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HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

JUDICIAL REVIEW AND COURTS BILL

Eighth Sitting

Tuesday 16 November 2021

(Afternoon)

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Saturday 20 November 2021

The Committee consisted of the following Members:

Chairs: † Sir Mark Hendrick, Andrew Rosindell

† Barker, Paula *(Liverpool, Wavertree)* (Lab)
† Cartlidge, James *(Parliamentary Under-Secretary of State for Justice)*
Crawley, Angela *(Lanark and Hamilton East)* (SNP)
† Cunningham, Alex *(Stockton North)* (Lab)
† Daby, Janet *(Lewisham East)* (Lab)
† Fletcher, Nick *(Don Valley)* (Con)
† Hayes, Sir John *(South Holland and The Deepings)* (Con)
† Higginbotham, Antony *(Burnley)* (Con)
† Hunt, Tom *(Ipswich)* (Con)
† Johnson, Dr Caroline *(Sleaford and North Hykeham)* (Con)
† Longhi, Marco *(Dudley North)* (Con)
McLaughlin, Anne *(Glasgow North East)* (SNP)
† Mann, Scott *(Lord Commissioner of Her Majesty's Treasury)*
† Marson, Julie *(Hertford and Stortford)* (Con)
† Moore, Damien *(Southport)* (Con)
† Slaughter, Andy *(Hammersmith)* (Lab)
† Twist, Liz *(Blaydon)* (Lab)

Huw Yardley, Seb Newman, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 16 November 2021

(Afternoon)

[Sir Mark Hendrick *in the Chair*]

Judicial Review and Courts Bill

2 pm

The Chair: Before we begin, I have a few preliminary announcements. I remind Members that they are expected to wear a face covering except when speaking or if they are exempt, in line with the recommendations of the House of Commons Commission. Please give each other and members of staff space when seated and when entering and leaving the room. I remind Members that they are asked by the House to have a covid lateral flow test twice a week if coming on to the parliamentary estate. That can be done either at the testing centre in the House or at home.

Hansard colleagues would be grateful if Members could email their speaking notes to hansardnotes @parliament.uk. Please switch electronic devices to silent. Tea, coffee and other beverages are not allowed during sittings.

Clause 18

Rules for online procedure in courts and tribunals

Alex Cunningham (Stockton North) (Lab): I beg to move amendment 59, in clause 18, page 35, line 9, after "that" insert—

"(a) a person may choose to participate in a hearing by non-electronic means, and

(b) "

This amendment would allow a person to choose to participate in a hearing by non-electronic means.

The Chair: With this it will be convenient to discuss amendment 90, in clause 18, page 35, line 11, at end insert—

"(7A) Online Procedure Rules must require a person to participate in a hearing by non-electronic means if a physical or mental health assessment of that person confirms that online proceedings will impede their ability to understand or effectively participate in proceedings."

This amendment would ensure if someone had a physical or mental condition that would prevent them from understanding or effectively participating in online proceedings then the Online Procedure Rules must allow them to participate by non-electronic means.

Alex Cunningham: It is a pleasure to serve under your chairmanship, Sir Mark.

As I mentioned in my previous speech, clause 18 provides for the creation of online procedure rules. The online procedure rules must require that proceedings of a kind specified in regulations made by the Lord Chancellor, per clause 19(1), are to be initiated by electronic means. Paragraphs (l)(b) and 1(c) of clause 18 allow for the online procedure rules to either authorise or require that specified proceedings are conducted, progressed and disposed of by electronic means, and that parties to the proceedings participate by electronic means.

The Courts and Tribunals (Online Procedure) Bill provided participants with a choice to initiate, conduct, progress or participate in proceedings by non-electronic means. That choice is retained for those without legal representation in relation to the initiation, conduct, progression or participation other than by a hearing. However, a person is currently unable to choose to participate in hearings by electronic means, and may do so only at the direction of the court or tribunal.

As JUSTICE explain:

"A myriad of issues, including health conditions and disabilities, may make it difficult for individuals to follow or engage with a virtual hearing and those same issues may make it difficult for them to explain to the court or tribunal why they would prefer to attend in person."

Amendment 59 would allow a person to choose to participate in a hearing by non-electronic means if that is appropriate for them. Amendment 90 would ensure that if someone had a physical or mental condition that would prevent them from understanding or effectively participating in online proceedings, the online procedure rules must allow them to participate by non-electronic means.

Amendments 59 and 90 share the same aim, and together their impact would be to ensure that court users who may have vulnerabilities or particular conditions are able to access the type of hearing most appropriate for them, which research suggests may often be in-person hearings. I am sure that the Minister agrees with me that as we progress with changes to court processes, we must not negatively affect access to justice for any group of court users with particular needs. I would welcome his thoughts on how we can ensure that does not happen.

The Parliamentary Under-Secretary of State for Justice (James Cartlidge): It is good to have you back in the Chair, Sir Mark. I hope that we will make diligent progress this afternoon.

As the hon. Member for Stockton North said, both amendments would provide options for a person to participate in a hearing via non-electronic means. Amendment 59 would give those participating the option, while amendment 90 would require someone who had a physical or mental condition preventing them from understanding or effectively participating in online proceedings to participate in a hearing via non-electronic means.

The online procedure rule committee will make simple and consistent rules that provide simple processes that can be followed by the average court user. We have seen an increase in online proceedings in response to the pandemic—I will say more on that when speaking to clause stand part. Her Majesty's Courts and Tribunals Service is moving towards digital services being the default, but we absolutely understand that not everyone will choose to participate in a hearing by electronic means.

I will emphasise specific clauses. In many ways, it is a disappointment that my right hon. Friend the Member for South Holland and The Deepings is not here, because he would have been greatly reassured by the clauses. He has obviously struggled to get here for an in-person sitting—perhaps we could have held it online, but

unfortunately that option is not available at the minute, which is a shame for my right hon. Friend. I have no doubt that he has a good reason for being absent.

Clause 18(6) states:

"Where Online Procedure Rules require a person—

(a) to initiate, conduct or progress proceedings by electronic means, or

(b) to participate in proceedings, other than a hearing, by electronic means,

Online Procedure Rules must also provide that, if the person is not legally represented, the person may instead choose to do so by non-electronic means."

The key thing is that the rules reply entirely to civil cases—civil, family and tribunals. Those are the jurisdictions to which those particular rules apply. It is not obvious how there would be a situation where someone who had legal representation would not be able to participate online given that practitioners should, for obvious reasons, be able to participate online.

Furthermore, subsection (7) states:

"Where Online Procedure Rules require a person to participate in a hearing by electronic means, Online Procedure Rules must also provide that a court or tribunal may, on an application or of its own initiative, order or otherwise direct that person, or any other person, to participate by non-electronic means."

Well—*[Interruption.]* My right hon. Friend has duly arrived, and I say to him that one of the downsides of physical sittings and in-person hearings is that one is subject to the whims of chronological events, to put it bluntly, and unfortunately he has missed a great bit of the Bill, which I read out not just for him but primarily because it is relevant to the amendments from the hon. Member for Stockton North, the Opposition spokesperson. The Bill shows that where one is represented, one would be able to request a physical or in-person hearing.

