

# What do we want from the King's Speech?



Iain Mansfield

Foreword by Rt Hon Lord Strathclyde CH PC

Preface by Sir Stephen Laws KCB KC





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# Foreword

By the Rt Hon Lord Strathclyde CH PC

The tricky final session of this Parliament is upon us. Tricky because there is always a discussion on how to frame the legislation. There will be a General Election within twelve months and if the opinion polls offer any guidance, it will be closely fought. Some may say that no one notices what happens in Parliament and therefore the best tactic is to concentrate on campaigning in the constituencies that will decide the next election, and keep MP's and activists busy locally. It is tempting to follow such a plan but now we have seen the Prime Minister at the Party Conference full of vigour and excitement at what change is needed, the government has no choice but to follow his lead. It must offer an ambitious, serious minded, thoughtful and energetic plan which looks less like a last session and more like a first.

This paper by Policy Exchange offers a blueprint of what such a programme might look like. It demonstrates that far from running out of ideas we are brimming with thoughts of how much more needs to be done over the next 5 – 10 years. In a period when politics seems so lacklustre and managerial here is a plan that puts the British people at the heart of the government's thinking. I am sure some will be vigorously opposed, but let's welcome criticism, after all, now is not the time to be faint hearted.

A world increasingly troubled by economic difficulty finds itself drawn into geo-political uncertainty. Trouble in the bond markets should make us all fearful for our economic security. Now, war in Ukraine and Israel, conflict in the Sahel and migration from North Africa, make us wish for more certainty and direction from our political leaders. This final session must demonstrate that we understand the problems that face our people and have the initiatives and commitment to find the right long term solutions.

Policy Exchange's report offers a valuable way forward.

*Lord Strathclyde was formerly Leader of the House of Lords and Chancellor of the Duchy of Lancaster*

## Preface

By Sir Stephen Laws KCB KC

### **The Challenges of Legislating in a Final Session**

Parliament is to be opened on 9 November with the first King's Speech of His Majesty's reign. This will be an important occasion, with the Speech setting out the government's priorities and legislative programme for the final session of this Parliament. The legislative programme will also be the first since the 2009-10 session to have been prepared for a session likely to end with a dissolution on a date that is not fixed and known in advance.

Before the Fixed-term Parliaments Act 2011, this was a frequent feature of planning the legislative programme for a session. The need to factor in the possibility that the session might be curtailed by an early dissolution arose at least once in every Parliament, and often more frequently - because Prime Ministers would usually wish to keep open the option of calling an election before a Parliament ran into its fifth year.

Planning a legislative programme is always an essentially political exercise. It would be a mistake to suggest it ought to be otherwise. This year the political factors that are central to the formulation of the legislative programme will have to include dissolution and uncertainty about its timing.

Law, once made, should be able to be applied in an impartial and a politically neutral way; but making new law and legal change can never be anything but political. The legal changes proposed in a legislative programme are always only ever incidental to what the programme is really about: the implementation of government policy for change. Legislative priorities should be determined by selecting the most urgent of the policy ambitions of the government that need legislative facilitation, rather than by an independent search for ways the law, as such, could be changed for the better. In setting out legislative proposals for the King's Speech, Policy Exchange's new paper rightly adopts this approach.

The political factors that inform the selection of policy priorities for a session that is likely to be curtailed by a dissolution all relate either to the prospect of an imminent general election or to the procedures that will be needed if the session is curtailed. In each case, it is safe to assume that the electorate is paying closer than usual attention to what is happening in Parliament in the run up to the election.

One feature of nearly all curtailed sessions before the passing of the 2011 Act was a process known as the "wash-up". The government and the opposition parties would negotiate, after the election had been announced, about which Bills with Parliamentary stages still to complete should be allowed to pass in an expedited way before the dissolution. It is important



for the legislative programme for a final session to be planned with regard to how different Bills might fare in such a process.

The government will want to be able to demonstrate to the electorate that it has made good use of the session, proposing legislative changes that will contribute to the delivery of good policy, and making clear that it maintains the will and energy to continue to govern the country. It will not want voters to infer that it has needed the last-minute acquiescence of opposition parties to get things done. So, it will want a significant proportion of its Bills to be capable of being enacted *before* the election is called.

The opposition parties, by contrast, will want, in the wash-up, to avoid being seen to thwart policies that may be electorally popular. They may hope to secure some of the credit for government-initiated changes they accept, or to avoid having to implement necessary but politically difficult policies if they win the election. They will also consider carefully the impact of what they do in the final session on the legislative programme for the first session of the new Parliament, when they will hope to be in a position to govern – and thus to set the policy and legislative agenda.

A government also faces particular political challenges when planning for a final session. It is vulnerable to the accusation that policy that was not in its last manifesto requires a new mandate from the electorate before being implemented. In a final session, the House of Lords may be much bolder in opposing and amending government Bills on this basis than earlier in a Parliament, and the prospect of the government resorting to the use of the Parliament Acts will have lost much of its force. In addition, MPs who support the government are likely, as the election approaches, to prefer more time in their constituencies to time at Westminster voting through legislation.

All these factors suggest the need for a legislative programme for a final session that focuses principally on “unfinished business”, on the policies that the party in power promised at the last election but has not yet delivered. Every party in power wants to go into an election with as long a list as possible of fulfilled promises. New ideas that would be easier to implement with a new mandate are better postponed or addressed in draft Bills for pre-legislative scrutiny. The same is true of anything that was promised at the last election and attempted in the current Parliament but with what the government now thinks are less than satisfactory outcomes. All policy reform requires an element of “steering” and trial and error, but the next stage of any such reform is probably best left until after the election.

The types of proposals that are suited for inclusion in the programme for a final session, and are similar to “unfinished business”, include proposals to implement “lessons learned” in the course of a government’s tenure of office. For the 2023-2024 session, the case for such proposals is reinforced by the extent to which, since the last election, the government has had to focus on crisis management. The same is true of policy changes needed to keep “the show on the road”. It is undoubtedly the duty of government,

for as long as it remains in power, (and subject only to electoral “purdah”, which does not begin until an election is called) to take responsibility for, and promptly to address, problems in need of an urgent remedy.

The government will obviously wish to avoid appearing to have given up on the country, or to be preparing for defeat. Partly for that reason, it should avoid creating the impression that it is “trench mining”, implementing policies for the sole purpose of making life difficult for its successors. When the electoral tide is flowing in someone's favour, the electorate is quite likely to punish anyone seen to be exploiting technicalities to hinder the incoming tide.

On the other hand - although drawing the distinction may be difficult in practice - it is perfectly legitimate for legislation passed in a final session to be used to set the basis and agenda for political accountability under any future government. Legislation can legitimately be introduced to ensure that significant political dividing lines cannot be crossed in future without a full debate on primary legislation in Parliament. Legislation facilitating change invariably sets the parameters for the change Parliament is authorising. Requiring resort to Parliament before further change occurs is what legislation does all the time; and it is an essential mechanism for ensuring that politicians on all sides are properly held to account when in power.

Policy Exchange's new paper proposes a range of policies that should be prioritised in the legislative programme for the next session. One way or another, they fall within the types of proposal that I have explained are likely to be practical and justifiable in a final session. Enacting them all before the next election would, of course, be quite ambitious. This is not an unusual problem. In the planning of any legislative programme, there is always more that the government would like and needs to do than Parliamentary time and practical politics allows. It is important to know all the policy options before selecting what to prioritise. This paper makes a valuable contribution to that process.

*Sir Stephen Laws KCB, KC (Hon) is a Senior Fellow of Policy Exchange's Judicial Power Project and a former First Parliamentary Counsel*

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# Introduction

The purpose of any Government is to govern well. That would be important at any time, but with over half of voters saying that ‘nothing works in Britain anymore’ it is now more imperative than ever. With polling suggesting that Labour is likely to win the next election, some have suggested that there is little left for the Conservative Government to do over its putative final months but to manage decline. At Policy Exchange, we believe that nothing could be further from the truth. Regardless of who wins at the next General Election, there are many actions that must be taken over the course of the next year to better prepare the UK to face the future.

Amongst the many tools that a Government has at its disposal is the ability to propose and pass legislation. At Policy Exchange, we have written many reports and recommendations for Government. Many of these recommendations do not require legislation – but some do, and it is these that form the basis for this paper: what we want to see from the King’s Speech.

New legislation can shape the country at the most fundamental level: by altering the laws by which we are governed. If speeches are ripples on a pool, and guidance documents drawn in sand, legislation delivers change that is graven in stone. Of course, no Parliament may bind its successor – and a future Government can repeal or amend anything that is passed. Yet very frequently they do not choose to: either because, once passed, legislation proves popular, or simply because other matters become a higher priority. Effective, use of the Parliamentary timetable to deliver impactful legislation that advances its agenda is therefore one of the most decisive factors in determining a Government’s legacy.

In this report we present a comprehensive legislative programme for the fourth Parliamentary session, orientated around Policy Exchange’s four underlying themes of Prosperity, Place, People and Patriotism. These address the pressing policy issues that must be tackled now – and that can only be addressed by means of primary legislation. Collectively, they comprise an ambitious agenda to strengthen Britain’s economy, improve our public services, strengthen public order and safeguard our constitution.

On **prosperity**, the UK economy remains in dire straits. Debt stands at close to 100% of GDP and productivity and GDP growth have yet to recover from the malaise inflicted by the financial crisis of 2008. The nation groans under an every-growing burden of regulation, while inflation and the energy price shock continue to take a toll on household budgets. The Prime Minister has placed the economy at the heart of his five missions,

and the Leader of the Opposition has been clear that economic growth will be key to fulfilling Labour's ambitions.

Our **Energy Investment and Affordability Bill** would directly target one of the largest factors impacting citizens, high energy prices, by reforming the regulatory and planning regime for electricity networks to mobilise investment, while ensuring that the cost of green energy and international price shocks are spread more fairly across consumers. Simultaneously, our **Regulatory Reform Bill** would curb the ability of over-zealous regulators to impose burdens on businesses, roll back the tide of red tape and create mechanisms for greater Parliamentary scrutiny of new regulation, promoting growth and innovation. The **Future Clinical Trials Bill** would help to boost Britain's competitiveness as a leading international site to develop new medicines and medical devices, strengthening and deepening investment in one of our world-leading sectors. And the **Higher Education and Skills Bill** would restore government control over the number of university places funded each year, with the money reinvested into a new Skills Tax Credit to support employers in training the skills we need to improve our productivity.

On **place**, the shortage of housing continues to be a major drag on growth, diverting capital, damaging consumer spending pricing young people out of the housing market. Rates of home-ownership amongst those aged 25 – 35 have fallen from 67% to 41% since 1991. Planning constraints similarly hold back energy infrastructure, with new nuclear, wind and other held back by extensive planning, consultation and legal requirements. Furthermore, as our Building Beautiful programme has consistently argued, people do not simply want more affordable homes, they want better neighbourhoods – ones built around beauty and good design, and where they do not have to content with crime and antisocial behaviour.

