The Bar Council

Courts and Tribunals Bill

Briefing for Lords Committee Day 1 – 10 November 2026 (updated)[1]

Summary

The Bar Council welcomed the government's decision to amend the Courts and Tribunals Bill at Commons Report Stage to remove the provision that would have created the 'Crown Court Bench Division'.[2]

However, the Bill still retains a number of provisions to which the Bar Council remains strongly opposed. Those four key areas are:

- **Clauses 1 & 2:** Removal of the right to elect Crown Court trial
- **Clauses 3 & 4 and Schedule 1:** Trial of complex or lengthy cases without a jury
- **Clause 5:** Increases in magistrates' sentencing powers
- **Clause 6 & Schedule 2:** Removal of the automatic right of appeal from magistrates' court

The Bar Council is opposed, both in principle and practically, to those provisions[3]. Primarily, we agree and support the amendments to delete Clauses 1 and 2, 3 and 4 and Schedule 1, Clause 5, Clause 6 and Schedule 2.

Considering mitigating the negative impact of the above Clauses – with interests of justice of defendants and alleged victims of crime[4] and witnesses being in focus, the Bar Council supports a number of amendments to the said Clauses should they remain.

Clause 1 and 2 - Removal of right to elect trial on indictment

We oppose Clauses 1 and 2 which removes a defendant's right to elect Crown Court trial for all cases which are triable either way. It would result in more serious and complex cases being tried in the Magistrates' Court, particularly when combined with the proposed

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[1] Updated following the publication of the Marshalled list for Committee 6 November 2026

[2] Bar Council, "'Justice prevails': Bar Council hails government decision to scrap jury trial plans", 4 October 2026

[3] Cf. Bar Council briefings for MPs and Peers; Bar Council written evidence

- Bar Council Briefing Courts and Tribunals Bill - House of Lords Second Reading
- Bar Council Briefing Courts and Tribunals Bill - House of Commons Report Stage
- Supplementary submissions and observations on behalf of the Bar Council, Criminal Bar Association and Circuit Leaders to the Courts and Tribunals Public Bill Committee
- Bar Council Written Evidence to the Courts and Tribunals Public Bill Committee
- Bar Council written evidence Commons Justice Committee Legislative Scrutiny: Courts and Tribunals Bill

[4] We consider it important to recognise the burden and standard of proof and that until conviction, the allegation is not proven. We also recognise that the complainant may well be a victim at the point of allegation but that the perpetrator is not the defendant. We use the appropriate language from the courts, namely complainant or alleged victim or witness, and mean no discourtesy to those suffering/ have suffered from criminal offences.

increase in magistrates sentencing powers under Clause 5. We therefore recommend Clauses 1 and 2 are removed from the Bill and support the following amendment:

LORD KEEN OF ELIE
VISCOUNT HAILSHAM
BARONESS JONES OF MOULSECOOM

The above-named Lords give notice of their intention to oppose the Question that Clause 1 stand part of the Bill.

Should Clauses 1 and 2 remain, we propose the following amendment which would mitigate the impact by focusing the discretion on allocation decisions[5].

Clause 1, page 3, line 11, add
"(5) in section 19(3)(b) (decision as to allocation), after "and shall have regard to any allocation guidelines (or revised allocation guidelines) issued as definitive guidelines under section 170 of the Criminal Justice Act 2003." insert and in considering representations from the accused for trial on indictment shall weigh in favour of trial on indictment:

a) whether the accused is of good character;
b) whether the defendant has previously been convicted of an imprisonable offence,
c) whether the defendant has previously been sentenced to a sentence of above the seriousness of a fine
d) whether the defendant is a person treated as rehabilitated under section 1 of the Rehabilitation of Offenders Act 1974;
e) whether the defendant, if convicted of the offence or offences for which they are to be tried, would likely suffer significant reputational damage or have their employment or professional qualifications adversely affected;
f) the impact of the case on any other person directly affected;
g) whether other exceptional circumstances pertain to the case or the defendant;
h) the impact of the allocation decision on the needs of other cases; and
i) any other factor relevant to the overall seriousness of the case."

We also propose the following amendment, which would ensure a right to appeal against allocation:

Clause 1, page 3, line 11, add:
"(3A) A defendant may appeal to the Crown Court against the decision of the magistrates' court on allocation."

The Bar Council supports the reclassification of a number of offences to summary only, as we have suggested in our submission to Part 1 of the Independent Review of the Criminal

[5] Explanatory Note: People are impacted by criminal convictions in different ways, irrespective of the gravity of the either way offence in the spectrum of those criminal offences. A person working as a cashier, accused of theft, will be catastrophically affected by a conviction in a way that would not apply to a person with multiple convictions for dishonesty. Currently, allocation only considers length of sentence and unusual legal, procedural or factual complexity.

