

New Bill hands additional tools to judges

- New Judicial Review and Courts Bill introduced in parliament today
- Measures will reduce delays in the High Court, saving money for the taxpayer
- Delivers on commitment to ensure the courts are not open to abuse

The Judicial Review and Courts Bill, introduced to parliament today (21/07/2021), will equip judges with the tools to give more tailored solutions in judicial review cases. It will also create a better balance between the rights of citizens to challenge executive decisions through judicial review and the need for effective government.

These measures will allow the courts to delay the time it takes for their orders to come into force, allowing parties time to prepare. They will also reduce the impact on third parties who have relied on a power that the courts deem unlawful.

It will also remove the inefficient 'Cart' judicial reviews which can create unnecessary delay including in immigration and asylum cases and introduce a range of steps to improve court processes.

This follows a thorough examination of trends in judicial review undertaken by the expert Independent Review of Administrative Law. The Government then launched a public consultation on a range of proposals, which informed this Bill.

Lord Chancellor, Robert Buckland QC MP, said:

The Government has pledged to ensure that the courts are not open to abuse and delay. Today we are delivering on that commitment.

We are giving judges the powers they need to ensure the Government is held to account, while tackling those who seek to frustrate the court process.

This legislation will empower judges to modify quashing orders by introducing two changes, to be used at the discretion of individual judges:

- Suspending the effects of a quashing order – this means that a judge can delay the point at which a government action will be overturned. This will improve the public policy making process by, for example, allowing time for a Department to consult on the best way to replace an administrative regime, rather than creating a rush to do it immediately.
- Limiting or removing the retrospective effect of quashing orders –

meaning judges can determine the Government's action unlawful, without invalidating any prior actions. For example, if a Judicial Review judgment found that an employment regulation which gave workers healthcare was found unlawful, it would jeopardise their access to a particular form of healthcare under current law. The new laws mean that a judge can ensure that continuing access to that healthcare was lawful even though the regulation had been ruled unlawful.

The so-called 'Cart' judgment will be reversed as part of this Bill to prevent parties who have already been refused permission to appeal by both the First-tier and Upper Tribunal from trying a third time through a judicial review in the High Court.

Research found that these claims – which are the most numerous judicial review cases – have a success rate of only around 3% compared to a 40-50% success rate for all other cases. This is estimated to cost the taxpayer over £300,000 per year, which could be better spent on dealing with outstanding cases that exist in the High Courts.

Many Cart cases arise from immigration and asylum appeals and despite the claim eventually failing it can be used as a delaying tactic to prevent removals.

Notes to editors: