To what extent will the report of the Independent Review of Administrative Law and the Judicial Review and Courts Bill (when enacted) improve judicial review in England and Wales?

Introduction

In liberal democracies the world over, criticism is levelled at judicial review ("JR") – the mechanism by which citizens and other interested parties may challenge the lawfulness of a public body's decision in court. A key driver for this criticism is that judges are called upon to decide controversial political issues, something that critics say they are constitutionally and institutionally ill-equipped to do.[1] In the UK, "law's expanding empire"[2] is accused of usurping decisions from elected officials in areas of high policy, thereby undermining our political constitution. This trend can be seen in the latter half of the 2010s, when new seeds of disquiet were sown after the Government suffered defeats in high-profile cases before the Supreme Court.[3] The Government's 2019 manifesto responded by proposing to reform "the relationship between the Government, Parliament and the courts" and "[the] balance between the rights of individuals, our vital national security and effective government".[4]

The Independent Review of Administrative Law ("IRAL") was launched in July 2020 to address these constitutional concerns. However, as the report acknowledges, it was also created to address the fallout from the two Brexit cases, Miller II having been handed down on 24 September 2019.[5] Perhaps contemplating root and branch reform, IRAL's terms of reference were expansive – containing within them the prospect of codifying the grounds of JR, as well

[1] See J Waldron (2006), "The core of the case against judicial review", *The Yale Law Journal* for discussion around democratic-based arguments against JR in the context of reviewing legislation, *nb* pp 1389-1390. For criticism of JR in the UK, see the *Judicial Power Project*: <https://judicialpowerproject.org.uk/>

[2] J Sumption, "Law's Expanding Empire", The Reith Lectures (21 May 2019) <http://downloads.bbc.co.uk/radio4/reith2019/Reith_2019_Sumption_lecture_1.pdf> accessed 7 September 2021.

[3] For example, *R (Privacy International) v Investigatory Powers Tribunal and others* [2019] UKSC 22, *R (UNISON) v Lord Chancellor* [2017] UKSC 51, and *R (Carmichael and Rourke) (formerly known as MA and others) v Secretary of State for Work and Pensions* [2016] UKSC 58.

[4] The Conservative and Unionist Party Manifesto 2019, "Get Brexit Done Unleash Britain's Potential", p 48 <https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf> accessed 2 August 2021.

[5] The Independent Review of Administrative Law (CP 407) ("the report"), March 2021, p 11, para 20 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970797/IRAL-report.pdf> accessed 2 August 2021.

as clarifying the legal principle of non-justiciability and the scope of JR (including remedies).[6] However, IRAL's report, published in March 2021, rejected the cut and thrust of the Government's concerns. Just two firm proposals were made. Firstly, the report recommended the introduction of suspended quashing orders.[7] Secondly, the panel said that Cart JRs should be abolished.[8] These proposals have since been adopted by the Government and are being implemented via the Judicial Review and Courts Bill ("the Bill"[9]).

This essay addresses whether these changes will improve JR. But this begs the question: *how* and *for whom* does JR need to be improved? The short answer is that neither vindicating Claimants' rights at all costs, effective Government nor policing legislative intent[10] lay claim to a monopoly on JR. Improvements must be assessed holistically. In what follows, I scrutinise the extent to which the report's proposals, the way in which the Bill implements them, and IRAL read as a whole positively contribute to the development of JR in England and Wales. In respect of IRAL's two recommendations, I argue that suspended quashing orders represent a modest improvement to JR, while abolishing Cart JRs is unjustified. Beyond the two recommendations, I contend that the report's deeper value lies in its affirmation of JR as an essential ingredient of the rule of law and the concomitant need to respect the judiciary.

Remedies: nullities and suspended quashing orders

It has become increasingly clear that the Government wishes to limit the frequency with which the courts find administrative acts to be null: a doctrine whereby *ultra vires* acts are deemed to have never had legal effect.[11] The Government considers that quashing regulations with immediate and retrospective effect may have "severe administrative or economic consequences"[12] and is therefore undesirable. An example of these consequences can be