There could be a number of reasons why someone would chose to participate in a hearing by a means other than electronic. Her Majesty's Courts and Tribunals Service provides a support service over the phone as well as more intensive face-to-face support for those who might require it, such as vulnerable users who might not otherwise be able to participate in proceedings effectively or those who are digitally excluded. HMCTS has also awarded a national contract to deliver positive and practical solutions to support users and break down the barrier of digital exclusion across civil, family and tribunal jurisdictions. Through this contract, support will be available in person and remotely through a network of delivery partners who are experienced in supporting users of justice services. As per the specification, the services will be delivered across different channels to ensure that all those who require them can access them. Those channels would include local-centre support in more than 300 physical sites, over-the-phone support, remote video appointments with those who have access but need support in navigating the service, and in-home face-to-face support with necessary equipment. HMCTS has considered forms of support that can be provided to the user throughout their online proceedings.

I recently visited Isleworth Crown court where the citizens advice bureau was actively involved in providing services to witnesses. It is conceivable that the physical roll-out of these support services could be provided on a sub-contracted basis by a range of organisations. The point is that that is precedented and it works to provide effective support on the ground to vulnerable users.

Most importantly, as I have said, the measures in the Bill also ensure that paper form will remain available for citizens participating in proceedings, so an offline option will always be available for those who need it, not least my right hon. Friend the Member for South Holland and The Deepings.

Sir John Hayes (South Holland and The Deepings) (Con): I am delighted to have come hotfoot from a discussion with one of the people who gave evidence to the Committee, Professor Ekins, who shares my view that the Bill should be widened to deal with matters of parliamentary sovereignty and other issues. We were debating how the new clauses that stand in my name and those of my hon. Friends might be recast to ensure that they are in scope. On the point that my hon. Friend the Minister raises, the key is that the move to online should not be obligatory. Sir Mark, I was making the argument earlier, as were one or two others on the Committee, that vulnerable people, in particular, might struggle with a purely online system and that they needed some protection from the effects of a system that could become exclusively online. Is the Minister giving the reassurance, which would certainly satisfy me, that this will not be obligatory and that there will be an option for people who wish to do so to appear before a court in the traditional way and to make representations accordingly?

James Cartlidge: I am glad that the reason for my right hon. Friend's delay was that he is so proactive he was working to amend earlier parts of the Bill, which we will presumably come to after all the other clauses. To allay his concerns and for his benefit, I will repeat the quote because I think it is important. Clause 18(6) states:

"Where Online Procedure Rules require a person—

(a) to initiate, conduct or progress proceedings by electronic means, or

(b) to participate in proceedings, other than a hearing, by electronic means,

Online Procedure Rules must also provide that, if the person is not legally represented, the person may instead choose to do so by non-electronic means."

To be clear, if a person is legally represented, there is no reason that a legal firm would not be able to participate electronically, and that is why the clause says

"if the person is not legally represented".

I remind the Committee that those rules apply entirely to civil and family tribunals, not to criminal proceedings. That is a different part of the Bill. I hope that has reassured my right hon. Friend that there will always be choice.

As I have already stated in reference to previous amendments, there is a range of support in place. We have just set up a national contract which will deliver not only telephone and web-based support, but physical, in-person support, of the kind that we see in our courts and other physical locations around the country. There is a wide range of measures.

Sir John Hayes: I am extremely grateful to the Minister, both for giving way and for that assurance. He is right that our endeavour in the Bill is to increase efficiency, free up court time and make the system run more

[Sir John Hayes]

smoothly. I was discussing that with hon. Members earlier, and I share that view. My fear was that the most vulnerable of our countrymen might be disadvantaged, but my hon. Friend has reassured me that that will not be the case because the measures will not be obligatory. "There will always be choice" were his words. Let those words ring out in the Committee and assuage the fears that I articulated on behalf of the most needy.

James Cartlidge: I am grateful to my right hon. Friend. As a Conservative, he is, of course, a champion of choice at the forefront of public policy—

Sir John Hayes: And a champion of the needy!

James Cartlidge: Of course—and the needy. They are both important. Given the safeguards in place and the fact that an offline option is already available, I do not think the amendments are necessary. I therefore urge the hon. Member for Stockton North to withdraw them.

Alex Cunningham: The theory is all well and good. I hope that, in practice, the service is delivered to the standard the Minister believes is possible. He has had our demands for quality support and flexibility for vulnerable people ringing in his ears for several days now. The right hon. Member for South Holland and The Deepings—who I thought had acquired a red box earlier this afternoon, but it is not quite the right colour—has joined the fray in championing vulnerable people, and I welcome the reassurances he has received from the Minister.

I want to expand slightly and talk a bit about the citizens advice bureaux and the tremendous support they give not only in courts across the country, but to people in my constituency in Stockton. I am interested to know how the services will be designed for the future. The Minister has talked about 300 hubs; he has talked about the CAB and others, as well. How will those services be delivered to ensure that people are properly covered with the necessary support? The comments from the Minister are clear and the theory is clear. We just want to see it in practice. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to consider that schedule 3 be the Third schedule to the Bill.

James Cartlidge: I intended to use part of the stand part debate to address some of the concerns from my right hon. Friend the Member for South Holland and The Deepings about the impact on those who are less acquainted with the digital sphere. To be fair, that also addresses some of the points from the hon. Member for Stockton North.

2.15 pm

As I said at the beginning of the first group of amendments, it is very easy almost to get the sense that moving things to a digital sphere must somehow challenge access to justice and that there will be people who will, dare we say, be at a disadvantage. We have to avoid that. Perhaps this is one of those terrible clichéd matters of whether the glass is half full or half empty, but I passionately believe that technology has already massively improved access to justice, and it will continue to do so.

I will give one key statistic from the pandemic. During the initial part of the pandemic—when the lockdowns were in place—90% of court and tribunal hearings used some form of remote technology, ensuring that as many hearings as possible that did not need a physical courtroom took place safely. We can debate the philosophical issue of digital access or whether matters are better in person, but the fact is that they could not have occurred in person. That may not be the case soon, we sincerely hope, but it underlines the extent to which the courts support access to justice. Indeed, they made it possible when it may not have been possible at all. I think that is really important.

I remind the Committee that this particular section of the Bill is about the civil part of the law. A really important aspect of that is employment tribunals. For many of our constituents, that will be the way in which they interact with this section of the Bill. On employment tribunals, we have established what we call a virtual region of fee-paid judges. A virtual region means that, by employing judges in this way, they can hear cases anywhere within the jurisdiction, because they work online. What a brilliant way of ensuring that we make the most of the resource we have. It also ensures, therefore, that we do everything possible to reduce the backlog and pressure on the system, and in employment tribunals we have made huge strides in reducing the outstanding case load.

As a reminder to colleagues, I will give some of the background to where these proposals originally came from. In doing so I want to address both clause 18 and schedule 3. As I said, over the past year our courts and tribunals have successfully and rapidly moved the bulk of their proceedings online in the midst of the pandemic. These proposals, which will allow the greater use of technology in online proceedings, emerge from Lord Briggs's review of the civil court structure in 2016, which recommended the introduction of an online court supported by a new rule committee, established in statute, to provide the rules for online procedures.

The review supported the concept of an online process that is accessible and fair, governed by rules that are both simple and simply expressed, and overseen by a new rule committee. These provisions establish a new rule committee specifically empowered to make rules for online procedure, which may apply to civil, family and tribunal proceedings. We believe that the online procedure so established will significantly improve user experience and reduce costs by providing an online service that is simply to navigate and will resolve disputes quickly and efficiently.

In pursuing that approach, we recognise that there will be people who will need help accessing a new digital system. To support those who lack skills, access and motivation to engage with Government services, we are mobilising a national digital support service in partnership with a third party. Through this contract, support will be tailored around the needs of users and will be available remotely, over the phone or online, and in person through a network of supportive organisations.