Courts[6], and during the progress of the Bill.[7] Sir Brian Leveson also made this recommendation in Part 1 of his Review[8], but this was not taken up by government. Therefore we support Lord Thomas of Cwimgiedd's amendment on reclassification:

LORD THOMAS OF CWMGIEDD
LORD BURNETT OF MALDON
LORD PHILLIPS OF WORTH MATRAVERS
LORD BELLAMY

Clause 1, page 3, line 31, at end insert—

"(7A) After section 22A (low-value shoplifting to be a summary offence), insert—

"22B Reclassification of summary offences

(1) Within six months of the day on which the Courts and Tribunals Act 2026 is passed, the Secretary of State must carry out a reclassification of summary offences and in doing so must have regard to—

(a) whether the offence carries a maximum sentence of two years or less, and

(b) the indicative list of offences contained in Annex G to the Independent Review of the Criminal Courts by Lord Leveson, dated 18 June 2025.

(2) The Secretary of State must, by regulations to be made by statutory instrument, specify the offences which are triable as summary only offences following the reclassification exercise in subsection (1).

(3) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.""

Clause 3 and 4 - Trial on indictment of complex or lengthy cases without a jury

We welcomed the removal of what was Clause 3 as introduced in the Commons, but we remain opposed to the introduction of judge-alone trials for fraud and related offences (Clause 3-4 and Schedule 1). Jonathan Fisher KC in his Independent Review of Disclosure and Fraud Offences, Fraud in the Digital Age, concluded that the efficiency case for judge-only trials is unproven. Juries are capable of dealing with serious and complex fraud when cases are properly managed and presented.

The House of Lords Delegated Powers and Regulatory Reform Committee's recent report on the Bill concluded 'that the Government should not have included the provisions in clause 3(5) in the Bill to allow a Secretary of State to use secondary legislation to add new offences to the list of those contained in the Bill whereby a court can order the trial be heard without a jury.'. [9] It added that it is an inappropriate use of the Henry VIII powers:

[6] Bar Council, Response to the Independent Review of the Criminal Courts, 6 February 2026
[7] Bar Council Briefing Courts and Tribunals Bill - House of Lords Second Reading, October 2026
[8] Sir Brian Leveson, Independent Review of the Criminal Courts Part 1, 9 July 2025
[9] Delegated Powers and Regulatory Reform Committee, 16th Report – Courts and Tribunals Bill, 6 November 2026

"In our view, this is an inappropriate delegation of power. It confers on the Secretary of State a significant power to amend, by order, principal aspects of the policy contained in the Bill. We are unconvinced by the Government's justification for the power in the Memorandum.

Accordingly, we recommend that the power in paragraph 20 of Schedule 3ZA to the Criminal Justice Act 2003 (as inserted by clause 3(5) of, and Schedule 1 to, the Bill) be removed from the Bill so far as it enables offences to be added to the list of offences in Part 1 of Schedule 3ZA."[10]

We therefore recommend the removal of Clauses 3 and 4, and Schedule 1 from the Bill, and support the following amendment:

LORD KEEN OF ELIE
LORD WOLFSON OF TREDEGAR
BARONESS JONES OF MOULSECOOMB

The above-named Lords give notice of their intention to oppose the Question that Clause 3 stand part of the Bill.

If it is to be retained, we propose an amendment that judge-alone trials may only applied if both prosecution and defence agree that the likely length of the trial will be at least 5 months:

Clause 3, page 9, line 37, at end insert—
"(d) the estimated length of the trial is agreed by the defence and prosecution to be at least 5 months."

Clause 5 - Increase in maximum custodial sentence in magistrates' court

We oppose the increase of magistrates sentencing powers. Magistrates are members of the public who are volunteers and the magistrates' courts are set up to deliver summary justice. It is a dangerous experiment to increase sentencing powers of magistrates and remove the right to elect from defendants at a time when prisons are at capacity and the backlog of cases is accelerating in the magistrates' courts. The House of Lords Delegated Powers and Regulatory Reform Committee's recent report makes very clear the dangers of this Clause, with the Chair of the Committee, Lord Pitkeathley of Camden Town, commenting:

"The right to a Jury trial is one of the fundamental balances in the relationship between the citizen and the state. It is only right that where changes are proposed to that balance, Parliament as the representative body of the public, has the right to subject them to full scrutiny."

"We understand that the Government wants to relieve pressure on the court system and we do not take a view on the broader merits of the policy but our job is to ensure the House of Lords is aware of

[10] Delegated Powers and Regulatory Reform Committee, 16th Report – Courts and Tribunals Bill, 6 November 2026

instances where possible future changes to law are being left open to Ministerial discretion through inappropriate Henry VIII powers." :[11]

The Chair went on to say that *"Clauses 3(5) and 5 (1) - overstep that mark and should be removed from the Bill."* We agree with this recommendation.[12]

We also support the following tabled amendment, which would ensure that magistrates' sentencing powers could be increased only by affirmative resolution procedure:

BARONESS GOUDIE
Clause 5, page 10, line 38, at end insert— *"(b) in sub-paragraph (3), for "negative" substitute "affirmative""*

If it remains, we propose the following amendment which would limit the maximum custodial sentence in the magistrates' court to 12 months:

Clause 5, page 10, leave out lines 37 and 38

Clause 6 - Appeals from magistrates' courts

We remain opposed to any reforms to appeals from the magistrates' court. The proposed change would remove a vital safeguard against wrongful summary conviction and excessive (or unlawful) sentences imposed by magistrates. The consequence risks adding to the burden on the criminal courts rather than reducing it. We support the removal of Clause 6 from the Bill:

LORD MURRAY OF BLIDWORTH
Lord Murray of Blidworth gives notice of his intention to oppose the Question that Clause 6 stand part of the Bill.