[6] Terms of Reference for the Independent Review of Administrative Law <https://assets.publishing.service.gov.uk/media/5f27d3128fa8f57ac14f693e/independent-review-of-administrative-law-tor.pdf> accessed 2 August 2021.
[7] See the report (n 5), p 70, para 3.49.
[8] *Ibid*, pp 69-70, para 3.46.
[9] The Judicial Review and Courts Bill <https://publications.parliament.uk/pa/bills/cbill/58-02/0152/210152.pdf> accessed 3 August 2021.
[10] T Poole (2009), "The reformation of English administrative law", *The Cambridge Law Journal*, pp 142-144.
[11] *Anisminic v Foreign Compensation Commission* [1969] 2 AC 147. See also *TN (Vietnam) v Secretary of State for the Home Department and Anor* [2018] EWCA Civ 2838, per Singh LJ, for recent discussion of the leading authorities.
[12] Ministry of Justice "Judicial Review Reform Consultation The Government Response" (CP 477) ("the July response"), July 2021, p 22, para 82 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004881/jr-reform-government-response.pdf> accessed 10 August 2021.

observed in the case of *Unison*,[13] in which the Employment Appeal Tribunal Fees Order 2013 was quashed. In the aftermath of *Unison*, the Government needed to refund more than £27m to those who had been unlawfully charged for bringing claims before the employment tribunals. In its response to IRAL, the Government proposed prospective-only remedies so as to "mitigate the impact of immediately having to set up a compensatory scheme" to rectify historic illegalities.[14]

IRAL – suspended quashing orders

IRAL took a more nuanced position. They recognised that the courts are cognisant of the potential for administrative chaos and that isolated examples are not a firm basis for far-reaching reform. Indeed, the Government's position overlooks the full suite of judicial practice: the case law speaks of "relative" as opposed to "absolute" voidness[15] and it is widely accepted that *ultra vires* acts can trigger legal effects.[16] Remedial discretion has therefore (arguably) remained intact. IRAL stated that:[17]

> *The common law's adherence to the "metaphysic of nullity" has never been more than half-hearted, driven as it has been less by considerations of principle and more by policy concerns to limit the operation of legislation ousting judicial review or to preserve people's abilities to mount collateral challenges under the civil and criminal law to the lawfulness of administrative action.*

Nevertheless, IRAL went on to find that the courts have at times unduly limited their discretion or have provided inadequate remedies because of the inconvenience that immediate quashing would cause. In *Ahmed (No 2)* the Supreme Court considered that it would be inappropriate to issue a suspended quashing order as, per Lord Phillips, "the court's order, whenever it is made, will not alter the position in law."[18] In other words, quashing orders merely *declare* what the legal position always was. By these lights, the courts have no discretion in the matter. IRAL suggested that *Ahmed (No 2)* should be reversed.

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[13] See (n 3).
[14] Ministry of Justice, "Judicial Review Reform The Government Response to the Independent Review of Administrative Law" (CP 408) ("the Government response"), March 2021, p 28, para 60 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975301/judicial-review-reform-consultation-document.pdf> accessed 2 August 2021.
[15] See *TN (Vietnam)* (n 11) at 75. See also D Feldman (2014), "Error of Law and the Effects of Flawed Administrative Decisions and Rules", *University of Cambridge Faculty of Law Legal Studies Research Paper Series* (Paper No. 18/2014), pp 8-9.
[16] See *Boddington v British Transport Police* [1999] 2 AC 143 per Lord Steyn at 172.
[17] See the report (n 5), p 72, para 3.59.
[18] [2010] UKSC 5 at 4.

IRAL also noted the case of *R (Hurley and Moore) v Secretary of State for Business, Innovation & Skills*.[19] Here, the High Court found that the Secretary of State had breached his "public sector equality duties" by failing to assess properly the discriminatory impact of allowing universities to charge £9,000 in fees. Despite this finding, the High Court declined to quash the regulations because of the inconvenience which would ensue. IRAL submitted that introducing suspended quashing orders would be beneficial for Claimants as the courts would be empowered to make a far-reaching suspended quashing order, which would have more "teeth" than a mere declaration.[20]

Comment and analysis

Strict adherence to the "metaphysic of nullity" would be far from ideal: it removes remedial discretion from the courts. If all unlawful administrative acts were subsequently found to be null, this could well inhibit effective Government by causing administrative chaos. However, putting *Ahmed (No 2)* to one side, it does not appear that the courts routinely find unlawful acts to be null.