With that background in mind, I turn to clause 18, which is the foundation of the new approach. It provides for the fundamental proposition that there are to be online procedure rules, made by a new online procedure rule committee, that require parties to participate online in civil, family and tribunal proceedings, including proceedings in employment tribunals and the employment appeal tribunals. Clause 18 will be underpinned by part 1 of schedule 3, allowing the Lord Chief Justice, or his nominee, with the approval of the Lord Chancellor, to issue practice directions in civil and family proceedings to which online procedures apply. Part 2 of schedule 3 sets out similar procedures in respect of the first tier and upper tier tribunals. Part 3 of schedule 3 sets out similar procedures in respect of employment tribunals and employment appeal tribunals.

Alex Cunningham: There is no doubt that electronic systems have already made a great difference within our Courts and Tribunals Service and I am sure that they will continue to do so in the future. However, as the Minister well knows, it is a case of ensuring that those at the margins—the vulnerable and the excluded—do not lose out in terms of justice as we go forward. Given the crisis in our courts, there is no doubt that we desperately need solutions, and the electronic solutions are part of that process, but again we want to ensure that the support within the system for everybody is correct and that justice is done.

The Minister has talked about various organisations that will be engaged in the process, but we look forward to seeing the system operating—perhaps he and I could go together when it is—to listen to people about its operation and make sure that what we have delivered in this new legislation is practical and that the most vulnerable people are still being looked after.

James Cartlidge: When we meet to discuss the single justice procedure—a meeting that I was more than happy to agree to—we can talk about how we can look at things. There will obviously be ongoing reviews. It is important that we get this issue right—by ensuring that it has been through a tender, for example.

Sir John Hayes: We have teased out important things from this debate. Would the choice that my hon. Friend the Minister mentioned earlier apply to witnesses, too? I am thinking of a blind person who has heard something or a deaf person who has seen something that might provide vital evidence, both of whom would struggle with the conventional online model. Will provision will be made for them to exercise, as witnesses, the sort of choice that he described earlier?

James Cartlidge: I can absolutely confirm that to my right hon. Friend. At the moment, we are talking about civil cases; he is absolutely right that those people could be witnesses in those, of course.

I stress that the matter would be at the discretion of the courts, without a shadow of a doubt, but I think there will be far more cases of vulnerable witnesses where technology assists the process. The obvious example is section 28 proceedings, in which evidence can be recorded in advance of the actual in-person hearing; they have become a very important part of the justice system. The Secretary of State has set out his desire for them to be rolled out more broadly. In a way, my right hon. Friend makes the point for me: technology in such cases can be of great assistance, and we are applying it to intimidated witnesses as well.

Alex Cunningham: The Minister mentioned section 28 proceedings and the recording of evidence. During consideration of the Police, Crime, Sentencing and Courts Bill, the Opposition tabled a number of amendments in that particular area, to expand the use of the process. Given that the new Minister is a fan, will he look at the issue with his colleagues in the Lords to see whether there are ways in which we can expand the service to the benefit of the sorts of people who the right hon. Member for South Holland and The Deepings just spoke about?

James Cartlidge: There are two points to make on that. First, the specific point about the Bill's progress in the Lords is a matter for Lord Wolfson, who is an excellent Minister; I effectively shadow him on the areas for which he is responsible. However, the hon. Gentleman should be assured of the Lord Chancellor's commitment to section 28 proceedings following his comments in media interviews. There is widespread support for them among the relevant victims' groups and charities.

Of course, there are practical issues that we need to consider, but, as I have said, there is widespread agreement about this issue. Using such technology can be very important in enabling and assisting vulnerable witnesses.

Alex Cunningham: I am in danger of drifting back to the other Bill that I mentioned, but we were also talking about how potential witnesses, in some circumstances, would be interviewed. For example, at the moment they may be interviewed by a non-legal person; in other words, there might not be a legal representative, either for the prosecution or the defence, carrying out the interview in those circumstances. Would the Minister be prepared to look at that?

James Cartlidge: With respect, I think that does stray too far into the specifics of the measure. It was a nice try, but I was setting out the principle that technology has assisted access to justice in the context of those who are vulnerable—the sorts of people who we would have in mind in discussing precisely these provisions.

I agree about the importance of in-person proceedings where it matters most. The most obvious example for all of us is that, like my right hon. Friend the Member for South Holland and The Deepings and others on this side of the Committee, I passionately wanted Parliament to return to its normal ways of working at the earliest safe moment, because we could not intervene on each other when we were on a TV screen.

It is not democracy when arguments are not challenged. It gives me a great thrill to take an intervention from the Opposition side that I have to try to answer. That is how we thrash out and debate an argument. It is sub-optimal to have it online and optimal to have it in person, but there will be many aspects of life, and many aspects of legal proceedings, that can be perfectly competently and satisfactorily conducted online.

By maximising those aspects, we maximise the in-person resource for the things that really matter. On the criminal side, that is clearly criminal trials, particularly jury trials in the Crown court. On the civil side, that could be

[James Cartlidge]

complex cases, such as family cases, that need to be heard in person. By maximising the use of technology, we liberate more of that resource, so it is important to support the measure.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Schedule 3 agreed to.

Clause 19

"Specified kinds" of proceedings

Question proposed, That the clause stand part of the Bill.

James Cartlidge: Clause 19 provides for online procedure rules to be made in relation to civil, family or tribunal proceedings specified by the Lord Chancellor. It enables the Lord Chancellor to specify in regulations such proceedings by reference to, among other matters, the legal or factual basis of the proceedings, the value of the matter in issue, and the court or tribunal in which the proceedings would be brought.

The regulations, which will require the concurrence of the Lord Chief Justice and, where tribunal proceedings are involved, the Senior President of Tribunals, and which will be subject to the affirmative resolution procedure, will accordingly govern the scope of application for any online procedure rules. They may provide safeguards, for instance, by setting out circumstances in which a party to proceedings may choose whether to use the online procedure or circumstances where proceedings of a specified kind may not be governed by online procedure rules.

We envision that there is likely to continue to be a need for a parallel paper-based procedure for those who are digitally excluded. That would act as a safeguard for the majority of claims that remain within the scope of the online procedure.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clause 20

Provision supplementing section 18

Question proposed, That the clause stand part of the Bill.

James Cartlidge: Clause 20 allows for provision to be made about the circumstances in which a party to proceedings may have a choice whether to use the online procedure or the appropriate alternative civil or family court or tribunal procedure to which the standard rules apply. Provision may also be made for excluded cases to which online procedure rules are not to apply and for circumstances in which proceedings may cease to be subject to online procedure rules or, conversely, may become subject to them even though they were not initially. That will enable flexibility, so that the most appropriate procedure can apply to any given proceedings or part of proceedings thereof.

Regulations under the clause will require the affirmative resolution procedure. Before making any regulations under the clause, the Lord Chancellor must secure the concurrence of the Lord Chief Justice or, if the regulations concern tribunal proceedings, the Senior President of Tribunals.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

The Online Procedure Rule Committee

2.30 pm

Alex Cunningham: I beg to move amendment 28, in clause 21, page 37, line 28, leave out "(3)" and "(4)" and insert "(3), (4) and (4A)".

This amendment is consequential to Amendment 29.

The Chair: With this it will be convenient to discuss the following:

Amendment 60, in clause 21, page 37, line 38, at end insert—

"(c) one person who is an 'authorised court and tribunal staff member' as defined by the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018."

This amendment would require the Lord Chief Justice to appoint an authorised court and tribunal staff member to the Online Procedure Rules Committee.

Amendment 61, in clause 21, page 38, line 5, leave out "one person who has" and insert "two people who have".

This amendment will expand the membership of the OPRC to include two IT experts.