Our **Housing and Planning Bill** would expedite the planning process for housing; to imbed beauty and high design standards into new development; and increase localism and democracy by actively encouraging and facilitating greater public and community participation in the planning process. It would also enact a new fast-tracked method for energy infrastructure which provides a share of the financial benefits to local residents, with community consent. Simultaneously, the **Leaseholder Enfranchisement Bill** would ban the future sale of residential property on a leasehold basis and provide for the compulsory enfranchisement of existing leaseholders. To tackle the scourge of anti-social behaviour, the **Anti-Social Behaviour and Vagrancy Bill** would put communities at the heart of the criminal justice system by giving the police the powers to deal effectively with those who cause misery to the law-abiding public. It will create a new criminal offence of 'aggravated begging', strengthen police powers to tackle rough sleeping and establish a new regulatory framework for firms which hire e-bikes and e-scooters. Meanwhile the **Sentencing Reform Bill** would introduce new mandatory minimum prison terms for prolific offenders, directly addressing the scourge of shoplifting burglary

and vandalism and is increasingly occurring with impunity. Just 9% of criminals account for over half of convictions, and this Bill would ensure that these prolific offenders are kept behind bars, increasing deterrence and making a direct impact to cutting crime.

On **people**, concern continues to rise at the state of the NHS, with waiting lists at record levels and public satisfaction low. While there are many causes to this, slow adoption of technology and inefficient use of computer technology – with twenty NHS trusts still using paper records is a major one, reducing inefficiencies and increasing errors. More widely in our public services, well-meant equality, diversity and inclusion initiatives have metastasised to promote politically toxic and divisive ideologies, leading to a fall of confidence in the police force, the erasure of women in the NHS and widespread inefficiencies and waste throughout the public sector. Of particular concern is the situation in schools, where too many schools are promoted contested ideas on gender and socially transitioning children without their parents' knowledge.

Our **Digital Health and Care Bill** would provide greater clarity and coherence to the governing and regulatory infrastructure for digital healthcare in England. Provisions in the Bill include clear direction in respect of the use of patient data and strengthened accountability mechanisms to tackle under-performance in 'digital transformation' across the health and care sector. It would also introduce provisions in respect of telemedicine / remote consultation and clarify the regulation and procurement of digital healthcare products. The **Equality Act (Reform) Bill** would consist of a single substantive clause, deleting both the Public Sector Equality Duty and the (unenacted) Socio-Economic Duty, thereby removing the principal legal driver for the public sector to engage in unnecessary equality, diversity and inclusion initiatives while leaving individual protections against discrimination unchanged. Meanwhile, the **Parental Right to Know Bill**, would establish an absolute right for parents to know what is being taught to their children in school and who is teaching it, ensure they are made aware if their child exhibits gender distress and allow them to seek an injunction to prevent schools from teaching inappropriate materials.

On **Patriotism**, Parliamentary Sovereignty is at the heart of our historic freedoms, yet in recent years trust in our political system has fallen. This has been marked by increasing concern over the perceived ability of judges or other public bodies to frustrate the manifesto commitments of elected politicians; increasing tensions between ministers and the civil service; broken promises over a referendum on the 'EU Constitution' or Lisbon Treaty; and threats to gerrymander the electoral system by expanding the franchise to EU citizens or 16 year olds, or by changing the method of voting – despite the last proposal to do so being defeated by 68:32 in a referendum in 2011.

The **Parliamentary Franchise (Referendum Lock) Bill** would protect the parliamentary franchise, the electoral system, and the structure of Parliament by preventing them from being changed unless the support of the British people had been formally obtained in a referendum. While

the Bill would not (and could not) limit Parliament's lawful authority. It would be a political commitment, which would form a constitutional and political constraint on future Parliaments not to legislate about these matters without first seeking popular support. Simultaneously, the **Judicial Review Reform Bill** would restore long-standing principled limits on the law of judicial review and thus to protect the rule of law and the political constitution. Its provisions would include measures to restore the primacy of Parliamentary intent and sovereignty, require reasons for permitting interveners, and make clear it is for the claimant in a judicial review to prove unlawfulness, rather than for the public body to prove lawfulness. Collectively, the provisions will help minimise the risk, which judges themselves acknowledge, that judicial review may become politics by another means.

These Bills represent an ambitious and coherent fourth session legislative programme. They are not exhaustive – the provisions of the Bills proposed, could be introduced as part of other, broader Bills. Furthermore, if not brought forward by Government, several of the smaller Bills – in particular the **Public Order Bill**, the **Equality Act (Reform) Bill**, the **Parental Right to Know Bill** and the **Parliamentary Franchise (Referendum Lock) Bill** are short enough to be introduced as Private Members' Bills – a route, which has, historically, resulted in important changes being enacted, from the abolition of the death penalty to, more prosaically but nevertheless of widespread interest, ensuring that the cost of school uniforms is affordable.

The Government must not allow inclement polling figures to dissuade it from a strong and effective legislative programme. Even if the polls prove correct, many governments have used their final session to pass far-reaching and impactful legislation, including the Equality Act (2010), the Sex Offenders Act (1997), the Banking Act (1979), and the Dangerous Drugs Act (1964). Equally, an ambitious and impactful legislative programme will be fundamental to turning around its political fortunes. Either way, it is imperative to spend the next session of Parliament doing what is right, necessary and important for the country to thrive.

The package of Bills proposed in this report would rejuvenate our economy, improve our public services, revitalise our neighbourhoods and safeguard our constitution. Collectively, they would make a compelling agenda for the fourth session of Parliament.

# Anti-Social Behaviour and Vagrancy bill

## The purpose of the Bill is to:

Put communities at the heart of the Criminal Justice System and make our streets and communities safer by giving the police the powers to deal effectively with those who cause misery to the law-abiding public through anti-social behaviour and crime.

## The bill is needed because:

The most recent Crime Survey of England and Wales shows that 30% of people believe that Anti-Social Behaviour in their local area are increasing, while only 15% of people are aware of the police actions to combat ASB.<sup>1</sup>

The most recent data suggests that 3,069 people were ‘rough sleeping’ in England on a single night in Autumn 2022 – an increase of 26% on the previous year.<sup>2</sup>

The negative impact of begging and ‘rough sleeping’ on society, communities and individuals is considerable. Men who are homeless have a mean average age of death of 44 years compared to 79 years for the population as a whole.<sup>3</sup> Those sleeping rough are 17 times more likely to be a victim of violent crime compared to the general public.<sup>4</sup> An ‘entrenched’ rough sleeper has been estimated to ‘cost’ the public an average of £16,000 per year through demands placed on public services compared to £4,600 for the average adult.<sup>5</sup>

This Bill would provide the opportunity to establish a modern and effective approach to dealing with the problems of begging and rough sleeping, and the anti-social behaviour which can be linked with both. This Bill would also deal with those who take advantage of and profit from the most vulnerable in our society and the public’s compassion for the most vulnerable.

The Government has previously committed to replacing the Vagrancy Act 1824 (through section 81 of the Police, Crime, Sentencing and Courts Act 2022) with an alternative which ensures that legislation is appropriate for a modern and compassionate society while simultaneously protecting the public and communities.

The Bill would streamline the powers which exist to enable the police to tackle anti-social behaviour and crime in communities as well as dealing with specific challenges around pedi-cabs, e-bikes and e-scooters which have arisen in recent years.

1. Office for National Statistics, Crime Survey of England and Wales: Annual Supplementary Tables, March 2023, [link](#)
2. Department for Levelling Up, Housing & Communities, Rough sleeping snapshot in England: autumn 2022, [link](#)
3. Public Health England (2020), Health matters; rough sleeping, <https://www.gov.uk/government/publications/health-matters-rough-sleeping/health-matters-rough-sleeping>
4. B. Sanders & F. Albanese (2016), “It’s no life at all”: Rough sleepers’ experience of violence and abuse on the streets of England and Wales, Crisis, [https://www.crisis.org.uk/media/20502/crisis\\_its\\_no\\_life\\_at\\_all2016.pdf](https://www.crisis.org.uk/media/20502/crisis_its_no_life_at_all2016.pdf)
5. City of Westminster, Rough Sleeping Strategy 2017 – 2022, p5, <https://www.westminster.gov.uk/media/document/rough-sleeping-strategy-2017-2022>

The main elements of the bill are:

- The Bill would replace the Vagrancy Act 1824 alongside other relevant legislation outlined as part of section 81 of the Police, Crime, Sentencing and Courts Act 2022.
- 'Begging' would be a criminal offence. There would also be an 'aggravated begging' offence where the circumstances are particularly egregious. These circumstances would include begging:
  - in specific locations, such as on the public transport network or near to cash machines and schools,
  - in specific circumstances, such as when not homeless or destitute,
  - in a specific way, such as behaving in an aggressive or intimidatory manner such as physically approaching members of the public.
- There would be a specific offence of organising or forcing others to beg.
- 'Rough sleeping' would continue to be a criminal offence with an aggravated offence of being part of a 'tented encampment' where there are multiple individuals 'rough sleeping' in the same location.
- Police officers would have specific powers to support those who are found to be rough sleeping or begging. There would also be a requirement for police officers to refer those found to be 'rough sleeping' to the relevant local authority to ensure that those who are 'rough sleeping' receive the necessary support to be able to move into appropriate accommodation.
- The Bill would streamline the powers of the police to deal with those who cause anti-social behaviour, particularly by reducing the authority levels to use the dispersal powers under Section 35 of the Anti-Social Behaviour, Crime and Policing Act 2014 from an Inspector to any Constable.
- This Bill would require 'pedicab' operators to be formally licensed with their local authority, to meet certain safety standards and to abide by a locally enforced charging structures.
- The Bill would establish a regulatory framework for firms which hire e-bikes and e-scooters which requires firms to abide by certain conditions including a fine mechanism for inconsiderate hirers and obligating firms to clear away inconsiderately and poorly parked e-bikes and e-scooters within a short timeframe.

### **Territorial extent and application**

This Bill would extend and apply to England and Wales



## Impact of the Bill

Although some of those who routinely beg are destitute, this is not universally the case. Evidence would suggest that many of those involved in begging are doing so to fund a drug or alcohol addiction, while intelligence held by police forces indicates that some of those involved in begging are doing so as part of groups which ultimately fund organised criminality. This Bill would give the police the power to deal with those who are begging, and particularly to deal with those who do so in more aggravated circumstances. In all cases the presumption would be those who are convicted of begging or aggravated begging would not be subject to a fine – but alternatives should be applied such as a Community Order with an associated Drug or Alcohol Treatment Order if relevant. There would be a presumption that those who are organising ‘begging gangs’ would receive a custodial sentence.

There can be little doubt of the negative impact of rough sleeping on both those who are ‘sleeping out’ and on wider society. This Bill would ensure that the police and local authorities work together to support those who do not wish to be sleeping rough while dealing with those who refuse appropriate support. This Bill would ensure that our local communities do not suffer from the negative impacts of ‘tented encampments’ now seen in other jurisdictions, such as San Francisco.

The Bill would also deal with other discrete elements of Anti-Social Behaviour, including pedi-cabs which have become an increasing concern due to their lack of safety requirements and the potential for operators to charge passengers extortionate sums for very short distances.

The Bill would also make it easier for police officers to disperse those who are committing Anti-Social Behaviour which is negatively impacting the life of the local community, if there are members of the local community likely to be caused harassment, alarm or distress, or preventing the commission of criminal offences.

The Bill would also deal with the increasing anti-social challenges of poorly run e-scooter and e-bike schemes as identified in the Policy Exchange report, [A Culture of Impunity](#).

