunal and the Upper Tribunal have erred in law and 'that either – (i) the claim raises an important point of principle or practice; or (ii) there is some other compelling reason to hear it'.
[17] Under Civil Procedure Rule 54.7A, if the Judge on consideration of the papers considers that the threshold for permission is met, the Upper Tribunal and the respondent to the appeal have 14 days in which to request an oral hearing. If no such request is received, the refusal of permission is quashed without a hearing and remitted to the Upper Tribunal to reconsider. In most cases, no request for a hearing is made.
[18] See §51 of the Judicial Review Reform Consultation document.
[19] Judicial Review and Courts Bill Deb, 9 November 2021, c173.

error of law by the First-tier Tribunal. This is exactly why the Administrative Court must step in. Therefore, a Cart judicial review represents a situation where a claimant has not had a proper first bite of the cherry, where the first bite was sour, rather than a situation where they seek a third bite. Therefore, the reasons given for abolishing Cart cases proceed on a false characterisation and should be reconsidered.

38. **For reasons set out above, clause 2 should be removed from the Bill.** The importance of what is at stake for individuals and for the rule of law in allowing decisions of the Upper Tribunal to be challenged in limited circumstances justifies the limited and proportionate use of judicial resource in a Cart JR.

Supported amendments to clause 2

a) Amendment tabled by Baroness Chakrabarti (Labour), Lord Ponsonby of Shulbrede (Labour) and Lord Marks of Henley-on-Thomas (Liberal Democrat)

The above-named Lords give notice of their intention to oppose the Question that Clause 2 stand part of the Bill.

Explanatory statement: This amendment would remove clause 2 from the Bill.

b) Amendment No.17 tabled by Lord Ponsonby of Shulbrede (Labour)

Page 3, line 36, leave out "procedurally defective"

Explanatory statement: This amendment seeks to clarify that in order to find a breach of the principles of natural justice, the High Court need not focus only on procedural defects.

c) Amendment No.18 tabled by Lord Ponsonby of Shulbrede (Labour)

Page 3, line 36, leave out "procedurally defective way as amounts to a fundamental" and insert "way as amounts to a material"

Explanatory statement: This amendment would change the test to judicially review a decision of the Upper Tribunal to refuse permission to appeal, from a fundamental breach of the principles of natural justice to a material breach of those principles.

d) Amendment No.19 tabled by Lord Pannick (CB), Lord Ponsonby of Shulbrede (Labour), Lord Marks of Henley-on-Thames (Liberal Democrat) and Lord Beith (Liberal Democrat)

Page 3, line 37, at end insert "or (iii) in reliance on a fundamental error of law"

Explanatory statement: The purpose of this amendment is to allow courts to hear a judicial review of a tribunal decision where there is a fundamental error of law, and not just where the tribunal has acted in bad faith or in fundamental breach of natural justice.

e) Amendment No.22 tabled by Lord Ponsonby of Shulbrede (Labour)

Page 4, line 22, at end insert -

"(3) The Lord Chancellor must carry out and publish a review of the operation of this section not more than two years after the passing of this Act.

(4) In respect of the review carried out under subsection (3), the Lord Chancellor must in particular have regard to—

a. whether the appeal in section 13(1) of the Tribunals, Courts and Enforcement Act 2007 is providing equivalent protection to claimants,

b. the consequences for individuals or groups with protected characteristics under the Equality Act 2010, and

c. the enforcement of rights protected under the Human Rights Act 1998."

Explanatory statement: This amendment would require the Lord Chancellor to carry out and publish a review of the operation and consequences of the ouster of *Cart* judicial reviews.

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Public Law Project is an independent national legal charity.

We are researchers, lawyers, trainers and public law policy experts. The aim of all of our work is to make sure that state decision-making is fair and lawful and that anyone can hold the state to account.

For over 30 years we have represented and supported people marginalised through poverty, discrimination or disadvantage when they have been affected by unlawful state decision-making.

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