Amendment 29, in clause 21, page 38, line 6, at end insert—

"(4A) The Lord President of the Court of Session is to appoint one person with experience in and knowledge of the Scottish legal system."

This amendment would require the Online Procedure Committee to include a person with experience in and knowledge of the Scottish legal system, appointed by the Lord President of the Court of Session.

Amendment 62, in clause 21, page 38, line 6, at end insert—

"and;

(d) one person who has experience representing the views of people who are digitally excluded."

This amendment will expand the membership of the OPRC to include someone with experience representing the views of people who are digitally excluded.

Amendment 91, in clause 21, page 38, line 6, at end insert—

"(d) one person who has experience in, and knowledge of, accessible service design".

This amendment would increase the membership of the Online Procedure Rule Committee by requiring the Lord Chancellor to appoint a person with expertise in accessible service design.

Amendment 64, in clause 21, page 38, line 25, at end insert—

"(9A) In making appointments under subsections (3) and (4) above, the Lord Chancellor and the Lord Chief Justice must have due regard to the ethnic and gender balance of the Online Procedure Rules Committee."

This amendment would require the Lord Chancellor and the Lord Chief Justice to have due regard to the ethnic and gender balance of the Online Procedure Rules Committee when making their appointments.

Alex Cunningham: I move the amendment on behalf of the hon. Member for Glasgow North East, who is unable to be here this afternoon.

Clause 21 sets out the membership of the online procedure rule committee and makes other provisions—for the Lord Chancellor to reimburse expenses of members appointed to it, for example. Under the clause as it is currently drafted, the online procedure rule committee would have just six members. Three of them would be judicial appointments made by the Lord Chief Justice and would include the chair of the committee. The other three appointments would be made by the Lord Chancellor and drawn from elsewhere in the legal profession, the lay advice sector and those with professional experience of online portals.

I understand that the number of committee members and the qualifications and experience that they must have can be modified. As the Bill is currently drafted, that would be done by regulations under the negative procedure, although regulations cannot be made until the agreement of the Lord Chief Justice and the Senior President of Tribunals has been secured, and only after consulting other specified members of the senior judiciary. Even though the Bill contains a provision to change the rules governing the committee's membership, I think the initial set-up as provided for by clause 21 is very unusual for its small size and, as a consequence, the limited amount of experience that would be covered by the committee.

I recall the evidence of Richard Leiper from two weeks ago. I am going to quote him at length because he captures in a few sentences what is wrong with the Government's proposals. He said:

> "The current composition of the committee is a total of 6 people. That is in contrast to the civil procedure rule committee, which has 18 members. The family procedure rule committee has 18 members. To me, given the potential breadth of the rule that could be set by this committee, having one senior judge, a couple of other judges, one practitioner, one layperson and one computer person is simply not enough. That is partly because the scope for the procedures would be trespassing on areas which it is likely that no member of the committee would have any knowledge of.
>
> For example, I have no knowledge at all about family court proceedings—how they begin, how they proceed, or what the interests of the various parties would be. Yet, if there is just one practitioner, who could be a barrister, a solicitor or a legal executive—each of whom have different perspectives on how the system operates, how it impacts on clients, other parties and so forth—there will not be the wealth of knowledge, even with consultation with people who do know, to enable effective online rules. The composition of the committee is my single greatest concern."—[*Official Report, Judicial Review and Courts Public Bill Committee,* 2 November 2021; c. 37, Q41.]

That is clear and wise counsel, I would say. The concern that Mr Leiper expressed is shared by many in the sector and, indeed, by the Opposition. I thank the Public Law Project, JUSTICE and the Legal Education Foundation for their expertise and constructive assistance in scrutinising this clause. This set of amendments looks at the membership of the online procedure rule committee, mostly with a view to expanding it to include additional professionals with relevant experience. I would be interested to hear from the Minister in relation to each amendment whether it represents the kind of regulation change that he anticipates may be brought in via the negative procedure.

Amendment 60 would require the Lord Chief Justice to appoint an authorised courts and tribunals staff member to the online procedure rule committee. JUSTICE has recommended that the OPRC should feature an authorised courts and tribunals staff member, as defined in the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018. The effect of that 2018 legislation is to allow individual rule committees to delegate functions that were traditionally judicial in nature to non-judicial court staff.

For example, in the context of the online court, JUSTICE understands from HMCTS that the pilot of legal advisers within that service will allow them to make various procedural determinations, including case progression directions, for defending claims. Given the extent to which procedural functions in online courts are to be delegated to authorised courts and tribunals staff and the concomitant need for those staff to understand and apply relevant procedural rules, would it not be prudent to include their voice in the drafting of the relevant rules? The Opposition agree that that would be a very sensible addition to the OPRC, and I hope the Minister will agree.

Amendment 61 would further expand the membership of the OPRC to include two IT experts, where now it only includes one. As it stands, the Bill places significant responsibility on a lone information technology expert. As the Public Law Project puts it,

> "To imply that there is one information technology expert who can be the source of truth for digital procedure is incorrect as there are lively debates in that sphere."

Limiting the committee to only one information technology expert presents a risk that a particular view of the capability and role of information technology in the justice system will take precedence. We think that expanding the Committee to include a wider range of expertise in information technology and internet portals would be a valuable contribution to ensuring that the online procedure rules are suitably futureproofed.

Amendment 62 would again expand the membership of the OPRC—this time, to include someone with experience representing the views of people who are digitally excluded. Currently, the online procedure rule committee does not include any members who would be able to represent the views of digitally excluded people or have expertise in the specific challenges that digitally excluded people might encounter if they needed to be a party to proceedings under the online procedure.

I spoke about this issue in our debate on clause 18, but I will stress the point again. In making the online procedure rules, it is important that we do not negatively impact access to justice for those with vulnerabilities or conditions, or who are digitally excluded for any reason. I think this would be a most important voice on the committee and I hope that the Minister will agree with me that it would add great value to its work.

Amendment 91 would increase the membership of the online procedure rule committee by requiring the Lord Chancellor to appoint a person with expertise in accessible service design. Again, we believe this would be an extremely valuable perspective to include on the committee.

I know the Minister wants these reforms to have a positive impact on justice; including a professional with experience in accessible service design would ensure

[Alex Cunningham]

that the online procedures can be used by the widest range of persons possible, which is surely an aim that the Government share with us. As I said earlier, I am keen to hear from the Minister on whether his Department has considered the addition of any such members to the Committee. If not, is it something he foresees being introduced under the negative procedure as outlined in the Bill? If the latter is true, I suggest that an easier route would be to include them now in the primary legislation.

Amendment 64 is slightly different. It would require the Lord Chancellor and the Lord Chief Justice to have due regard to the ethnic and gender balance of the online procedure rule committee when making their appointments. I understand that in Committee and on Report in the Courts and Tribunals (Online Procedure) Bill, Lord Beecham tabled an amendment, introducing a requirement that

"The Lord Chancellor must ensure that gender balance is reflected on the Online Procedure Rule Committee."

Amendment 64 is tabled in that spirit, but goes further, adding that the racial diversity of the committee must also be considered.

JUSTICE's working party report, "Increasing Judicial Diversity", found that reducing homogeneity in the legal system is important for both legitimacy and quality of decision making. Ensuring gender balance in the creation of new rules committees would serve as a positive step towards that aspiration. However, the Opposition agree that there is no reason why that should be prioritised any more than racial diversity, especially given the dreadful disparities in the legal profession.