## Further evidence and background

For further Policy Exchange reports on these subjects see:

- [A Culture of Impunity](#)
- [‘Policing Can Win’](#)
- [What do we want from the next Prime Minister: Crime & Policing?](#)

## Digital Health and care bill

### The purpose of the Bill is to:

Provide greater clarity and coherence to the governance and regulatory infrastructure supporting digital healthcare. Provisions in the Bill would include clear direction in respect of patient data usage; definition of the principle of 'national accreditation' so solutions can be more readily adopted once regulatory approval has been met; and new accountability mechanisms introduced to tackle under-performance in meeting 'digital transformation' targets. In doing so, the Bill would provide boost confidence for citizens concerning the use of data for research and planning purposes; support the adoption of productivity-enhancing technologies and tools to support patient care; and boost the attractiveness of the UK market for digital health and care providers.

### The bill is needed because:

It is imperative the Government boosts trust and transparency with respect to the use of healthcare data to maximise the opportunities for clinical research; to ensure health and care professionals have all the information they need to provide the best possible care; and to ensure local and national managers are informed by improved sources of information to improve services.<sup>6</sup>

The opportunities afforded by digital healthcare have been highlighted by a number of recent Governments, yet despite the advantages of a world-leading life sciences sector, highly regarded regulators and the attractive scale of the NHS, the UK lags behind in 'digital transformation'.<sup>7</sup> Last year it was estimated 20% of hospitals remained 'paper-based'. Progress in the care sector lacks further behind, with only half of providers routinely using digital records.<sup>8</sup> Digital healthcare companies meanwhile reflect the challenges of an unclear 'route to market' and in achieving 'scale' across the NHS. Much work meanwhile – beyond the scope of legislation – remains to be done to ensure healthcare professionals are prepared to make the most of digital healthcare. A recent review by the Health and Social Care Committee concludes 'digital transformation' of the NHS "has been slow and uneven".<sup>9</sup> There is therefore:

1. **A need to clarify how patient data can be used to boost trust and improve transparency.** Legislation should be introduced so patients are deemed the owner of their own healthcare data and are afforded the possibility to 'open' or 'close' sections of their

6. <https://www.gov.uk/government/publications/data-saves-lives-reshaping-health-and-social-care-with-data/data-saves-lives-reshaping-health-and-social-care-with-data#supporting-local-and-national-decision-makers-with-data>

7. Digital healthcare refers to a range of services encompassing 'telemedicine' (such as video consultations), mobile health (such as apps), wearable devices, programmes and software used to support healthcare delivery (analytics driven by big data) and personalised medicine (such as genomics). These products have uses which range from acting as informational aides to being used as medical devices in their own right. They include "technologies intended for use as a medical product, in a medical product, as companion diagnostics, or as an adjunct to other medical products (devices, drugs, and biologics)" – see <https://www.fda.gov/medical-devices/digital-health-center-excellence/what-digital-health>. A helpful overview of the possibilities and pitfalls posed by digital healthcare is <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9499383/>

8. [https://www.theregister.com/2022/01/07/nhs\\_trusts\\_parliament/](https://www.theregister.com/2022/01/07/nhs_trusts_parliament/). On care providers, see: <https://committees.parliament.uk/writenevidence/109113/pdf/>

9. <https://committees.parliament.uk/publications/40637/documents/198145/default/>. See also the findings of an expert independent review panel, commissioned by the committee who described progress on 'digital transformation' to be "inadequate" in February 2023: <https://committees.parliament.uk/publications/33979/documents/186799/default/>

digital record, aligning with best practice internationally. The legal architecture for the use of that data should also be clarified in legislation. In England, the obligations of a ‘data controller’ are covered by a range of statutes including the Health and Social Care Act (2012), Data Protection Act (2018), and common law.<sup>10</sup> The Health and Social Care Act imposes a duty on health and care providers to conform to give “due regard” to the information governance standards set by NHS England or the Secretary of State. Legislation should strengthen this obligation.

**2. A need to clarify institutional responsibility relating to the governance and regulation of digital healthcare across the UK.**

Some countries have already introduced bespoke legislation in respect of digital healthcare, but across the UK, digital healthcare is governed by “a patchwork of legal regimes”, with an even wider array of bodies responsible for elements of its governance.<sup>11</sup> As the recent Goldacre Review highlighted, the collection, storage and use of data for health and care is governed by “a multi-layered set of overlapping, duplicative and sometimes contradictory policies, regulations, and ethical guidelines”, with “this layering... [making] it almost impossible...to see the wood for the trees”.<sup>12</sup> A similar conclusion could be made in respect of regulation and procurement.

**3. A need to ensure legislation keeps up with demand for digital healthcare services, such as remote consultations and online pharmacy.**

As more people become accustomed to accessing services digitally, the law needs to be sufficiently able to support the growing number of citizens who will seek out health and care services online. This is of particular significance with a growing number of providers offering services across international jurisdictions.

### The main elements of the bill are:

Currently, digital healthcare is governed by a range of Acts, including provisions of the Health Service (Control of Patient Information) Regulations (2002), NHS Act (2006), Data Protection Act (2018) and Health and Care Act (2022). A longer list of statutory bodies have a role to play in its governance and regulation, including NHS England, the National Institute for Health and Care Excellence (NICE), the Medicines and Healthcare products Regulatory Agency (MHRA), Care Quality Commission (CQC) and the Information Commissioner’s Office (ICO).

### Provisions Relating to the Authorisation and Procurement of Digital Healthcare Products

- The Bill should introduce provisions for ‘National Accreditation’, applicable for solutions which meet regulatory standards set –

10. <https://committees.parliament.uk/written-evidence/120353/pdf/> (see p. 1)

11. <https://www.lw.com/en/people/admin/upload/SiteAttachments/2023-Digital-Health-United-Kingdom.pdf>

12. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1067053/goldacre-review-using-health-data-for-research-and-analysis.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1067053/goldacre-review-using-health-data-for-research-and-analysis.pdf) (p. 148)

for instance – by the new ‘AI and Digital Regulations Service’, coordinated between the National Institute for Health and Care Excellence (NICE), the Care Quality Commission (CQC), the Health Research Authority (HRA) and the Medicines and Healthcare products Regulatory Agency (MHRA) and which have already been trialled or piloted in the NHS or care settings.<sup>13</sup> This approach was recommended by Policy Exchange in our report, *At Your Service*, with the principle reflected in recent Health and Social Care Committee guidance in respect of an ‘accreditation scheme for third-party healthcare apps’.<sup>14</sup>

### Provisions in Respect of Information Governance and Data Usage

- The Bill should clarify how patient data in health and care contexts may be used. As encouraged in the Goldacre Review, legislation should define the terms: “anonymous”, “identifiable”, “linked” and “pseudonymised but re-identifiable”.<sup>15</sup>
- Under law, the patient should be the owner of their health data. In alignment with best practice internationally, they should have the right to see which healthcare professionals have sought access their information and should be able to ‘open’ or ‘close’ sections of their record accordingly.
- NHS organisations (including GP practices) should enter into ‘joint controllership’ arrangements with either NHS England or the integrated care board in their locality.<sup>16</sup> This is a policy recommended by Policy Exchange in our reports *At Your Service* and *A Fresh Shot* and seeks to enable improved data sharing activities between NHS organisations whilst providing safeguards to organisations with fewer resources to manage complex data sharing requests or to pool risk in the instance of breaches.<sup>17</sup>
- Following the precedent set by the Health and Care Act (2022) which introduced duties for the NHS to tackle health inequalities by using demographic data (such as ethnicity and index of multiple deprivation), NHS organisations should have a duty to make population-level data available for the purposes of clinical research, provided adequate safeguards are in place to ensure anonymity.
- The current approach to the use of posthumous records is “confusing and inconsistent”.<sup>18</sup> The Bill should standardise mechanisms by which those responsible for executing a will can access records. Provisions should be made for individuals to define the length of time after death that health records can be accessed, and which elements may be accessed. A right for health records to be destroyed upon death should also be introduced.

### Provisions Relating to Good Clinical Practice and Digital Healthcare

13. <https://www.nice.org.uk/news/article/one-stop-shop-for-ai-and-digital-regulations-for-health-and-social-care-launched>

14. <https://policyexchange.org.uk/publication/at-your-service/>; <https://committees.parliament.uk/publications/40637/documents/198145/default/> (p. 37)

15. <https://www.gov.uk/government/publications/better-broader-safer-using-health-data-for-research-and-analysis>

16. <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/controllers-and-processors/controllers-and-processors/what-does-it-mean-if-you-are-joint-controllers/>

17. <https://policyexchange.org.uk/publication/a-fresh-shot/>; <https://policyexchange.org.uk/publication/at-your-service/>

18. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1067053/goldacre-review-using-health-data-for-research-and-analysis.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1067053/goldacre-review-using-health-data-for-research-and-analysis.pdf) (p. 173). For the current approach, see: <https://ico.org.uk/media/for-organisations/documents/1202/information-about-the-deceased-foi-eir.pdf>

- The Bill should define the professionals and procedures which can be carried out via telehealth (health care services provided using audio and video technology).<sup>19</sup> The principle of the ‘point of care’ should be introduced – meaning that the consultation is – legally – defined as occurring where the patient or user of services is located to provide safeguards as opportunities for cross-jurisdictional care grow.
- Pharmacists should be added to the range of professionals able to conduct remote consultations. Additional guidance should be produced to define their scope of practice and activities which can be performed remotely.<sup>20</sup>

### Provisions Relating to Enforcement

- Modelled on provisions of The NHS Act (2006) which provides NHS England the power to direct struggling trusts when they are failing to discharge their functions, the Secretary of State should be given discretionary powers enabling the abrogation of routine procurement or commissioning rules to ensure targets are met for digital maturity. This should include the ability to appoint commissioners to observe and to effect change.
- A sanctions regime should be introduced for organisations which fail to meet core targets for digital maturity as defined by the Government, including manifesto commitments and by the Secretary of State in their Mandate to NHS England.

### Territorial extent and application

The Bill would have UK-wide applicability in respect of information governance and data sharing. As health and care are devolved matters, elements of the Bill, such as new duties on organisations working with NHS England would have England-only applicability.

### Impact of the Bill

*There is a rich and ever-growing literature of the possibilities (and challenges) which digital healthcare presents. The below represents only a snapshot of the operational and clinical benefits which effective implementation of the wide range of digital healthcare tools/solutions can provide.*

### **Enables smoother and swifter adoption of digital solutions which deliver efficiencies and enable savings for health and care organisations.**

- A recent analysis by the Organisation for the Review of Care and Health Apps suggests improved adoption of digital health and care solutions can reduce pressure on the NHS by preventing annual attendances in general practice by 5.9 million and A&E by 600k. They suggest avoided attendances would save the NHS around

19. For an overview, see <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7577680/>

20. <https://www.twobirds.com/-/media/pdfs/news/articles/2022/itrltbbv6.pdf> (p. 37)

£553m per year.<sup>21</sup>

- Digitising administrative tasks across London North West University Healthcare NHS Trust re-allocated 30,000 appointments and cut its 'did not attend' (DNA) rate by more than a quarter (27%) after introducing a digital patient portal. By avoiding missed appointments, the Trust made potential savings of £418,000 a month, equating to over £5m a year. Moreover, 61% of patients have since opted for digital letters, saving the trust two thirds of its postal budget.<sup>22</sup> At Cambridge University Hospitals NHS Foundation Trust electronic prescribing has prevented 850 yearly adverse reactions via allergy-related prescribing alerts, saving 2,450 bed days and £0.98M a year.<sup>23</sup>

**Enables greater opportunities for research.** Boosting clinical research activity leads to improved access to treatments and better clinical outcomes. There is considerable evidence which shows that NHS organisations which carry out research provide better health outcomes for their patients.<sup>24</sup> Enabling safe and secure access to relevant patient data for these purposes is an important feature in our ability to develop life-changing treatments and diagnostic tools. It also enables more effective planning of services.