The recent case of *D4*, concerning deprivations of citizenship, illustrates that the courts are conscious of the implications of their rulings.[21] D4 was deprived of citizenship. She was not informed of this decision. The British Nationality Act 1981 ("the 1981 Act") states that the Secretary of State needs to "give written notice" prior to exercising her powers to make a deprivation order. However, regulations made under the 1981 Act state that, where a person's whereabouts are not known, "notice shall be deemed to have been given" after the Secretary of State enters a record on the person's file. Chamberlain J found that these regulations were *ultra vires* as "you do not 'give' someone 'notice' by putting the notice in your desk drawer and locking it".[22] However, in circumstances where the knock-on effects of nullity would be to restore D4's citizenship, thereby *theoretically* allowing her to return to the UK and "[paving] the way for dozens of jihadists to return to the UK",[23] Chamberlain J issued a suspended declaration. This illustrates that the courts can be trusted to fashion their own solutions.

[19] [2012] EWHC 201 (Admin).
[20] *Ibid*, per Elias LJ at para 100. See also the report (n 5), p 71, para 3.54.
[21] [2021] EWHC 2179 (Admin).
[22] *Ibid*, at 49-51.
[23] See T Shipman and D Gadher, "Jihadists given hope of return to UK", (1 August 2021, *The Times*) <https://www.thetimes.co.uk/article/jihadists-given-hope-return-syria-isis-vqzlr9zkw> cited in J Rozenberg (n 35).

However, IRAL's recommendation to reverse *Ahmed (No 2)* – which has been described by Mark Elliott as displaying "rigid logic"[24] – is welcome. It paves the way for suspended quashing orders,[25] which are potentially a positive addition to the judicial armoury. Suspended quashing orders would provide a limited window in which Parliament could ratify an impugned executive act.[26] IRAL says that issuing a suspended quashing would "[make] it abundantly clear that the Court acknowledged the supremacy of Parliament".[27] In many ways, such a step is unnecessary: the courts *do* recognise Parliament as sovereign. However, given the tensions between the branches of the State,[28] issuing a suspended quashing order *could* improve the dialogic relationship between the courts, the executive and Parliament.[29] This would improve the constitutional standing of JR. Claimants could also benefit from suspended quashing orders, in cases such as *Hurley*, where quashing regulations with immediate effect would have far-reaching consequences. Issuing a suspended quashing order, and then allowing the executive to remedy the situation, would ensure that Claimants had access to adequate remedies while not causing administrative chaos.

The Bill: a step too far?

The Bill adopts IRAL's proposal for suspended quashing orders. However, it goes a step further by introducing the power to limit their retrospective effect, i.e. prospective-only.

Clause 1 to the Bill would insert s.29A(9) into the Senior Courts Act 1981 ("SCA 1981"). Section 29A(9) states that where a court considers that delaying[30] or removing/limiting the retrospective[31] effect of the quashing order would offer "adequate redress" then the court "must" exercise its powers to do so, "unless it sees good reason not to do so". Firstly, it is unclear why "adequate redress" is deemed to be an appropriate form of relief.[32] Secondly, there are circumstances in which it is necessary for regulations to be declared void *ab initio* as a

[24] M Elliott, "Judicial review reform I: Nullity, remedies and constitutional gaslighting", (6 April 2021, *Public Law for Everyone Blog*) <https://publiclawforeveryone.com/2021/04/06/judicial-review-reform-i-nullity-remedies-and-constitutional-gaslighting/> accessed 19 August 2021.
[25] The Government response (n 14), p 70, para 3.49 and p 75, para 3.68.
[26] The report (n 5), p 70, paras 3.50-3.51.
[27] *Ibid*, p 70, para 3.52.
[28] P Sales (2018), "Legalism in constitutional law: judging in a democracy", *Public Law*, p 700 and fn 5.
[29] *Cf* s.4 HRA declarations of incompatibility. See Lady Hale, "Law and Politics: A Reply to Reith", Dame Frances Patterson Memorial Lecture (8 October 2019), p 13 <https://www.supremecourt.uk/docs/speech-191008.pdf> accessed 19 August 2021.
[30] See the Bill (n 9) s.29A(1)(a).
[31] *Ibid*, s.29A(1)(b).
[32] M Carter (2021), "Proposed Reform of Judicial Review: From the Conservative Manifesto to the Judicial Review and Courts Bill", *Encyclopedia of Local Government Law Bulletin*, p 9.