A recent report by the race working group of the Bar Council found that barristers from ethnic minority backgrounds, particularly black and Asian women, face systemic obstacles to building and progressing a sustainable and financially rewarding career at the Bar. Indeed, they found that a black female junior barrister with the same level of experience as a white male junior bills £18,700 a year less on average, and an Asian woman £16,400 less. That is clear evidence that addressing racial diversity within the legal profession must be an urgent priority for the Government. The amendment provides one opportunity to address some of these disparities, and I hope the Minister will take it.

James Cartlidge: The amendments in the group all relate to the membership of the new online procedure rule committee. The Bill provides for a committee of six members, of whom three are judicial members appointed by the Lord Chief Justice and three are non-judicial members appointed by the Lord Chancellor. The range of members will ensure that the new committee will have expertise in the law and the provision of lay advice and information technology. That will equip it to produce straightforward, easily understood court rules, which will support the online procedure.

When the committee comes to develop rules for courts and tribunals, it will be able to consult or seek advice from those with relevant qualifications, and create working groups including persons with relevant experience and expertise, such as in service design or representing those who are digitally excluded. That is in line with how existing rule-making committees work.

The committee is specifically designed to be small and agile in its decision making. Adding additional members at the outset will detract from that. Any need for additional expertise to inform the committee's decision-making process that may become apparent through experience can be addressed through the power in clause 23, which enables the Lord Chancellor to amend clause 21 to change the required membership of the committee. I suggest that a more flexible approach would be preferable to adding the additional members proposed in amendments 60 to 62 and 91.

Amendments 29 and 28 would require the online procedure committee to include a person of experience and with knowledge of the Scottish legal system appointed by the Lord President of the court of session. The OPRC will be responsible for making rules across civil and family courts in England, Wales and the specified tribunals. The vast majority of the committee's work, certainly at the outset, is likely to concern procedure for online court proceedings in England and Wales for which a dedicated member of the committee specifically with expertise in Scottish law would, with respect, not be so well equipped to contribute.

When the committee comes to develop rules for tribunals, which would currently include Scottish employment tribunals, it will be able to consult or seek advice from those with relevant qualifications, and to create working groups including persons with relevant experience and expertise. This is in line with how existing rule-making committees work. The need for a distinct Scottish contribution in the decision-making committee through membership can be addressed through the power in clause 23, which enables the Lord Chancellor to amend clause 21 to change the required membership of the committee. That is a better solution than requiring a Scottish member at the outset, since work is continuing towards the devolution of tribunals for Scotland.

Amendment 64 would require the Lord Chancellor and the Lord Chief Justice to have due regard to the ethnic and gender balance of the online procedure rule committee when making their appointments. We can all agree that, as the refreshed public appointments diversity action plan states, drawing public appointees from all aspects of the society that they serve

"will improve the quality of our public services overall."

I do not, however, consider it necessary to include the specific duty embodied in this amendment in the appointment process for this rule committee alone. Compared with the other committees that, like the online procedure rule committee, are covered by the action plan and the governance code for public appointments under the supervision of the Commissioner for Public Appointments, the OPRC is designed to be small and agile to address rules that can be updated quickly, keeping step with technology changes to meet the expectations of 21st century court users.

The OPRC requires a range of expertise to complement new technology and online working. When making appointments to the OPRC, the Lord Chancellor and Lord Chief Justice will follow the standard process in line with the civil procedure rule, family procedure rule and tribunal procedure rule committees.

I hope I have reassured the hon. Gentleman about the proposed membership of the committee, and that the Bill has built in significant flexibility should its expertise not be sufficient. I therefore urge the hon. Gentleman to withdraw the amendment.

Alex Cunningham: I am grateful to the Minister for his response and for addressing the Scottish amendments. I attached some notes on that to the end of the wrong speech, but I was going to speak briefly to it because our Scottish colleagues—I am Scottish myself, of course—from the SNP made the point that there was no real representation of the Scottish legal profession. The Minister has, however, already addressed that.

I am disappointed that the Minister does not recognise how such a small committee may not have the length and depth of expertise that is required to carry out the jobs that he requires of it. To have one IT expert and just one appointed judge strikes me as totally inadequate in the circumstances. While we will not press the amendment to a vote, the Minister needs to take that away and think again. I have not come across anybody within the sector who does not think that this committee is potentially weak, and will not be able to do the job that it is required to do. We hope that the Minister will take this issue away and look at it again in the spirit that we intend.

I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

2.45 pm

Alex Cunningham: I beg to move amendment 63, in clause 21, page 38, line 14, at end insert—

"(6A) Before appointing a person under subsection 3(c) the Lord Chief Justice must—

(a) consult the Lord Chancellor, and

(b) obtain the agreement of the Senior President of Tribunals."

This amendment makes the appointment of the authorised court and tribunal staff member to the Online Procedure Rules Committee subject to consultation with the Lord Chancellor and agreement of the Senior President of Tribunals, mirroring the current requirements in relation to judicial appointments to the Committee.

I will be briefer in dealing with this amendment than I have been on anything else. This straightforward amendment relates to amendment 60, and would make

"the appointment of the authorised court and tribunal staff member to the Online Procedure Rules Committee subject to consultation with the Lord Chancellor and agreement of the Senior President of Tribunals, mirroring the current requirements in relation to judicial appointments to the Committee."

As I said in my previous speech, the Courts and Tribunals (Judiciary and Functions of Staff) Act 2018 allows individual rule committees to delegate functions that were traditionally judicial in nature to non-judicial court staff. Therefore, we think it would be appropriate to appoint this member in line with the process for the members appointed under subsection 3(b) of clause 21.

James Cartlidge: This amendment would make

"the appointment of the authorised court and tribunal staff member to the Online Procedure Rules Committee subject to consultation with the Lord Chancellor and agreement of the Senior President of Tribunals, mirroring the current requirements in relation to judicial appointments to the Committee."

As I said when we discussed the previous group of amendments, the committee is to be comprised of six members: three are judicial members, to be appointed by the Lord Chief Justice, and three are non-judicial members, to be appointed by the Lord Chancellor. To alter the composition of the OPRC, the Lord Chancellor is required to consult the Lord Chief Justice and the Senior President of Tribunals. That requirement is in line with the existing rule-making committees. The reason for including this power is that, as the scope of the online procedure rules increases, it may be necessary to expand the committee's membership or widen its expertise in order to assist in making rules for different online procedures. I therefore urge the hon. Member to withdraw his amendment.

Alex Cunningham: I am pleased to hear the Minister talk about the possibility of the committee being expanded in future, and the process for doing so. That is heartening: it is certainly something that needs to be looked at. In those circumstances, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

James Cartlidge: To recap, clause 21 provides for the membership of the online procedure rules committee and its powers. It also includes the procedure for appointing members. The committee is to comprise six members, of whom three are to be appointed by the Lord Chief Justice: one person who is a judge of the senior courts of England and Wales, and two persons, each of whom is either a judge of the senior courts of England and Wales; a circuit judge or district judge; a judge of the first-tier tribunal; a judge of the upper tribunal; an employment judge; or a judge of the employment appeal tribunal—a fair selection. The Lord Chancellor is to appoint the committee's non-judicial members: one person who is a barrister in England and Wales, a solicitor of the senior courts of England and Wales, or a legal executive; one person who has experience in, and knowledge of, the lay advice sector; and one person who has experience in, and knowledge of, information technology related to end users' experience of internet portals.