**Improves ability to share information across NHS settings, benefitting patient care and safety.**

- Effective data sharing – such as between primary and secondary care – is associated with improved care quality and care coordination.<sup>25</sup> This was a subject Policy Exchange examined in our recently-published report, *Medical Evolution*.<sup>26</sup>
- Since Frimley Care introduced its 'Connected Care' programme, hospital admissions have been reduced by 40% for 'high-need patients' and 34% for care home residents.<sup>27</sup> A recently-published independent study linking care home data to NHS records has proven that remote monitoring of care home residents can significantly reduce the number of unplanned hospital admissions, consequently saving costs for the NHS.<sup>28</sup>
- Countries which have introduced effective electronic patient record (EPR) systems have seen reduced healthcare costs.<sup>29</sup> Clinical outcomes are also improved as there are less errors via information transfer.<sup>30</sup> This can also have knock-on consequences for staff satisfaction with one study finding 90% of junior staff members preferred to use an EPR systems over paper records.<sup>31</sup>

**High-quality digital health tools can enhance health outcomes and enable improved models of care.**

- In diagnostics, an AI-driven tool which analyses skin lesions can assist in the discovery of cancers at an early stage. A review of over

21. <https://committees.parliament.uk/writtenevidence/117408/html/>

22. [https://buildingbetterhealthcare.com/news/article\\_page/Digital-first\\_patient\\_communications\\_saves\\_over\\_5m\\_a\\_year/168789](https://buildingbetterhealthcare.com/news/article_page/Digital-first_patient_communications_saves_over_5m_a_year/168789)

23. <https://committees.parliament.uk/writtenevidence/109029/pdf/> (cited p.4)

24. A good overview is: <https://www.rcplondon.ac.uk/projects/outputs/benefiting-research-effect> See also: <https://gut.bmj.com/content/66/1/89>

25. <https://www.nature.com/articles/s41746-023-00891-y>

26. <https://policyexchange.org.uk/publication/medical-evolution/>

27. <https://www.digitalhealth.net/2023/08/frimley-health-and-care-ics-rolls-out-proactive-remote-monitoring/>

28. <https://www.digitalhealth.net/2023/09/remote-monitoring-in-care-homes-reduces-hospital-admissions-finds-study/>

29. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9555331/>

30. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3270933/>

31. <https://informatics.bmj.com/content/25/2/92>

10,000 lesions seen in the last year identified 98.7% of cancers.<sup>32</sup> Substantial progress is already being made in other key areas set out in the Government’s Major Conditions Strategy, such as in dementia diagnosis, where AI methods in neuroimaging can outperform traditional approaches at diagnostic classification.<sup>33</sup>

- The inclusion of genomic data into a patient record enables improved medicines optimisation: roughly 20% of prescriptions should be amended (via dose changing or switching) based on genomic information.<sup>34</sup>

## Further evidence and background

**‘Digital transformation’ has been a priority for recent Governments, including devolved administrations, who have developed digital health and care strategies in recent years.**

- These include a *Digital and data strategy for health and social care in Wales*, 27 July 2023 [[link](#)] and a *Digital health and care strategy*, Scottish Government, 27 October 2021 [[link](#)]. In England, A plan for digital health and social care was published in June 2022, following a speech delivered by the then health secretary, Rt Hon Sajid Javid MP at Policy Exchange.<sup>35</sup>
- An independent review published in 2022 by Baroness Cavendish emphasises the possibilities that improved digitisation of records and processes would have for the care sector. [[link](#)]
- In *Data saves lives: reshaping health and social care with data (draft) policy paper*, the Government committed to working ‘with care providers to accelerate the adoption of digital social care records’ through NHS England’s ‘Transformation Directorate’ [[link](#)]

**Despite this, recent reviews of the state of ‘digital transformation’ across the NHS have highlighted an array of challenges in meeting Government targets.**

- On 30 June 2023, the Health and Care Select Committee published its report, *Digital transformation in the NHS* [[link](#)]
- This followed a National Audit Office report from May 2020 which described progress on ‘digital transformation’ in the NHS as “poor” [[link](#)]

**A number of countries have already introduced bespoke legislation in respect of digital healthcare.**

- The US 21st Century Cures Act (2016) includes provisions concerning the interoperability of electronic health records under a ‘Trusted Exchange Framework and Common Agreement (TEFCA)’, developed to boost interoperability between Health

32. <https://www.digitalhealth.net/2023/07/skin-analytics-awarded-funding-to-scale-ai-tech-that-detects-skin-cancer/>

33. <https://ore.exeter.ac.uk/repository/bitstream/handle/10871/132385/s40708-022-00183-3.pdf?sequence=3&isAllowed=y>

34. <https://bpspubs.onlinelibrary.wiley.com/doi/10.1111/bcp.14704>

35. <https://www.gov.uk/government/speeches/health-and-social-care-secretary-speech-to-policy-exchange>

Information Networks at a national level.<sup>36</sup>

- Germany passed an E-Health Law (2015) which introduced mandatory targets for EPR systems in hospitals and sanctions for failing to meet targets.<sup>37</sup> Further legislation is likely to be forthcoming. The Federal Government is planning to introduce a Health Data Use Act (Gesundheitsdatennutzungsgesetz; “GDNG”) to establish a central data access and coordination point to enable access to research data.<sup>38</sup>
- Estonia were one of the first countries to implement a National EPR system. In 2002, all pharmacies were obliged by law to transmit prescription information for reimbursement to the Estonian Health Insurance Fund electronically. In 2008, the Estonian nationwide Health Information System (EHIS) was established, incorporating the health data of every Estonian resident from birth to death and making medical data, prescriptions and medical images accessible online.<sup>39</sup> As a result, more than 99% of the data generated by hospitals and doctors in Estonia is now digitised. Citizens can access their own medical records via online portal and choose who gets to look at those records with the ability to ‘lock’ and ‘unlock’ sections of the record, boosting trust.

### **Digital healthcare has been a prominent feature in the work of the Health and Social Care Unit at Policy Exchange for many years.**

- In a speech at Policy Exchange in 2013, the then Health Secretary, the Rt Hon Jeremy Hunt MP set out the Coalition Government’s plans to make the NHS ‘paperless’ by 2018 [[link](#)].
- A speech at Policy Exchange by Matt Hancock MP, delivered whilst health secretary in December 2019 called for “digital technology to ease the burden on staff, to give people the tools and information to manage their own healthcare, and make sure that patient data can be safely accessed wherever and whenever it’s needed across the system” [[link](#)].
- In June 2022, the then Health Secretary, the Rt Hon Sajid Javid MP delivered a keynote address on the Government’s plan for digital health and social care at Policy Exchange [[link](#)]. A month later, Policy Exchange hosted Dr Tim Ferris, NHS England’s Director of Transformation for a discussion on how digital transformation could be ‘hard wired’ into the new NHS hospitals estate [[link](#)].

### **A strong feature of Policy Exchange’s work over the past fifteen years has been our encouragement of more transparent data sharing (and analysis) by public services as a means of improving performance.**

- In a health context, this began with our 2007 report, *Measure for measure: Using outcome measures to raise standards in the NHS* [[link](#)] and has continued to the present day, most recently relating to the

36. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6708407/>

37. <https://www.taylorwessing.com/en/insights-and-events/insights/2016/03/e-health-law-in-germany>

38. <https://technologyquotient.freshfields.com/post/102ilw7/new-regulation-on-access-and-use-of-research-and-health-data-in-germany#:~:text=The%20German%20federal%20government%20plans,research%20data%20from%20various%20sources>. Germany has also introduced a Digital Healthcare Act (Digitale-Versorgung Gesetz or DiGa, 2019) to enable reimbursement of digital healthcare providers through statutory health insurance. A good overview of its contents is: <https://www.taylorwessing.com/-/media/taylor-wessing/files/germany/2020/05/faqs-on-the-digital-healthcare-act-dvg.pdf> Sara Gerke, Ariel D. Stern & Timo Minssen, ‘Germany’s digital health reforms in the COVID-19 era: lessons and opportunities for other countries’, *npj Digital Medicine*, Vol. 3, No. 94 (2020) [[link](#)]

39. <https://www.hsj.co.uk/technology-and-innovation/meet-the-country-thats-ripping-up-the-rules-on-records/7013690.article>



management of vaccination programmes [\[link\]](#) and in tackling waiting lists [\[link\]](#).

- Policy Exchange's Technology Unit has been supportive of growing the use of mobile health in the NHS, with a piece in 2014 stating that an 'NHS Kitemark' would be a positive development [\[link\]](#).

**More recently, the Health and Care Unit has made a series of interventions which call for an expanded role for digital healthcare:**

- In March 2022, we published *At Your Service: A proposal to reform general practice and enable digital healthcare at scale* [\[link\]](#), which made the case for the development of a new front door to NHS services called 'NHS Gateway' to put a greater range of 'first contact services at the hands of the service user, from digital diagnostics to options to consult with a greater range of health professionals remotely. It was in this report that we first called for the Government to introduce a Digital Health and Care Act.
- Our August 2022 report, *What do we want from the next Prime Minister? A series of policy ideas for new leadership: Health and Social Care* called for an expansion in the use of virtual wards and to analytical capabilities across NHS management [\[link\]](#).
- Our June 2023 report, *Medical Evolution: Measures to improve the interface between primary and secondary care* [\[link\]](#) calls for an expansion in the use of clinical decision support tools to support referral activity and a range of measures to enable more effective tools to be introduced to ensure clinicians can communicate and share information more effectively across NHS organisations.

## Equality Act (Reform) Bill

### The purpose of the Bill is to:

This Bill will address the growth of increasingly controversial and costly activity related to equality, diversity and inclusion in the public sector by repealing the Public Sector Equality Duty (PSED). It will also repeal the unenacted Public Sector Duty Regarding Socio-Economic Inequalities.

### The bill is needed because:

Since its introduction 11 years ago, the Public Sector Equality Duty has caused the embedding and expansion of public sector equality, diversity and inclusion initiatives. The scope of the PSED has been interpreted increasingly widely, with well-meant equality, diversity and inclusion initiatives metastasising to promote politically toxic and divisive ideologies, as well as equality considerations increasingly incorporated into new areas, such as procurement requirements for suppliers.