matter of justice. For example, in cases such as *Boddington*,[33] where a defendant launches a collateral challenge to *ultra vires* byelaws under which they are being prosecuted, it is essential to declare the byelaws a nullity. Otherwise, people could receive criminal penalties under regulations which have not been sanctioned by Parliament. Thus, to the extent that s.29A(9) creates a presumption in favour of limiting the retrospective effect of the quashing, it should be removed.[34]

However, as Joshua Rozenberg notes, the Bill in its present form may be a paper tiger: judges consider that clause 1 does no more than provide a "steer".[35] If so, judges would retain a freehand to decide that a suspended quashing order would provide *in*adequate redress, ensuring that Claimants do not lose out in these reforms.

Abolishing Cart JRs

IRAL's second proposal is to reverse the Supreme Court's decision in *Cart*.[36] In *Cart*, it was established that the High Court has jurisdiction to judicially review the Upper Tribunal's ("UT") refusal of permission to appeal against the First-tier Tribunal. The High Court's jurisdiction was not ousted by s.13(8)(c) of the Tribunals, Courts and Enforcement Act 2007 ("the TCEA"), which excludes the right to appeal against the UT's refusal of permission.

IRAL recommended abolishing Cart JRs because of their low success rate. The panel concluded that, of the post-2012 applications that passed the permission stage, only 0.22% resulted in an error of law being identified.[37] Cart JRs were therefore considered to be unsustainable. However, the empirical basis upon which this recommendation rests has been seriously undermined.[38] Mikołaj Barczentewicz says the success rate for Cart JRs is at least 10

[33] See (n 16).
[34] T Hickman, "Quashing Orders and the Judicial Review and Courts Act", (26 July 2021, *UK Constitutional Law Association*) <https://ukconstitutionallaw.org/2021/07/26/tom-hickman-qc-quashing-orders-and-the-judicial-review-and-courts-act/> accessed 17 August 2021.
[35] J Rozenberg, "Pulling the plug on void decisions", (1 August 2021, *A Lawyer Writes*) <https://rozenberg.substack.com/p/pulling-the-plug-on-void-decisions> accessed 22 August 2021.
[36] *R (Cart) v Upper Tribunal* [2011] UKSC 28.
[37] See the report (n 5), pp 69-70, para 3.46.
[38] See J Tomlinson and A Pickup, "Putting the *Cart* before the horse? The Confused Empirical Basis for Reform of *Cart* Judicial Reviews", (29 March 2021, *UK Constitutional Law Association*) <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/> accessed 25 August 2021.

times higher than IRAL calculated.[39] Notwithstanding these criticisms, the Government has satisfied itself that:[40]

> *The sheer number of challenges per year, the very low success rate, and the stature of the Upper Tribunal mean that Cart Judicial Reviews are detrimental to the efficiency and function of the justice system.*

The Government has not in fact commissioned a study into the impact that Cart JRs have on "the efficiency and function of the justice system". There is therefore limited support for these propositions and the basis for reversing Cart is thin. Overall, there is a non-negligible risk that abolishing Cart JRs will undermine access to justice. Abolishing Cart JRs may therefore mark a downturn in JR.

Clause 2 to the Bill (which inserts s.11A into the TCEA) expressly immunises UT permission-to-appeal decisions from challenge,[41] except where the UT has acted in "bad faith" or "in fundamental breach of the principles of natural justice".[42] Whether this ouster clause will be upheld will likely depend on the circumstances in which a Claimant challenges a UT's refusal of permission and whether justice would be denied to them by enforcing s.11A. However, in light of the explicit drafting of s.11A, it remains to be seen whether the higher courts could refuse to enforce it under the fig leaf of statutory interpretation. Insofar as the Bill limits the courts' ability to consider the substantive issues at hand, it is a misstep for JR.

IRAL's true value

It is lamentable that the terms of reference to IRAL are premised on a false dichotomy between effective Government and JR and make no reference to Parliament.[43] The panel noted one of the ways in which effective Government and JR pull together: "[A]ll public bodies including government departments have an interest in legality as an element in good administration".[44]

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[39] M Barczentewicz, "Should Cart Judicial Reviews be Abolished? Empirically Based Response", (5 May 2021, *UK Constitutional Law Association*) <https://ukconstitutionallaw.org/2021/05/05/mikolaj-barczentewicz-should-cart-judicial-reviews-be-abolished-empirically-based-response/> accessed 25 August 2021.
[40] The July response (n 12), p 3.
[41] See the Bill (n 9), s.11A(2) and s.11A(3)(a)-(b).
[42] *Ibid*, s.11A(4)(c) – see also 4(a)-(b) for other exceptions e.g. where the UT is improperly constituted.
[43] See report (n 5), pp 12-13, para 25.
[44] *Ibid*, p 15, para 34; see also pp 14-15 at paras 31-37 for further discussion.