Before appointing a person, the Lord Chief Justice must consult the Lord Chancellor, and must also consult the Senior President of Tribunals or—in the case of a person to be a tribunal judge member—secure the agreement of the Senior President of Tribunals. Similarly, the Lord Chancellor must consult the Lord Chief Justice and the Senior President of Tribunals and, in the case of a practitioner member, must also consult the relevant authorised body. The range of members for which this clause provides will ensure that the new rule committee will have expertise in the law, the provision of lay advice, and information technology. This will help equip it to produce straightforward, easily understood court rules, which will support the online procedure, which, as far as possible, will be embedded in the online software.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Clause 22

Powers of the Online Procedure Rule Committee

Question proposed, That the clause stand part of the Bill.

James Cartlidge: Clause 22 provides that the online procedure rules committee has the same rule-making powers that are available to the civil, family and tribunal rule committees. It will therefore have the full range of powers appropriate to any proceedings for which it may make online procedure rules. The committee may also apply any other rules of court. That is to ensure that any rule that is included in the current civil, family and tribunal rules and other rules of court may be used and modified as appropriate to ensure that the online procedure may operate as intended. It does not, however, enable the committee to make procedure rules for procedures that are not subject to the rule-making powers specified in the clause. For example, it may not make online Court of Protection rules because the clause does not give it power to do so.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clause 23

Power to change certain requirements relating to the Committee

Alex Cunningham: I beg to move amendment 92, in clause 23, page 41, line 14, leave out subsection (5) and insert—

'(5) Regulations under this section are subject to affirmative resolution procedure (see section 45(3)).'

This amendment would make regulations under clause 23 subject to the affirmative resolution procedure.

The Chair: With this it will be convenient to discuss the following:

Amendment 93, in clause 24, page 41, line 38, leave out subsection (7) and insert—

'(7A) A statutory instrument containing Online Procedure Rules is subject to affirmative resolution procedure (see section 45(3)).'

This amendment would make SIs containing Online Procedure Rules subject to the affirmative resolution procedure.

Amendment 65, in clause 25, page 42, line 5, at end insert—

'(1A) The written notice under subsection (1) is subject to the concurrence requirement (see section 30(1)).'

This amendment would make the Lord Chancellor's power to require the Online Procedure Rules Committee to make rules to achieve a specified purpose subject to the concurrence requirement.

Amendment 68, in clause 26, page 42, line 20, leave out subsection (3) and insert—

'(3) Regulations under this section are subject to the concurrence requirement (see section 30(1)).'

This amendment would make the Lord Chancellor's power to make amendments in relation to the Online Procedure Rules subject to the concurrence requirement.

Amendment 94, in clause 26, page 42, line 25, leave out "that amend or repeal any provision of an Act"

This amendment would make all regulations under clause 26 subject to the affirmative resolution procedure.

Amendment 95, in clause 26, page 42, line 27, leave out subsection (6)

See Explanatory Statement for Amendment 94.

Amendment 66, in clause 30, page 43, line 17, after "regulations" insert "or notices"

This is a consequential amendment to include a notice given to the Online Procedure Rules Committee to make rules to achieve a specified purpose within the concurrence requirement.

Amendment 67, in clause 30, page 43, line 21, after "regulations" insert "or notices"

See Explanatory Statement for Amendment 66.

Alex Cunningham: Members of the Committee may be relieved to learn that this will be my final speech on chapter 2.

Clause 23 makes provision for how certain changes relating to the online procedure rules committee can be made. Concern has been raised that the breadth of powers provided to the Lord Chancellor by the online procedure rules provisions in the Bill as drafted is vast, and that there is therefore a danger of a democratic deficit.

Currently, the Lord Chancellor has the power to specify which proceedings will be made subject to the online procedure rules under clause 19; designate exceptions or circumstances where proceedings may be conducted by the standard procedure rules rather than online procedure rules under clause 20; appoint OPR committee members under clause 21; change the composition requirements of the OPR committee under clause 23; allow or disallow online procedure rules made by the OPR committee under clause 24(3); require online procedure rules to be made under the terms of clause 25; and under clause 26(1) the Lord Chancellor may

"by regulations amend, repeal or revoke any enactment to the extent that the Lord Chancellor considers necessary or desirable in consequence of, or in order to facilitate the making of, Online Procedure Rules."

That is quite a raft of powers for the Lord Chancellor.

The Lord Chancellor's powers under clauses 19, 20 and 23 are subject to the concurrence of the Lord Chief Justice or the Senior President of Tribunals, depending on whether the regulations relate to proceedings in the courts or tribunals. This is the "concurrence requirement". However, the power in clause 26 is subject only to a requirement to consult the Lord Chief Justice and Senior President of Tribunal, while the power to require OPRs to be made in clause 25 is subject to neither a consultation nor a concurrence requirement.

Clause 26 has caused particular concern to some. I note that Joshua Rozenberg has observed that this clause differs in this Bill from its earlier forms in the Courts and Tribunals (Online Procedure) Bill and the Prisons and Courts Bill, in which there were more stringent limits on the ability of this power to be used to amend future Acts of Parliament. Mr Rozenberg described the refinement of the drafting as "Henry VIII mission creep". He said:

"Let's imagine that parliament passes new legislation of some sort in 2030. There is a change of government in 2035 and the new lord chancellor thinks the 2030 legislation gets in the way of procedural rules that the incoming government wants to introduce. Using legislation passed in 2022, the lord chancellor will have power to sign an order in 2035 which, if all goes to plan, will repeal legislation made by parliament in 2030. It's no excuse to say that this is very unlikely to happen — and the clauses are simply included just in case. Having got a foot in the door, ministers are pushing it a bit further open every time they try. Soon, they'll be pushing at an open door. If they really need to amend or repeal an act of parliament, ministers should take the trouble to bring forward legislation in the normal way."

I certainly agree.

In our evidence session, I asked Richard Leiper about this democratic deficit, and he said that yes, there was something of a democratic deficit, but that his personal view was that

"it seems to reflect the processes that are already in place into the existing procedure rule committee. This appears to have been the accepted approach since about 2005, and it seems to be replicating that."

He went on:

"It does seem to give a substantial power to the Lord Chancellor in this regard, which I personally find surprising. However, it seems to be the way that things have operated for some time."–[*Official Report, Judicial Review and Courts Public Bill Committee,* 2 November 2021; c. 39, Q45.]

For me, that does not make it right, even if it does go back to 2005 and a Labour Government.

I appreciate that clauses 25 and 26 mirror the approach taken with other procedure rule committees. I would say that is no reason not to get it right first time.

Even the Government have recognised that the broad powers provided to the Lord Chancellor in this part of the Bill could have a significant impact on access to justice, and have therefore decided that some of those powers should be subject to the requirement to obtain the concurrence of the Lord Chief Justice and Senior President of Tribunals. Indeed, the concurrence requirements in clauses 19 and 20 were brought forward by the Government in the Courts and Tribunals (Online Procedure) Bill, on Report, to address concerns that the Bill conferred broad powers on Ministers in particular to limit oral hearings in an extensive range of cases.

The amendments that the Opposition have tabled make provision for two additional mechanisms in this process, allowing for greater scrutiny and accountability of decisions that the Lord Chancellor makes. The first mechanism is covered by amendments 65 to 68, which would make the Lord Chancellor's power to make rules to achieve a specified purpose and to make amendments in relation to the online procedure rule subject to the concurrence requirement—that is, the powers covered by clauses 25 and 26.

As Lord Judge pointed out when the Courts and Tribunals (Online Procedure) Bill was at Report stage, it is inconsistent with clauses 19 and 20 of this Bill, which are subject to the concurrence requirement, that the power to require OPRs to be made in clause 25 and the broad Henry VIII power to make consequential or facilitative amendments in clause 26(1) are not also subject to the concurrence requirement. Clauses 25 and 26, taken together, give too much power to the Lord Chancellor: they enable the Lord Chancellor to, as Lord Judge put it,

"overrule the very rules which were made with the concurrence of the Lord Chief Justice".—[*Official Report, House of Lords,* 24 June 2019; Vol. 798, c. 956.]