Amongst other things, this has led to leading to a fall of confidence in the police force, with polling showing that 'the public were almost twice as likely to agree than disagree with the statement that 'the police are more interested in being woke than solving crimes.'<sup>40</sup> In the NHS it has led to the erasure of women from policies and language, as well as compromising the provision of same-sex spaces, despite this being an explicit exemption in the Equality Act and guaranteed under the NHS constitution.<sup>41</sup> It has impacted guidance in the criminal justice system, causing biologically male sex offenders, who have not surgically transitioned, being housed in women's prisons and leading to guidance to courts that victims of sexual assault should refer to those who assaulted them as 'she' if they identify as women<sup>42</sup>. And in schools, it has led to the widespread proliferation of radical gender ideology being taught as fact, with a quarter teaching children that some people are 'born in the wrong body'<sup>43</sup>, and to Ofsted feeling it is required to explicitly fail primary faith schools if they do not explicitly teach about 'gender identity'.<sup>44</sup>

While Ministers have called for this to end, and make speeches condemning 'wokeness' in the public sector or calling for reviews<sup>45</sup>, this has made little impact as public officials consider, rightly or wrongly, that they are obliged to carry out these actions due to the PSED, or to protect themselves from potential judicial review. The PSED therefore creates a *corpus separatum*, leading to a fundamental politicisation of our public sector and removing certain areas from democratic oversight. Only by abolishing the PSED can this be altered.

40. <https://policyexchange.org.uk/publication/policing-can-win/>

41. <https://policyexchange.org.uk/publication/gender-identity-ideology-in-the-nhs/>

42. <https://policyexchange.org.uk/publication/transgenderism-and-policy-capture-in-the-criminal-justice-system/>

43. <https://policyexchange.org.uk/publication/asleep-at-the-wheel/>

44. <https://policyexchange.org.uk/publication/the-watchmen-revisited/>

45. See for example <https://www.express.co.uk/news/uk/1736368/Steve-Barclay-NHS-gender-pronouns-health-news-latest>

The PSED is also a major driver of cost and red-tape in our public services. It has been estimated that at least ten thousand equality, diversity and inclusion related jobs are costing the taxpayer over £500m a year, and that over a million staff days are wasted each year on diversity training<sup>46</sup>. NHS England, for example, has recently and has an extensive and regularly updated “Equality, Diversity, and Inclusion Improvement Plan.”<sup>47</sup>

This may be an underestimate, as compliance with PSED duties (for example, the completion of Equality Impact Assessments) will typically be carried out by a wide range of policy makers and analysts, not simply done by those with formal responsibility for equality and diversity. Because the PSED is a procedural duty, in order to protect their organisations from judicial review, public officials must devote considerable effort to documenting that they have carefully considered the differential equality impacts of each policy – frequently leading to full ‘equality impact assessments’ being completed. Furthermore, consideration of the equality impacts will need to be revisited and updated as necessary if circumstances change, proposals evolve, or there are further stages of decision-making on the project<sup>48</sup>. The time and resource spent by civil servants and other public sector officials to avoid potential PSED is therefore considerable.

Despite this activity, the PSED has also unnecessarily increased the likelihood of unnecessary and counter-productive judicial reviews of government decisions. Judicial reviews citing the PSED were launched to challenge the appointment of several senior figures – including Kate Bingham, the highly regarded Vaccines Tsar<sup>49</sup>, or Mike Coupe, the Director of Testing at NHS Test and Trace – for their appointment being non-compliant with the PSED. The claim of non-compliance with the PSED was upheld, despite this being emergency action taken by the Government during a time of national crisis, demonstrating the fundamental inadequacy of the underlying law<sup>50</sup>. This is simply one of many judicial review cases brought each year citing the duty.

Repeated attempts by Ministers to reduce the equality bureaucracy have been frustrated by public officials citing their perceived legal duties under the PSED. Only repealing the PSED will allow progress to be made.

The Public Sector Public Sector Duty Regarding Socio-Economic Inequalities has yet been brought into force but, unless repealed, could easily be brought into force by a future government. It is likely that enacting it would lead to similar issues as the PSED, regarding red-tape, bureaucracy, politicisation and judicial review. It should therefore be formally repealed.

### The main elements of the bill are:

The Bill would consist of a single substantive clause: “Sections 1 through 3 and Sections 149 through 157 of the Equality Act 2020 are repealed.”

This would repeal, respectively the Public Sector Duty Regarding Socio-Economic Inequalities, which has not yet been brought into force (Sections 1 through 3), and the Public Sector Equality Duty (Sections 149 through 157).

46. [https://www.conservativewayforward.com/\\_files/ugd/acef4a\\_5b5ec1d9017f-40b987a68110f70d276c.pdf](https://www.conservativewayforward.com/_files/ugd/acef4a_5b5ec1d9017f-40b987a68110f70d276c.pdf)

47. <https://www.england.nhs.uk/long-read/nhs-equality-diversity-and-inclusion-improvement-plan/#high-impact-action-1>

48. <https://www.pinsentmasons.com/out-law/guides/the-public-sector-equality-duty>

49. Reference to Kate Bingham was later dropped from the claim.

50. <https://www.judiciary.uk/wp-content/uploads/2022/02/The-Queen-on-the-application-of-1-Good-Law-Project-2-Runnymede-Trust-v-1-Prime-Minister-SSHSC-judgment.pdf>

### Territorial extent and application

This Bill would apply across the United Kingdom.

### Impact of the Bill

Repealing the PSED would remove the principal legal driver for the public sector to engage in unnecessary equality, diversity and inclusion initiatives in the public sector. It would reduce the politicisation of the public sector and enable Ministers and other senior leaders to restore political impartiality and neutrality to our civil service, our schools, our police forces and our NHS. It would also create significant public sector efficiencies by enabling a significant reduction in equality and diversity related staff and activities.

Importantly, repeal would not impact other provisions of the Equality Act, meaning measures that protect individual from direct or indirect discrimination would be unchanged.

Repealing the PSED would not in itself prevent the public sector from adopting radical or politicised views; however, it would remove the currently perceived legal pressure for them to do so, and allow ministers or senior leaders to more effectively improve efficiency and restore impartiality.

further evidence and background

Previous Policy Exchange reports that are relevant to this subject include:

- [The problem with 'allyship' schemes at NHS hospitals](#)
- [Asleep at the Wheel: An Examination of Gender and Safeguarding in Schools](#)
- ['Blurred Lines: Police Staff Networks – politics or policing?](#)
- [Gender identity ideology in the NHS](#)
- [Balancing the Books: Charting a credible path to fiscal responsibility](#)
- [Policing Can Win'](#)
- [Transgenderism and policy capture in the criminal justice system](#)
- [The Future of Equality: Why it is time to review the Equality Act 2010](#)
- [The Watchmen Revisited](#)

# Future Clinical Trials Bill

## The purpose of the Bill is to:

This Bill would improve the UK's approach to the establishment and regulation of clinical trials. The aim of the legislation is to boost patient participation, to ensure the highest levels of safety whilst enabling greater regulatory pragmatism (reflecting the varied and swiftly changing nature of trials). In doing so, the Bill would ensure the UK boosts its competitiveness as a leading international site for trials (both early and later-stage).

## The bill is needed because:

The UK has many great assets for the successful delivery of clinical trials – from world-leading universities to highly-regarded regulators. Yet there is recognition of a range of challenges which hold back UK clinical trial activity to the detriment of patients, staff and UK Plc. There is:

1. **A need for greater speed and flexibility in trial set-up, design & regulation.** The UK's approach has been regarded as “consistently slow”. As the Association of the British Pharmaceutical Industry have shown, between 2018 and 2020, the median time between application for regulatory approval and delivery of a first dose to a participant in a trial increased by almost a month.<sup>51</sup> Spain has witnessed significant improvements in recent years with the introduction of legislation which mandates strict timelines for approval. Timeframes to set up trials were reduced (on average) by 15% within a year of the legislation coming into force.<sup>52</sup> The Government recognises the salience of these issues and announced a consultation on legislative changes which ran in Spring 2022.<sup>53</sup>
2. **A need to enhance patient and public involvement.** Currently, Research Ethics Committees (RECs) (which are provided by the Health Research Authority and the Devolved Administrations) expect researchers to involve patients in the design, management, conduct and dissemination of research activity. However, current clinical trials legislation “is silent on patient and public involvement”.<sup>54</sup>
3. **A need to create opportunities for more healthcare professionals to work as Investigators.** Legislation should take a more pragmatic approach to defining ‘who can do what’ in conducting trials to create greater opportunities for suitably qualified and experienced healthcare professionals to participate.

51. <https://www.abpi.org.uk/media/news/2022/october/nhs-patients-losing-access-to-innovative-treatments-as-uk-industry-clinical-trials-face-collapse/>

52. For an overview, see: <https://link.springer.com/article/10.1007/s12094-016-1550-9>; on its effect: <https://pharmaboardroom.com/country-reports/spain-pharma-report-september-2019/>

53. <https://www.gov.uk/government/consultations/consultation-on-proposals-for-legislative-changes-for-clinical-trials>

54. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1046680/Clinical\\_trial\\_consultation\\_proposals\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046680/Clinical_trial_consultation_proposals_final.pdf) (p. 6)

### The main elements of the bill are:

Legislation would update The Medicines for Human Use (Clinical Trials) Regulations 2004, which is based upon the EU Clinical Trials Directive.<sup>55</sup>

### Provisions to Ensure Greater Transparency (of Set-Up, Participation and Result Sharing)

- A requirement to register trials via the Health Research Authority (HRA) who then register trials with the internationally-recognised ISRCTN Registry<sup>56</sup>;
- A requirement to publish a summary of results within twelve months once a trial has completed (unless a deferral has been agreed) to encourage future participation;
- Introducing a requirement to share trial findings with those who have participated in suitable format(s).
- Introducing a duty for the National Institute for Health and Care Research (NIHR) to collect and publish national monthly returns on clinical trials activity across the NHS.<sup>57</sup> This activity should bring together relevant data sets which are collected by the MHRA and HRA also.
- Introducing a Regulation whereby the Secretary of State can impose financial penalties upon organisations who fail to comply with the requirements set out above in respect of transparency, such as timely reporting of recruitment figures to regulator or NIHR.

### Provisions to Ensure Greater Regulatory Pragmatism

- Introducing a combined MHRA and Research Ethics Committee (REC) review of applications within thirty days after validation as standard. In doing so, creating timelines set out in law substantially shorter than existing EU regulation;
- Introducing a sixty-day limit for those conducting a trial to respond to Requests for Further Information (RFI) from the MHRA or Research Ethics Committees (RECs) (co-ordinated by the Health Research Authority and Devolved Administrations) meaning sufficient time for sponsors to prepare responses which satisfy regulators.<sup>58</sup>
- Introducing a 'notification scheme' for so-called 'low intervention trials'. These are defined as trials which have an equivalent risk to 'standard medical care' "e.g., they involve marketed product(s) either used in accordance with the marketing authorisation or supported by (nationally accepted) published evidence and/or guidance and /or established medical practice".<sup>59</sup>
- Removing requirement for individual 'Suspected Unexpected Serious Adverse Reactions' (SUSARs) to be reported to all investigators. These must be reported in an expedited manner to the MHRA on an individual basis. Ensures alignment with

55. <https://www.legislation.gov.uk/uksi/2004/1031/contents/made>

56. The ISRCTN is a clinical trial registry recognised by the WHO and ICMJE that accepts planned, ongoing or completed studies: <https://www.isrctn.com/>

57. <https://www.gov.uk/government/publications/commercial-clinical-trials-in-the-uk-the-lord-oshaughnessy-review/commercial-clinical-trials-in-the-uk-the-lord-oshaughnessy-review-final-report>

58. Requests for Further Information are issued by the MHRA and/or Research Ethics Committees to a trial sponsor if a clinical trial application does not have sufficient information to allow an approval, or where changes to the submitted information is needed. It should be noted that this timeframe has been piloted successfully in an MHRA and ethics committee combined review.

59. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1144407/Clinical\\_Trials\\_Final\\_government\\_response\\_to\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1144407/Clinical_Trials_Final_government_response_to_consultation.pdf) (p. 28)

international comparators, such as the FDA's 'Final Rule for Aggregate Reporting'.<sup>60</sup>

- Enabling regulatory action to be taken against specific parts of a trial (where appropriate) rather than the trial as a whole.

### Provisions To Expand Participation

- Introducing amended legal definitions of who can be deemed an 'Investigator' so healthcare professionals appropriately trained and expert in their field can undertake the role. Legislation should make clear this should be proportionate to trial design.
- Creating a duty on those conducting trials to ensure representative enrolment, relevant to the trial. The aim should be to encourage maximum diversity in enrolment, both by geography and ethnicity. This could be introduced as a requirement for certain multi-site trials, but with exemptions for single-site trials or where or a specific ethnic group is the focus of a trial.

### Territorial extent and application

The Bill would have UK-wide application.

### Impact of the Bill

**Enabling clinical trials to be established more quickly, underpinned by a proportionate and pragmatic regulatory regime.** Recent research has shown that between 2017 and 2021, the number of industry trials initiated in the UK fell by 41%. Slow trial start-up and sluggish recruitment are cited as the main factors for this.<sup>61</sup> Lord O'Shaughnessy's recently published independent review estimates the direct cost of this near-halving of recruitment to be £360 million.<sup>62</sup> Australia has one of the fastest ethics and regulatory review processes in the world for early-phase trials and is one of the leading international destinations for trials as a result, demonstrating the link between an effective, streamlined regulatory regime and increased attractiveness of the market for clinical trials activity.<sup>63</sup> The provisions of the Bill set out above will mandate transparent trial registration and facilitate swifter approval.

**More clinical research activity leads to improved access to treatments and better clinical outcomes.** There is considerable evidence which shows that NHS organisations which carry out research provide better health outcomes for their patients.<sup>64</sup> By way of example, one study on patients with colorectal cancer shows that the mortality rate in the first 30 days after major surgery was 30% lower in trusts with high research participation.<sup>65</sup>

**Expanding opportunities for participation in clinical trials will lead to improved workforce retention, health literacy and outcomes.** Currently, half of industry trials fail to meet targets for participant recruitment.<sup>66</sup> Moreover, the NIHR has found that places in the UK with

60. <https://www.fda.gov/drugs/investigational-new-drug-ind-application/final-rule-investigational-new-drug-safety-reporting-requirements-human-drug-and-biological-products>

61. <https://www.bmj.com/content/379/bmj.o2540.full>

62. <https://www.gov.uk/government/publications/commercial-clinical-trials-in-the-uk-the-lord-oshaughnessy-review/commercial-clinical-trials-in-the-uk-the-lord-oshaughnessy-review-final-report>

63. <https://onlinelibrary.wiley.com/doi/full/10.5694/mja2.51856>

64. A good overview is: <https://www.rcplondon.ac.uk/projects/outputs/benefiting-research-effect> See also: <https://gut.bmj.com/content/66/1/89>

65. <https://gut.bmj.com/content/66/1/89>

66. <https://www.nihr.ac.uk/about-us/who-we-are/our-research-performance/data-on-performance-in-initiating-and-delivering-clinical-research.htm>

the highest burden of disease also have the lowest number of patients taking part in research.<sup>67</sup> Improving the transparency of trials will improve the quality of studies being undertaken and boost recruitment. Academic literature on the topic suggests improving the “visibility and transparency of trials, supporting informed decision making, and ensuring confidence and trust” can improve patient participation in trials.<sup>68</sup> Increased participation in trials is good for health literacy, because patients taking part in clinical trials learn more about their health, play a more active role in decision making, and have better health outcomes.<sup>69</sup> Boosting clinical research activity across the NHS would have positive impacts upon retention and in expanding knowledge/skillsets of the workforce also.<sup>70</sup> A 2020 study from the Royal College of Physicians showed that 40% of those in rural hospitals not research-active wished to be, whilst over a third of women interviewed who did not currently conduct research were keen to do so, demonstrating a significant appetite to boost opportunities for research across the NHS, including in organisations that are currently less research intensive.<sup>71</sup>

### Further Evidence and Background

- The Government recently responded to a consultation on legislative changes to the regulation of clinical trials: Consultation on proposals for legislative changes for clinical trials, *Medicines and Healthcare products Regulatory Agency*, 21 March 2023 [\[link\]](#)
- This has followed a variety of initiatives undertaken by the MHRA to streamline clinical trial approvals. Guidance published in March 2023 represents the “biggest overhaul of trial regulation in 20 years”, 21 March 2023 [\[link\]](#)
- The approach aligns to the overall aims and strategy outlined in the Government’s landmark *Life Sciences Vision*, which was published in July 2021. This seeks to ensure that the UK remains a world leader in the development, regulation and delivery of medical devices and pharmaceutical products [\[link\]](#)
- In the wake of recent decline in the number of Phase III trials, former health minister Lord O’Shaughnessy was commissioned to undertake an independent review which reported in May 2023: *Independent report: Commercial clinical trials in the UK: the Lord O’Shaughnessy review - final report*, 26 May 2023 [\[link\]](#)
- For an overview of reasons for declining performance of UK clinical trials in recent years, see evidence compiled by the ABPI: ‘Rescuing patient access to industry clinical trials in the UK’, *The Association of the British Pharmaceutical Industry* [\[link\]](#); ‘Three steps to boost patient access to clinical trials in the UK’, *The Association of the British Pharmaceutical Industry*, 19 May 2023 [\[link\]](#)
- Commitments in the February 2022 ‘Levelling Up’ white paper included a commitment for DHSC to boost funding to NHS-university partnerships beyond London and the Golden Triangle.

67. <https://www.england.nhs.uk/blog/not-hard-to-reach-increasing-diversity-in-research-participation/>

68. <https://www.sciencedirect.com/science/article/abs/pii/S0895435621000251>; <https://www.nature.com/articles/s41581-022-00585-w>; <https://www.sciencedirect.com/science/article/pii/S2451865421001307>

69. <https://pubmed.ncbi.nlm.nih.gov/22039138/>

70. [https://ascopubs.org/doi/full/10.1200/EDBK\\_360253](https://ascopubs.org/doi/full/10.1200/EDBK_360253)

71. <https://www.rcplondon.ac.uk/projects/outputs/research-all-analysis-clinical-participation-research>



This included a review of NIHR clinical research network funding, with a commitment to release at least 50% of funding (from September 2022) to NHS organisations outside the ‘Greater South East’.<sup>72</sup>

Clinical trials are an essential component in a broader approach to clinical research. A number of complimentary initiatives ought to be mentioned which – if effectively implemented – will have a reciprocally beneficial impact upon the delivery of clinical trials. Previous Policy Exchange Reports which have considered these matters include:

- Policy Exchange have previously suggested measures to enhance clinical research activity overall, see Robert Ede & Sean Phillips, ‘A single bus ride may have saved more than a million lives: what the Government can now do to further boost clinical research’, *Policy Exchange*, 21 January 2022 [[link](#)]
- A UK-wide accreditation scheme for clinical research practitioners (CRPs) has been introduced. It seeks to double the research workforce, with resultant progression to individuals joining the Academy of Healthcare Sciences (ACHS). This is equivalent to commitments set out in the NHS Long Term Workforce Plan, such as doubling medical school places over the coming decade.<sup>73</sup> Policy Exchange set out a roadmap to deliver such an expansion: Sean Phillips & Iain Mansfield, *Double Vision: A roadmap to double medical school places*, *Policy Exchange*, 16 December 2022 [[link](#)]
- Recommendations to boost research activity across primary care are detailed in David Landau & Sean Phillips, *Medical Evolution: Measures to improve the interface between primary and secondary care*, *Policy Exchange*, 29 June 2023 [[link](#)]

72. <https://policyexchange.org.uk/blogs/what-does-the-levelling-up-white-paper-mean-for-health-and-social-care-policy/>

73. <https://www.england.nhs.uk/publication/nhs-long-term-workforce-plan/>

## Higher Education and Skills Bill

### The purpose of the Bill is to:

The Bill would rebalance public investment between higher and further education to support skills growth and prosperity. It would restore government control over the number of university places funded each year, with the money reinvested into a new Skills Tax Credit to support employers in training the skills we need to improve our productivity.

### The bill is needed because:

Over the last twenty-five years the number of students attending full-time higher education has risen dramatically, with the latest data showing that the Higher Education entry rate by age 25 has reached 47%<sup>74</sup>. Entry rates have risen particularly sharply since 2014, when the Government removed all controls on the number of funded places. Since then, the Government has been obliged to fund any individual wishing to go to higher education, provided that a higher education provider is willing to accept them on to a course – and although some of this money is ultimately repaid via the student loan system, approximately half is not.

During this period, UK economic growth and productivity has stagnated. Approximately one-third of graduates are employed in non-graduate jobs<sup>75,76</sup>, suggesting a significant oversupply of graduates to the labour market; this hypothesis is reinforced by the fact that the graduate premium has been declining, with one in five courses providing no, or even a negative, graduate premium<sup>77</sup>. The situation is exacerbated by an exceptionally low quality assurance regime in higher education: in contrast to the situation in schools, hospitals or childcare, over the last decade no university<sup>78</sup> has been failed or significantly sanctioned by the regulator for quality measures, despite many courses having very low completion rates or very poor progression to highly skilled employment or further study. Grade inflation has also increased significantly over the period, with 32.8% of graduates awarded a first class degree in 2022, compared to 15.7% in 2010<sup>79</sup> and the OECD has found that 10 per cent of new graduates had poor literacy skills and 14 per cent lacked numeracy<sup>80</sup>. Overall, while elements of the English Higher Education system remain high quality, the removal of controls has created a 'race to the bottom', in which the state has provided an open chequebook to fund courses of limited quality and value, for individuals unqualified to attend them to award, and which are not required by the labour market.

The lack of control over has had a number of negative consequences.

74. <https://explore-education-statistics.service.gov.uk/find-statistics/participation-measures-in-higher-education/2020-21>

75. <https://www.gov.uk/government/publications/post-18-review-of-education-and-funding-independent-panel-report>

76. <https://www.ons.gov.uk/news/news/oneinthreegraduatesovereducatedfortheircurrentrole>

77. <https://ifs.org.uk/publications/impact-undergraduate-degrees-lifetime-earnings>

78. Defined as a provider which has been granted the status of university title.

79. <https://www.gov.uk/government/publications/post-18-review-of-education-and-funding-independent-panel-report>

80. [https://www.oecd.org/skills/piaac/Skills\\_Matter\\_Further\\_Results\\_from\\_the\\_Survey\\_of\\_Adult\\_Skills.pdf](https://www.oecd.org/skills/piaac/Skills_Matter_Further_Results_from_the_Survey_of_Adult_Skills.pdf)

Prior to 2014, funding for higher education would take place as part of the Spending Review process, with the Department for Education negotiating with the Treasury as to (a) how many places could be funded; and (b) how much funding a higher education provider should receive per graduate. This negotiation would also encompass other elements, such as student maintenance, support for high costs subjects such as engineering, and funding support for widening participation. The removal the controls on funded places has resulted in reductions in other areas of the funding settlement: by 2025, tuition fee income will only be worth £5,800 in 2011/12 terms; student maintenance has increased by less than inflation<sup>81</sup>, and grant funding for teaching has also decreased in real terms per student since 2014<sup>82</sup>.