The putative dichotomy is also misconceived for two further reasons. Firstly, the executive is at all times subject to the rule of law, as secured through access to an "authoritative and independent judicial source".[45] Effective Government cannot include acting unlawfully.[46] Secondly, any notion of effective Government cannot undermine Parliamentary sovereignty.[47] As the former Lord Chief Justice aptly remarked: "[A]ttacking judges for activism is quite often concealment, or an excuse for not allowing proper parliamentary scrutiny."[48] Indeed, a core tenet of JR stresses that legislative grants of power to the executive are limited. Viewed through this lens, the "effectiveness" of statute should be ensured by JR.[49]

IRAL confirmed these orthodox views. The panel also considered that the *Miller* cases were exceptional, and not an indication of any fundamental issue.[50] *Miller 1*[51] concerned the justiciability of Royal Prerogative powers to trigger Article 50 of the TEU; *Miller 2*[52] the prorogation of Parliament. Reasonable minds may differ as to whether the *Miller* cases were justiciable and/or their outcomes were correct. However, as IRAL concluded, these flashpoints do not provide a proper foundation for making broad reforms. The panel rightly concluded that comprehensive reforms to non-justiciability were unwarranted,[53] and there was a "strong presumption in favour of leaving questions of justiciability to the judges".[54] IRAL recommended that an appropriate course of action (as with *Ahmed (No 2)*) is for Parliament to legislate on its preferred position in discreet areas.[55] This approach respects Parliamentary sovereignty while not blithely overhauling JR.

However, while acknowledging Parliamentary sovereignty, the panel queried the wisdom of excluding judicial review, save where there are "highly cogent reasons for taking such an exceptional course".[56] That is undoubtedly right. As Mark Elliott observes, our constitutional

[45] *Cart* (n 36) per Lady Hale at 30.
[46] See A Buttle, Lechmere Essay Prize, p 7, para 14 <https://www.middletemple.org.uk/sites/default/files/Uploads/FOR%20WEBSITE%20Lechmere%20Essay%20Prize%20Submission%20Abby%20Buttle%2011.12.20.pdf> accessed 25 August 2021.
[47] See report (n 5), p 12, para 24, per Lord Reed.
[48] A Dean, "Interview: John Thomas—Why our judges are not "activist"", (2 December 2020, *Prospect*) <https://www.prospectmagazine.co.uk/politics/interview-john-thomas-chief-justice-gina-miller-parilament-courts-judicial-activism> accessed 28 August 2021.
[49] [2009] EWHC 3052 per Laws LJ at 38.
[50] See report (n 5), p 41, para 2.37.
[51] *R (Miller and another) v Secretary of State for Exiting the European Union* [2017] UKSC 5.
[52] *R (Miller) v The Prime Minister* [2019] UKSC 41.
[53] See report (n 5), pp 55-56, paras 2.96-2.98.
[54] *Ibid*, p 56, para 2.100.
[55] *Ibid*, p 130.
[56] *Ibid*, p 54, para 2.89.

settlement is steeped in "respect, civility and comity".[57] Removing the courts' ability to deploy interpretive strategies in relation to ouster clauses would pose the fundamental question to our constitution: are there legal limits to Parliamentary sovereignty?[58] This question should not be posed lightly.

Finally, it should be noted that of the relatively few high-profile constitutional cases which have concerned legislative provisions, *Evans*[59] and *Privacy International*[60] each contain powerful dissenting judgments. This is testament to the fact that judges reach their conclusions in good faith, based on legal rules and principles, rather than political whim. A key takeaway from IRAL, which is of great value for JR, is that the judiciary deserve respect. No less respect is owed when the courts exercise their "inherent powers to review the legality of government action".[61]

Conclusion

IRAL correctly identified that it is implausible to reach agreement on the exact position that JR should occupy within the British constitution.[62] JR's position has evolved and will continue to evolve over time. IRAL did not consider directly the impact of human rights, as a separate consultation has been commissioned for that purpose.[63] However, as Lord Sales put it, "[the Human Rights Act 1998] gave impetus to the courts' own willingness to articulate presumptive constitutional conditions to be implied into legislation".[64] There is force in the argument that the courts are simply developing the common law in the light of today's constitutional landscape, which undoubtedly includes the protection of fundamental rights.