The Opposition's amendment is a simple extension of a safeguard that the Government already recognise is appropriate for these types of powers, so I hope the Minister can support our aim here.

The second mechanism is covered by amendments 92 to 95, which would make regulations made under the powers of clause 23 and statutory instruments containing online procedure rules subject to the affirmative resolution procedure, rather than the negative resolution procedure, as the Bill currently allows for. This will provide a different type of safeguard, in that it would allow for greater parliamentary scrutiny of the online procedure rules. I look forward to the Minister's response.

James Cartlidge: The amendments in this group all relate to the powers granted to the Lord Chancellor through the legislation. I start with amendment 92, which would require the regulations made by the Lord Chancellor to change the composition of the membership of the online procedure rule committee to be subject to the affirmative resolution procedure. The arrangements for making changes to the membership of the committee are the same as those that apply to the Civil Procedure Rule Committee, the Family Procedure Rule Committee and the Tribunal Procedure Rule Committee and reflect the existing responsibilities of the Lord Chancellor, the judiciary, the committee and Parliament in making procedure rules.

Any regulations changing the Committees' membership must be agreed by both the Lord Chief Justice and the Senior President of Tribunals. Before making them, the Lord Chancellor is also required to consult other senior members of the judiciary. The regulations must be laid before Parliament and may be subject to debate if either House wishes. That is, I would suggest, an appropriate level of control and scrutiny, as it is for all the other rule committees, and there is no good reason for treating the online procedure rule committee differently in that regard. The amendment is unnecessary, as the arrangements under clause 23 reflect the existing constitutional arrangements, and I therefore urge the hon. Member for Stockton North to withdraw that particular amendment.

Similarly, amendment 68 would require the Lord Chancellor to secure the concurrence of the senior judiciary to, rather than to consult them on, regulations amending, repealing or revoking any enactment. I should start by stressing that this power is designed to allow the Lord Chancellor to make minor revisions or consequential amendments to legislation to support or facilitate the making of online procedure rules.

The provision mirrors the arrangements in place for the Civil Procedure Rule Committee and the Family Procedure Rule Committee, which require the Lord Chancellor to consult the Lord Chief Justice before making regulations of this nature. It is therefore in line with the respective constitutional roles of the Lord Chancellor and the judiciary for the making of procedure rules.

3 pm

Furthermore, where the regulation amends primary legislation it is subject to the affirmative procedure and must therefore be scrutinised, debated and approved by both Houses. Again, that is consistent with the approach in the other committees. Other than a general distrust of the concept of online procedure rules, it is impossible to see a reason for extending the concurrence requirement for them when it is not required for other rules, which of course can themselves make provision for electronic and online working.

Amendments 94 and 95 would require all regulations made under clause 26 to be subject to the affirmative resolution procedure, rather than that requirement applying to only those regulations that would amend primary legislation. Clause 26 provides for the Lord Chancellor to make consequential or minor amendments to the legislation to support or facilitate the making of online procedure rules. Again, the clause reflects similar powers that the Lord Chancellor has in relation to civil, family and tribunal procedure rules. In each of those cases, any regulations that revoke, appeal or amend primary legislation

are subject to the affirmative procedure, but regulations amending secondary legislation are subject to the negative resolution procedure.

Furthermore, the Lord Chancellor is required to consult specified members of the senior judiciary before making such regulations. We are satisfied that that provides the appropriate level of parliamentary scrutiny and oversight for the amendments that will be made under the power, and that there is no reason for singling out consequential amendments related to online procedure rules for that more stringent scrutiny. The clause as drafted reflects the existing and agreed constitutional roles of the Lord Chancellor, judiciary and Parliament, and I urge the hon. Member for Stockton North to withdraw the amendment.

Amendment 93 would subject online procedure rules uniquely among all court and tribunal rules, and irrespective of what they contain, to the draft affirmative procedure, rather than the negative resolution procedure, for no apparent reason other than that they are online procedure rules. Since the Supreme Court of Judicature Act 1873 and the Supreme Court of Judicature Act 1875, which I believe even predate Tony Blair, rules of court have been made by subordinate legislation, subject to annulment pursuant to a resolution of either House of Parliament.

Tribunal procedure rules have followed that well established model. It applies to all rules made, as online procedure rules will be, by a separately established rule committee or other rule-makers, such as the Lord Chief Justice in the case of the magistrates court rules. The very rare exceptions to that model have been the exercise of specific powers conferred on the Lord Chancellor to make rules for closed material procedure. I see no good reason why online procedure rules should be treated differently from other rules made by an independent rule-making body, and subjected to the higher degree of scrutiny otherwise reserved for the making of closed material procedure rules by a Minister.

The only reason appears to be that the rules are online procedure rules, and online procedure is to be regarded as in some way akin to the closed material procedure used for exceptionally sensitive proceedings involving national security. I do not consider that to be a valid reason. We consider that the negative procedure provides the appropriate level of scrutiny for legislation of this nature, and the statutory instrument is, of course, subject to annulment by a motion of either House. Those arrangements reflect the existing and agreed responsibilities between the committee, the Lord Chancellor and Parliament on the making of procedure rules.

Amendments 65, 66 and 67 would require the concurrence of the Lord Chief Justice or the Senior President of Tribunals before the Lord Chancellor could give any notice to the Lord Chancellor that it is expedient that the rules be to achieve a specified purpose. We have drafted the clause to mirror the arrangements established for the other procedure rule committees, including the Civil Procedure Rule Committee, the Family Procedure Rule Committee and the Tribunal Procedure Committee.

In each case, the Lord Chancellor may direct the committee to make rules to achieve a specified purpose. He cannot, however, require the relevant committee to make specific rules. Those arrangements derive from the concordat—the principles agreed for the allocation and performance of the Lord Chancellor's judiciary-related functions, given effect by the Constitutional Reform Act 2005—and reflect the existing and agreed constitutional roles of the Lord Chancellor, the judiciary and the committee in making rules.

The amendment, however, would effectively give the Lord Chief Justice or the Senior President of Tribunals a direct veto on the giving of such a notice, and accordingly an indirect veto on the making of rules to achieve a purpose specified in such a notice. That would start unpicking the concordat in a way that I would suggest is not to be done lightly, as an aside to the Bill, not least because of all the constitutional implications. For the reasons I have set out, I urge the hon. Member for Stockton North to withdraw the amendments.

Alex Cunningham: I am grateful to the Minister for his response. As I outlined at the beginning of my speech, this is a huge power grab by the Executive.

James Cartlidge *indicated dissent.*

Alex Cunningham: The Minister laughs and shakes his head, but it is a huge power grab by the Executive, which is all the more reason why we need to ensure that there are protections in the Bill for people within the system. I also say to the Minister that, as I pointed out in my speech, there is a lack of consistency in the approach in different parts of the Bill. I suspect that the Government may well have to repeat some of the work that they have done on the online procedure rule committee, so they might have to correct that on Report. I will leave the Government to do that.

In trying to persuade the Minister that we should apply the affirmative procedure in a much greater way, I do not believe that, as he says, there is sufficient scrutiny by Parliament through the processes that he proposes in the Bill. Far greater powers are passed back to Parliament with the alternative procedure, but I have listened to what the Minister has said and can possibly look forward to amendments on Report. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

James Cartlidge: To recap, clause 23 enables the Lord Chancellor to alter the composition of the online procedure rules committee in the future, but only with the concurrence of the Lord Chief Justice and the Senior President of Tribunals. The Lord Chancellor must also consult the head of civil justice, who is Sir Geoffrey Vos, the deputy head of civil justice, who is currently Lord Justice Birss, and the President of the Family Division. Any changes are made by negative resolution.