The concentration of funding upon HE expansion has also had a severely negative impact on other forms of skills investment. FE Funding has decreased by two-thirds since 2003-04<sup>83</sup> and all forms of participation in adult FE and skills, including college education and training for qualifications, community learning and apprenticeships have been in steep decline over the last fifteen years, with only a small pick-up from 2020-21 onwards<sup>84</sup>. Meanwhile, the most recent Government Employer Skills Survey found that the proportion of staff receiving training in the last twelve months had dropped to 60%, the lowest figure since 2010<sup>85</sup>. The Labour Force Survey also shows a long-term decrease in the number of employees who worked fewer hours than usual because they attended a training course away from the workplace<sup>86</sup>.

Restoring controls on the number of higher education places funded each year would curb government expenditure on training of limited value. The savings from ending uncontrolled expansion could be recycled into a Skills Tax Credit, modelled after the successful R&D tax credit, putting employers in the driving seat to train the skills that they genuinely value and stimulating investment in human capital. This would rebalance investment between higher education and other forms of skills development, improving UK productivity.

### The main elements of the bill are:

- To impose a duty upon the Education Secretary to, on an annual basis, determine the total number of undergraduate university places that would be funded for the following academic year, at least three months prior to the beginning of that year's university application cycle.
  - This decision would be implemented by regulations made under the negative procedure.
  - In the event that Parliament did not approve a new annual quantity of places, the number of places funded would be the same as in the previous year.
  - The number of places funded may not be lower than 95% of the total number of places funded the previous year.

81. <https://ifs.org.uk/articles/student-living-cost-support-cut-lowest-level-seven-years>

82. <https://commonslibrary.parliament.uk/research-briefings/cbp-7973/>

83. <https://ifs.org.uk/publications/2021-annual-report-education-spending-england>

84. Apprenticeship and Traineeship data

85. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/936488/ESS\\_2019\\_Summary\\_Report\\_Nov2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936488/ESS_2019_Summary_Report_Nov2020.pdf)

86. <https://www.ons.gov.uk/surveys/informationforhouseholdsandindividuals/householdandindividualsurveys/labourforcesurvey>

- To impose a duty upon the Office for Students to apportion the limit on funded places amongst higher education providers by imposing a limit on funded places upon each provider.
  - The total of the limits imposed upon each provider must sum to the overall limit set out in regulations.
  - In determining the limits upon each provider, the Office for Students may consider:
    - The wishes of the provider.
    - The need to maintain stability within the sector.
    - The student outcomes achieved by the provider, as measured by completion rates, progression to highly skilled employment or further study and earnings.
    - National skills shortages, as specified in the Shortage Occupation List published by the Migration Advisory Committee.
    - The sufficiency of student accommodation provided by the provider or available in the vicinity of the provider.
    - Whether or not the provider is currently subject to one or more specific ongoing regulatory conditions of registration.
    - Guidance or Directions issued by the Secretary of State under Section 2 or Section 77 of the Higher Education and Research Act 2017.
    - The need to protect institutional autonomy.
  - In determining the limits upon each provider, the Office for Students may not consider:
    - The content of courses at the provider, and the manner in which they are taught, supervised or assessed,
    - The criteria for the selection, appointment or dismissal of academic staff, or how they are applied, or
    - The criteria for the admission of students, or how they are applied.
- In determining the limits upon each provider, the Office for Students may not impose a limit that is lower than 95% of the limit imposed the previous year, unless the provider requests such a limit.
- To impose a duty upon the Office for Students to impose a fine upon any provider that exceeds their place limit equal to twice the total value of tuition fees that would be paid by those students over the course of their studies.
  - The Office for Students may, at its discretion, choose to waive the fine for a provider that exceeds its place limit but does so by less than 2%, where it is satisfied that this was neither negligent nor intentional.
  - The Office for Students may not waive the fine for a provider

more than once in any three year period.

- To provide a right of appeal against such a fine the basis of severe procedural irregularities or significant factual errors only.
- To provide that the Open University shall be exempt from all limits on funded places.
- To create a Skills Tax Credit that would enable all businesses to claim a tax relief equal to 10% of the money spent on skills development that could be offset against their corporation tax.
  - Eligible skills spend would include spending on apprenticeship wages, any course at a UK Further Education College, registered independent training provider or registered higher education provider, T-Level placements (up to £1000 per placement), Skills Bootcamps and the cost of external trainers brought in for skills development.
  - Excluded skills spend would include any training required solely or primarily to comply with statutory obligations, such as the Health and Safety at Work Act 1974 or the Bribery Act 2010.

### Territorial extent and application

Mixed. The number controls would apply to England only. The Skills Tax Credit would be UK-wide.

### Impact of the Bill

This Bill would restore government control over the public funding invested each year in Higher Education. It would allow the Government to ensure that numbers could be frozen, or sustainably shrunk, with contraction focused on those providers with the poorest outcomes for the students who attend. A Government could also choose to allow numbers to grow, but at a more controlled rate.

By investing the money saved from curbing uncontrolled expansion into a Skills Tax Credit, the Bill would incentivise business to invest more in the skills they need – whether that was apprenticeships, college courses, bootcamps or professional education. This in turn would increase productivity and enhance the UK’s growth potential.

### Further evidence and background

Relevant Policy Exchange reports related to this subject include:

- [Rethinking social mobility for the levelling up era](#)
- [Technical Breakthrough: Delivering Britain’s higher level skills](#)
- [The Training We Need Now: Essays on technical training, lifelong learning and apprenticeships](#)
- [It’s time to get serious about rebalancing Post-18 Education](#)
- [Universities at the Crossroads](#)

## Housing and Planning Bill

### **The purpose of the Bill is to:**

A Bill to expedite the planning process for new infrastructure, particularly housing, places and renewable energy assets; to imbed beauty and high design standards into new development; to increase localism and democracy by actively encouraging and facilitating greater public and community participation in the planning process.

### **The bill is needed because:**

This bill is required to address and resolve the issues constraining the quality and quantity of the UK's housing supply and energy infrastructure. It would, amongst other things, give effect to the government's new housing policy as outlined in the Secretary of State's housing speech on 24<sup>th</sup> July 2023.

Housebuilders and renewable energy developers cite the planning system as the principal obstacle to the provision of new infrastructure. This applies to energy infrastructure – it takes less than a year to build a wind energy facility but 3-5 years to get through the planning process – as it does to housing – England granted 315,000 planning requests in the year to June 2023, but we need to build 442,000 homes a year just to clear the housing backlog in 25 years. It is also required because the public often lacks confidence in the quality of new development which therefore encourages a default response predicated on objection rather than support. Most importantly, by having a planning system exclusively based on discretionary permission rather than strategic compliance, the existing system creates too many veto opportunities and hardens the conflict of interest between local residents, developers, and those who stand to benefit from new infrastructure and improved urban environment.

The planning system also has regulatory blockages that could be solved fairly swiftly with primary legislation, the most obvious example being the current regulations regarding nutrient neutrality. As the rules are currently applied, there is an effective moratorium on the new housebuilding in areas affected by nutrient neutrality requirements under the Conservation of Habitats and Species Regulations 2017, since unless a Local Authority can be absolutely satisfied that a new development will not change nutrient levels in proximate waterways, they cannot grant permission for new homes. This can be solved with fairly straightforward regulatory reforms, which will both enable the building of new, urgently need homes and promote mitigation strategies that will protect our rivers and estuaries.

This bill will streamline the planning process in specific instances. It will provide avenues for expedited planning permission for urban

densification, the provision of new clean energy assets, and new housing which meets high design standards.

### The main elements of the bill are:

- An amendment to Section 12 of the Town and Country Planning Act 1947 to Create a new Urban Right to Build; planning permission in principle would be granted to all those living within city limits to densify existing residential sites, provided that:
  - New development conforms with existing building regulations and the relevant design code in the Local Plan or Neighbourhood Plan;
  - The development demonstrably prioritises high density terraced streets of flats and houses;
  - Developers can demonstrate that the proposals have been meaningfully informed by public consultation;
  - The urban density of the ward does not exceed 300 persons per hectare;
  - The site contains no listed buildings, is not in a conservation area and proposes no heritage demolition;
  - The proposals provably and demonstrably conform to placemaking principles as set out in the relevant statutory guidance (i.e. National Model Design Code and/or Placemaking Matrix or similar).
- A new presumption in favour of development within Local Authorities that do not have an up to date local plan.
- A Community Ownership Planning Pathway for new renewable energy infrastructure. A planning application for energy infrastructure may be submitted for a local referendum subject to conditions established in secondary legislation. The Energy Secretary could suggest that:
  - A proportion, of at least 2%, of the equity of the new project is distributed freely amongst all residents within a defined distance of the project;
  - At least 10%, of the equity of the new project to be available for purchase under fair terms to residents;
  - The prescribed distance from the project for the referendum and equity distribution should be technology specific;
  - To gain permission, the proposal must secure 60% of votes cast on a turnout of no less than 50%.
- A new Public Land for Housing Programme, which requires government departments to transfer land to Homes England to be assembled for new housing development. Secondary legislation should be introduced to specify the targets for each department. The programme should have a duty to maximise the delivery of new homes, and should be assessed against three key performance indicators: the total number of housing completions it supports;

the housing capacity of the land unlocked; and the total number of households supported into homeownership.

- The establishment of new Expedited Planning Resources Officers (EPROs) capable of being deployed across the country to give expert planning advice and unlock bottlenecks in complex planning projects. These EPROs should also have a specific mandate to support infill development on brownfield sites.
- Ending the current 'Nutrient Neutrality' rules by amending of the Conservation of Habitats and Species Regulations 2017 so that Local Authorities can better take into account mitigation measures, such as upgrading water treatment works or reducing agricultural run-off in the area, in giving permission for development.

### Territorial extent and application

The Bill would apply to England & Wales.

### Impact of the Bill

This bill will increase the ability of local communities to take decisions in their collective interest, whilst also diffusing the potential benefits of ownership more widely. It will also expedite the planning process for both residential and energy infrastructure development, unlocking badly needed new housing supply and helping the UK to meet its Net Zero objectives in a way that garners democratic consent.

The Urban Right to Build will help our cities to densify and expanded supply will help with housing costs, especially for renters in the short term. In London, private renters on average spend 42% of their household income on rent. Unlocking badly needed supply will make the private rented sector more competitive and help drive down rents. It will also free up household disposable income for spending, saving and investment.

Critically too, these proposed reforms would be a huge boon to the British Economy. As Policy Exchange has argued, building an extra 100,000 homes each year would directly add £17.7 billion to the GDP – and that's before one takes account of the indirect benefits of increased tax receipts and agglomeration effects in cities is taken into account. Reforming the nutrient neutrality regulations would unlock the delivery of 150,000 homes across the country in affected areas. Finally, social housebuilding could provide badly needed counter-cyclical investment in the housing market whilst saving considerable amounts on housing benefit spending. If we could clear the social housing backlog by getting more homes in the private sector built and furnishing new social housing for those in need. We might reduce welfare spending by £10 billion over five years.

While maintaining the broad national principle of discretionary planning established in the Town and Country Planning Act 1947, the new bill will embellish and revitalise this with a new principle of mandated exceptions whereby normal statutory determination processes can be substantially accelerated as long as a stringent series of pre-application tests are met. Ultimately this will speed up the planning process by reducing risk and



delay and increasing efficiency and certainty.