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[57] M Elliott, "Judicial review reform IV: Culture war? Two visions of the UK constitution", (28 April 2021, *Public Law for Everyone Blog*) <https://publiclawforeveryone.com/2021/04/28/judicial-review-reform-iv-culture-war-two-visions-of-the-uk-constitution/> accessed 19 August 2021.
[58] P Sandro, "Do You Really Mean It? Ouster Clauses, Judicial Review Reform, and the UK Constitutionalism Paradox", (1 June 2021, *UK Constitutional Law Association*) <https://ukconstitutionallaw.org/2021/06/01/paolo-sandro-do-you-really-mean-it-ouster-clauses-judicial-review-reform-and-the-uk-constitutionalism-paradox/> accessed 1 September 2021.
[59] *R (Evans) and another v Her Majesty's Attorney General* [2015] UKSC 21.
[60] *Privacy International* (n 3).
[61] See the report (n 5), pp 131-132.
[62] *Ibid*, p 11, para 22.
[63] The Independent Human Rights Act Review (7 December 2020) <https://www.gov.uk/guidance/independent-human-rights-act-review> accessed 30 August 2021.
[64] P Sales (2019), "The common law: context and method", *Law Quarterly Review*, p 65.

As discussed, IRAL's recommendation in relation to suspended quashing orders has the potential to enhance JR. It may improve the relationship between constitutional actors and offer more robust remedies for Claimants, particularly where the courts are reluctant to issue a quashing order with immediate effect because of the far-reaching impact that it would have. However, as I argued, any presumption against the retrospective effect of quashing should be removed from the Bill and abolishing Cart JRs may undermine access to justice. While it is conceded that these reforms may be a necessary olive branch to prevent far-reaching reforms, it is submitted that access to justice would benefit from greater attention, particularly in light of the prohibitive costs regime in JR proceedings.[65] It is welcome that the panel concluded that the costs regime requires further "careful study" by a body with the relevant expertise.[66]

The report roundly rejected the notion that sweeping reforms to ouster clauses, non-justiciability and codification are necessary: judicial restraint was the tonic to these perceived ills.[67] The Government's response to IRAL in March 2021 showed that it was initially seized to go far further than the report's modest recommendations. This was particularly so in relation to ouster clauses.[68] The Government, however, agreed that it would be "premature" to legislate on "codification, non-justiciability and the grounds of review".[69] Come July 2021, after further consultation, the Government's enthusiasm in respect of establishing a framework for ouster clauses seems to have waned.[70] That is a positive development for both JR and the constitution.

IRAL should be applauded for defending the judiciary and re-establishing its proper role within the constitution. The judiciary needs to be trusted and respected. In the end, perhaps the greatest improvement to JR, which IRAL has helped to confirm, is the realisation that JR is not in need of major improvement at all.

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[65] T Hickman, "Public Law's Disgrace", (9 February 2017, *UK Constitutional Law Association*) <https://ukconstitutionallaw.org/2017/02/09/tom-hickman-public-laws-disgrace/> accessed 5 August 2021.
[66] See the report (n 5), pp 78-79, para 4.14 and p 111, para 4.165.
[67] *Ibid*, p 61, paras 3.19-3.20.
[68] The Government response (n 14), pp 38-42.
[69] *Ibid*, pp 22-23, paras 44-47.
[70] The July response (n 12), p 6, para 11 and p 15, para 46. However, the Lord Chancellor considers that s.11A in the Bill (ousting the High Court's jurisdiction in relation to Cart JRs) is a "prototype". See M Fouzder, "News focus: Judicial Review and Courts Bill - bigger reforms on the horizon?", (26 July 2021, *The Law Society Gazette*) <https://www.lawgazette.co.uk/news-focus/news-focus-judicial-review-and-courts-bill-bigger-reforms-on-the-horizon/5109353.article> accessed 30 August 2021.