Further amendments

The Bar Council supports the following further amendments:

LORD THOMAS OF CWMGIEDD **LORD BELLAMY** **LORD BURNETT OF MALDON** **LORD PHILLIPS OF WORTH MATRAVERS**
Schedule 1, page 35, line 5, at end insert "provided— *(i) the offence is an offence under the Health and Safety at Work etc*

[11] Delegated Powers and Regulatory Reform Committee press release via Lords Press Office, 6/11/2026
[12] Ibid.

Act 1974 or the Environmental Protection Act 1990, and
(ii) the defendant or defendants to be tried for such an offence are bodies corporate;"

Member's explanatory statement
The amendment narrows the scope of the wide power to add other offences to the list of cases by providing only for the addition of categories of regulatory offence which might be considered suitable for trial by a judge without a jury.

The Bar Council also supports the following further tabled amendments:

BARONESS JONES OF MOULSECOOMB

Leave out Clause 5 and insert the following new Clause—
"Magistrates' courts: removal of power to vary general limit on custodial sentence
In Schedule 23 to the Sentencing Act 2020 (powers to amend the Sentencing Code), omit paragraph 14A (general limit on magistrates' court's power to impose custodial sentence)."

Member's explanatory statement
This amendment would replace Clause 5 with a provision removing the Henry VIII power to change, by regulations, the maximum custodial sentence a magistrates' court may impose for a single either-way offence. The limit in section 224(1A)(b) of the Sentencing Code (currently 12 months) could then be changed only by primary legislation.

BARONESS SATER

After Clause 5, insert the following new Clause—
"Review: increase in maximum custodial sentence in magistrates' courts
(1) Within the period of 12 months beginning with the day on which this Act is passed, and annually thereafter, the Lord Chancellor must publish a review of the impact of the implementation of section 5 (increase in maximum custodial sentence in magistrates' court) on the capacity of magistrates' courts to manage the additional caseload arising from the implementation of that section.
(2) Each subsequent review must assess the extent to which magistrates' courts have succeeded in managing that additional caseload and identify any challenges that have arisen."

Member's explanatory statement
This new Clause seeks to require the Lord Chancellor to review annually the impact of the increase in magistrates' courts' sentencing powers on the capacity of magistrates' courts to manage any additional caseload arising from that increase.

LORD THOMAS OF CWMGIEDD
LORD BELLAMY
LORD BURNETT OF MALDON
LORD PHILLIPS OF WORTH MATRAVERS

After Clause 6, insert the following new Clause—

*"**Readiness for new appeal provisions***

(1) The Secretary of State must arrange for—

(a) training in relation to sections 1 to 6 to be provided to magistrates, district judges and magistrates' clerks,

(b) recording facilities to be provided at each magistrates' court,

(c) transcription services to be made available for each magistrates' court, and

(d) offices to be established to assist the judges of the Crown Court in the administration and hearing of appeals and permission applications.

(2) The Secretary of State must make a written statement to both Houses of Parliament when the arrangements under subsection (1) have been made."

BARONESS GOUDIE
BARONESS CHAKRABARTI
VISCOUNT HAILSHAM

After Clause 20, insert the following new Clause—

"Transportation of persons in custody to court: statement on delays

(1) The Secretary of State must publish and lay before Parliament a monthly statement relating to delays in transporting persons held in custody to courts in England and Wales to court hearings in criminal proceedings.

(2) Statements under subsection (1) above must include—

(a) the number of occasions when prisoner escort and custody transport delivered a defendant late for a court hearing in criminal proceedings;

(b) the name of the prisons and contractors responsible for prisoner escort and custody transport that arrived late;

(c) any judicial or magistrates' comments received by the Secretary of State under subsection (3).

(3) In the event of a court proceeding being delayed for the reason of late arriving prisoner escort and custody transport, the fact of that late arrival will be recorded by the court with any further comments by the relevant judge or magistrate and transmitted to the Secretary of State and Lady Chief Justice as soon as practicable.

(4) The Secretary of State must review the provisions of any relevant prisoner escort and custody services contract if delays exceed 1% of transportations by that provider for three continuous months."

Member's explanatory statement

This new clause provides for a public statement on delays in prisoner transport that cause criminal court delays.

LORD THOMAS OF CWMGIEDD
LORD BELLAMY
LORD BURNETT OF MALDON
LORD PHILLIPS OF WORTH MATRAVERS

Schedule 2, page 36, line 10, at end insert—

"(5) Where a decision to grant permission has been refused without an oral hearing, the defendant may renew the application for permission before a Crown Court judge within 28 days of the refusal."

Member's explanatory statement

This provision follows the current provisions for leave to appeal in the Crown Court and applies it to appeals to the Crown Court.

Bar Council
November 2026