



# Public Law Project

## **Criminal Justice and Courts Bill 2014 Part 4 (Judicial Review) Briefing for Lords following Government Amendments (Ping Pong) December 2014**

This is a short briefing paper by the Public Law Project (PLP) in relation Part 4 of the Criminal Justice and Courts Bill 2014. PLP is a legal NGO concerned with the quality and transparency of public decision making and access to justice. We are a recognised authority in matters of public law.

Judicial review is an important means of securing the accountability and transparency of executive action. It allows individuals to challenge public authority decision making and obtain redress when public bodies have acted unlawfully. It has a vital role in our finely balanced constitution, and the Lords vote on 9 December 2014 could determine the future of this role.

PLP supports the amendments to Part 4 of the Criminal Justice and Courts Bill tabled by the Lords, amendments that were rejected by the Government when the Bill returned to the Commons. PLP is opposed to the Government's amendments in lieu at 107 A-E.

Without the safeguards set out in the Lords amendments, the proposals in the Criminal Justice and Courts Bill will serve to shield the executive from accountability. The proposal at clause 64 of the Bill will allow public bodies to evade responsibility for unlawful conduct where the Court finds it *'highly likely'* that the outcome would not be substantially different if the conduct had not occurred. The financial obstacles, costs threats and limits on PCOs introduced at clauses 66-69 will have a chilling effect on judicial review challenges brought by individuals, interventions by charities and NGOs, and public interest litigation.

The Government's alternative proposal (amendments in lieu at 107 A-E) provides that the Court *must* order costs against interveners in a broad and ill-defined set of circumstances. This cannot be regarded as a concession. The potentially severe impact of a mandatory costs order on an intervener, and the lack of clarity as to when one would be made, will create an even greater deterrent to intervention by third parties, particularly those with limited funds, than the original proposals in the Bill. Both the Government's original proposals in the Bill and the amendments in lieu will result in the Court being deprived of the experience and expertise of third party interveners when determining matters of public interest.

**The provisions of Part 4 of the Criminal Justice and Courts Bill 2014 could have profound implications for our constitutional settlement. PLP urges peers to support the Lords amendments to Part 4 of the Bill, reject the Commons disagreements, and oppose the Government's amendments in lieu ((a)-(e)).**