This is an important provision, because it allows the committee to change, vary or extend its membership as circumstances change and online provisions develop. It also reflects the powers available to existing rule committees. This power is useful, in that it will allow the committee to extend its membership as circumstances change. The power is precedented in other rule committees—for example, it has been used to ensure that the Civil Procedure Rule Committee and the Family Procedure Rule Committee include a judicial member with particular experience of proceedings in Wales. I recommend that the clause stand part of the Bill.

Alex Cunningham: Briefly, and with reference to what I said before, we believe that the clause leads to a democratic deficit. It is a power grab by the Executive, but we look forward to seeing how it progresses at later stages of the Bill and in the other place.

Question put and agreed to.

Clause 23 accordingly ordered to stand part of the Bill.

Clause 24

PROCESS FOR MAKING ONLINE PROCEDURE RULES

Question proposed, That the clause stand part of the Bill.

James Cartlidge: Clause 24 outlines the process for making online procedure rules, which mirrors the process by which civil procedure rules, family procedure rules and tribunal procedure rules are made. The clause requires the committee to hold a meeting before making or amending rules, unless it is inexpedient to do so, and to consult any persons that it considers appropriate. Before being submitted to the Lord Chancellor for approval, rules drafted by the committee must be signed by at least three members, with one of the signatories being the Chair, or by a majority of members. The Lord Chancellor may disallow any rules, but must give written reasons for doing so.

This safeguard reflects similar powers available to the Lord Chancellor in relation to civil, family and tribunal rules. The powers have never had to be used, but it is none the less right that an equivalent power is available in relation to the online procedure rules. It would be interesting to know whether the hon. Member for Stockton North would still think they are a power grab if they are never used. I recommend that the clause stand part of the Bill.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

POWER TO REQUIRE ONLINE PROCEDURE RULES TO BE MADE

Question proposed, That the clause stand part of the Bill.

James Cartlidge: The clause gives the Lord Chancellor the power to require online procedure rules to be made. The Lord Chancellor may give the online procedure rule committee written notice that he or she thinks that the online rules should include provision to achieve a specified purpose. The committee must make the rules within a reasonable period and in accordance with the procedure for making rules. The power is consistent with the Lord Chancellor's powers for other rules committees.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clause 26

POWER TO MAKE AMENDMENTS IN RELATION TO ONLINE PROCEDURE RULES

Question proposed, That the clause stand part of the Bill.

James Cartlidge: The clause gives the Lord Chancellor the power to make amendments to facilitate the making of online procedure rules. It is anticipated that it will be used to make minor revisions to legislation, for example in order to regularise and modernise terminology to match that in new rules. For making regulations, the Lord Chancellor must consult the Lord Chief Justice and the Senior President of Tribunals. Any regulations that amend or repeal primary legislation are subject to the affirmative resolution procedure and must go before Parliament for approval. Regulations that amend or repeal secondary legislation are subject to the negative resolution procedure.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clause 27

DUTY TO MAKE SUPPORT AVAILABLE FOR THOSE WHO REQUIRE IT

Question proposed, That the clause stand part of the Bill.

James Cartlidge: The clause requires the Lord Chancellor to make provision for those who require digital support. HMCTS is moving towards digital services being the default, but we absolutely understand that not everyone is able to use online procedures and may need assistance in starting or progressing their case online.

Digital services are designed with and for users, so that they are easy to use. That includes, for example, ensuring that services work with assistive technology, such as screen readers, and simplifying language to ensure that users understand what they are required to do. HMCTS user contact functions support users with guidance and help on their journey through a service over the phone and through related call centre channels, such as web chat. HMCTS has also awarded a national contract to deliver positive and practical solutions to support users and to break down the barriers of digital exclusion. Through the contract, support will be available in person and remotely through a network of delivery partners who have experience in supporting the users of Justice services.

The measures above seek to direct as many users as possible through the primary digital channels. However, that does not mean that non-professional users will only be able to interact digitally with the court. HMCTS will ensure—as I have explained before—that all users receive an equal service, no matter what channel they engage through. Paper forms will be kept as a channel for non-professional users and work is ongoing to review and simplify those. The use of digital applications has been made mandatory for professional users in some HMCTS services, but in all services paper forms will remain available for non-professional users.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Clause 28

POWER TO MAKE CONSEQUENTIAL OR SUPPLEMENTARY PROVISION

James Cartlidge: The clause details the powers of the Lord Chancellor to make consequential or supplementary amendments to legislation in relation to any other provision within chapter 2 in order to facilitate the making of the online rules. In particular, the Lord Chancellor may amend, repeal or revoke any provisions within an Act of Parliament passed before this legislation or during this parliamentary Session. In addition, the Lord Chancellor may amend, repeal or revoke any provisions within subordinate legislation, irrespective of when the legislation was made or will be made, or which Act the power to make it is contained within. It is anticipated that the power will be used to make minor revisions to legislation, for example in order to regularise and modernise terminology to match that in new rules. Any regulations that amend or repeal primary legislation are subject to the affirmative resolution procedure and must go before Parliament. Regulations that amend or repeal secondary legislation are subject to the negative resolution procedure.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

AMENDMENTS OF OTHER LEGISLATION

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss, That schedule 4 be the Fourth schedule to the Bill.

James Cartlidge: I propose to deal with clause 29 and schedule 4 together, as the clause simply gives effect to that schedule. Schedule 4 amends existing legislation as a result of the new online procedure in courts and tribunals. Those amendments provide that the standard civil family and tribunal procedure rules must be framed to ensure that they do not apply to proceedings while they are subject to the online procedure rules. That provides clarity so that court users are aware of which set of rules apply to their case. This power will ensure that rules made by the online rule committee are not subject to, or undermined by, rules made by the other rule committees.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Schedule 4 agreed to.

Clause 30

JUDICIAL AGREEMENT TO CERTAIN REGULATIONS

Question proposed, That the clause stand part of the Bill.

James Cartlidge: Clause 30 explains what is meant by the concurrence requirement, which the Lord Chancellor is required by a number of the preceding clauses to fulfil when making regulations. The requirement is to obtain agreement of the Lord Chief Justice and the Senior President of Tribunals when making regulations. The clause explains that the Lord Chancellor must obtain the concurrence of the Lord Chief Justice before making regulations that relate to civil or family proceedings in England and Wales, and of the Senior President of Tribunals before making regulations that relate to proceedings in the first-tier, upper, employment or employment appeal tribunals.

Question put and agreed to.

Clause 30 accordingly ordered to stand part of the Bill.

Clause 31

INTERPRETATION OF THIS CHAPTER

Question proposed, That the clause stand part of the Bill.

James Cartlidge: It is fair to say that this is not the longest speech I have given so far. Clause 31 is a technical clause and merely defines terms used in the online procedure clauses.

Question put and agreed to.

Clause 31 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Scott Mann.)*

3.18 pm

Adjourned till Thursday 18 November at half-past Eleven o'clock.

Written evidence reported to the House

JRCB10 JUSTICE (Part 2 of the Bill – Criminal Procedure)

JRCB11 Dr Rebecca K Helm, Director and Clinic Solicitor, Evidence-Based Justice Lab, University of Exeter

JRCB12 Dr Jonathan Morgan, Reader in English Law, University of Cambridge (supplementary submission)