We know that the planning system increases delay and the expense of infrastructure projects. Data from the Planning Inspectorate suggests that the average time for a planning decision on a nationally significant infrastructure project has increased from 17 months to 22 between 2012 and 2022. These changes will not only greatly expedite that planning process, but through the Community Ownership Pathway will create more shareowners.

### Further evidence and background

Policy Exchange's [Strong Suburbs](#) paper set out the case for Street Votes – an influential proposal that is awaiting Royal Assent. Other papers, such as [Homes For Growth](#), [Better Places](#), [Better Brownfield](#) and [Rethinking the Planning System for the 21<sup>st</sup> Century](#), have all identified the current planning system as one of the chief barriers to economic growth, increased housing supply, urban enrichment and local democratic enfranchisement. Much of this bill is influenced by the principles behind this research: localism; benefit sharing; beauty, placemaking and the positive externalities of well-designed, well-conceived development. These proposals offer a practical way to help unblock the planning system and to overcome the conflict of interest between local residents and those that stand to gain from housebuilding or, more diffusely, the provision of new, clean, energy infrastructure.

Ultimately, the UK is simply not building enough new infrastructure to meet both demand and broader strategic UK objectives. In the case of housing, the British population has grown by approximately 34% since 1952 (more recently as a result of high levels of net inward migration), yet new housing supply has fallen off considerably. In the 1960s, England was delivering on average over 300,000 new homes per annum. In the 2010s, we averaged 150,000 new homes a year. This has had a hugely negative impact on rents and house price affordability. Indeed, the ratio of house prices to earnings has grown from around four in the 1980s to around nine today – rendering homeownership simply unattainable for many households. Unlocking new housing supply in the places of highest demand through an improved planning system will begin to address these trends.

As detailed in the recent Policy Exchange Reports [A Plan for Household Energy Bills](#), energy costs have spiralled since the war in Ukraine commenced, yet renewable energy is some of the cheapest in the market: onshore wind, for example, is £42 per MW. It is also, as discussed in our 2022 paper [Great Restorations](#), popular with the public; YouGov also found that just 11% of people objected to onshore wind developments if a majority of local residents supported them. Yet just 21 individual wind turbines – not even whole sites – have been built since 2018. These changes will help us to deliver much more clean energy infrastructure – helping to reduce bills, increase energy independency and deliver on the UK's net zero targets.

## Judicial Review Reform Bill

### **The purpose of the Bill is to:**

The purpose of this Bill is to restore long-standing principled limits on the law of judicial review and thus to protect the rule of law and the political constitution. The Bill will not codify the law of judicial review but will set out a series of targeted reforms – substantive and procedural – that will help minimise the risk, which judges themselves acknowledge, that judicial review may become politics by another means.

### **The bill is needed because:**

The Bill is necessary because the law of judicial review has changed sharply in recent decades. Importantly, as the outgoing Lord Chief Justice of England and Wales, Lord Burnett, has noted, this body of law has largely been developed by the judges themselves, rather than by Act of Parliament. In some cases, judicial review has gone too far, with judges wrongly interfering with government action, misreading statutory powers and statutory limits on judicial review, and setting aside traditional limits on the types of question that the courts are competent to answer. These cases, and the trends in doctrine that they set in motion, advance the rule of judges rather than the rule of law. They also often threaten the integrity of the political constitution, in which many key relationships are constituted and disciplined by constitutional convention and the dynamics of competitive parliamentary and electoral politics.

Legislative reform is needed in order to minimise the risk that judicial review will undermine the lawful exercise of statutory powers, distort policymaking and legislative deliberation, and politicise litigation and juridify political contest. In the last eighteen months, Parliament has started to respond to this problem. Sections one and two of the Judicial Review and Courts Act 2022 reverses the effect of two Supreme Court judgments from 2010 and 2011, which is a welcome change. Section three of the Dissolution and Calling of Parliament Act 2023 prevents judicial review of the dissolution of Parliament, which is necessary in the wake of the Supreme Court's 2019 prorogation judgment. One provision of the Northern Ireland Troubles (Legacy and Reconciliation) Bill, when enacted, will restore the Carltona doctrine, which a 2020 Supreme Court judgment put in doubt. However, Parliament can and should go further, reversing judgments that extended judicial review beyond its proper scope, undermining long-standing doctrine.

## The main elements of the bill are:

This Bill would have three parts.

The first part of the Bill would make general changes to the law of judicial review:

- **Primacy of legislative intent:** this provision would amend the Interpretation Act 1978 to require courts, in interpreting and applying ouster clauses (statutory provisions that limit or exclude judicial review), to give effect to the intention of Parliament in enacting the clause.
- **Primacy of parliamentary sovereignty:** this provision would amend the Constitutional Reform Act 2005 to make clear that the Act's affirmation of the constitutional principle of the rule of law in no way limits parliamentary sovereignty or justifies courts in interpreting statutes inconsistently with legislative intent.
- **Non-justiciability of parliamentary accountability:** this provision would make clear, notwithstanding the Supreme Court's prorogation judgment, that no court may question the lawfulness of a public act on the grounds that it is allegedly incompatible with parliamentary accountability and that no court may question whether the Houses of Parliament, or any parliamentary committee, has acted properly.
- **Non-justiciability of the political constitution:** this provision would rule out litigation attempting to enforce a constitutional convention or to question whether a minister, including the Prime Minister, has complied with the Ministerial Code.
- **Proportionality:** this provision would prevent the courts from introducing, as they have in a series of cases threatened to do, proportionality as a general ground of judicial review, that is, as a ground of review that would apply beyond the scope of the Human Rights Act 1998.

The second part of the Bill would restore limits on judicial review in relation to particular public powers:

- **Exclusion of review of the Investigatory Powers Tribunal:** this provision would restore the express statutory limitation on judicial review of decisions of the Investigatory Powers Tribunal, which is effectively a specialist court that considers allegations against the security services, a limitation which a majority of the Supreme Court circumvented in a 2019 judgment.
- **Exclusion of review of prorogation:** this provision would restore the law as it stood for centuries before the Supreme Court's 2019 prorogation judgment, which is to say that neither the King's formal exercise of the prerogative power to prorogue Parliament nor minister's advice to the King should be able to be challenged in court, unless the court is upholding an express statutory limitation on prorogation.

- **Limitation of review of the power to set tribunal fees:** this provision would reverse a landmark Supreme Court judgment in which the Lord Chancellor's express statutory power to set fees was misread to limit its scope, such that the court was able to second guess the Lord Chancellor's discretion.
- **Finality of certificates by accountable persons under the Freedom of Information Act 2000:** this provision would restore the express statutory power on the part of the Attorney General or a minister to decide that disclosure of information would not be in the public interest, a power that was badly undermined by a Supreme Court judgment in 2015, quashing the Attorney General's decision to block release of the then Prince of Wales's letters to ministers (the so-called black spider memos).
- **Exclusion of review of ombudsman reports:** this provision would reverse a number of cases in which the courts have entertained applications for judicial review challenging an ombudsman's report or, especially, the minister's response to the report, which should be considered by Parliament and not the court.
- **Limitation of review of devolved legislatures:** this provision would rule out the argument, advanced in some Supreme Court judgments, that Acts of the Scottish Parliament or other devolved legislatures that comply with the express limits on competence in the Scotland Act or other relevant legislation might nonetheless be quashed by the courts reference to the general principle of the rule of law.
- **Exclusion of review of decisions about inquiries:** this provision would reverse a judicial decision holding that a minister's decision not to order an inquiry may be questioned and overturned on judicial review. Whether to hold an inquiry should remain a decision for the minister rather than the court.

*The third part of the Bill would make a number of changes to the procedure of judicial review:*

- **Prohibition of abstract review:** this provision would limit judicial review to cases in which there is an actual dispute, rather than a hypothetical or academic question, about the exercise of a legal power or alleged breach of a legal right or duty.
- **Evidence in judicial review proceedings:** this provision would limit the court's freedom to call oral evidence in judicial review proceedings and would limit any duty on a public body to disclose evidence in cases where the public body argues the matter is non-justiciable.
- **The onus in judicial review proceedings:** this provision would make clear that it was for the claimant in judicial review proceedings to establish that a public body was acting unlawfully, rather than for the public body to prove that it was acting lawfully.
- **Interveners in judicial review proceedings:** this provision would

require courts to give reasons for permitting an intervener (a non-party) to participate in judicial review proceedings and to consider whether such participation would maintain a fair balance in representation between the parties.

### **Territorial extent and application**

This Bill would apply across the United Kingdom.

### **Impact of the Bill**

The Bill would change the practice of judicial review in a number of important respects, which would help restore the UK's traditional constitution. The general changes the Bill would make would minimise the risk of future unconstitutional developments in the law of judicial review and would restate the primacy of Parliament and of legislative intent in our constitution. The procedural changes would help to refocus judicial review and to limit the risk that judicial review proceedings will expand into a generalised challenge to government action or inaction. The more particular changes would restore important government powers that have wrongly been undermined by way of litigation.

In reversing some of the leading cases in the last decade in which the courts have expanded judicial review beyond its proper scope, the Bill would help to change legal culture for the better. It would restore the statutory powers that Parliament had enacted, or the prerogative powers that Parliament had chosen not to set aside, and would secure the rule of law from being undermined in future cases. In particular, the Bill would help prevent judicial review proceedings from being used as a general means of political challenge to government action and in particular would protect the political constitution from judicial interference. This would also protect the courts from being politicised.

### **Further evidence and background**

On the need for corrective legislation in relation to judicial review, see further Policy Exchange reports:

- [The Case for Reforming Judicial Review](#)
- [How to Reform Judicial Review](#)
- [How to Improve the Judicial Review and Courts Act](#)

# Leaseholder Enfranchisement Bill

## The purpose of the Bill is to:

To ban the future sale of residential property on a leasehold basis; to provide for the enfranchisement of existing leaseholders on a compulsory basis, and to remove practical difficulties with new development on a commonhold basis.

## The bill is needed because:

Some 4.98 million homes in the UK are owned on a leasehold basis, representing 20% of the English housing stock. They are far more common in denser urban areas: 95% of owner-occupied flats are leasehold.

Yet leasehold is deeply inequitable. It gives leaseholders a temporary right to a wasting asset and subjects them to charges and fees over which they have little control. For instance, the Competition and Markets Authority found in 2020 that some leaseholders were being locked into contracts in which their ground rent fees were doubling every ten years. It is no wonder that 57% of leaseholders regret purchasing a property on such a basis.

The UK is also an international outlier – developed legal systems across the globe have frameworks which allows for residents of a building to manage shared areas on a cooperative basis.

The UK has taken action to give leaseholders further protections, such as from exorbitant ground rent hikes. It also already has a framework to enable flat leaseholders to become freeholders– “commonhold”, which was introduced in 2002, is designed to facilitate unit freeholding within the context of a shared building. However, there are a number of practical difficulties that relate to converting existing buildings to commonhold, as well as building new sites on such a footing. This bill addresses those practical difficulties, whilst ending future sales of leasehold properties.

The main elements of the bill are:

- A ban on future sales of residential property on a leasehold basis.
- A mechanism for the expeditious enfranchisement of a leaseholder on a compulsory, no-fault basis. This would include:
  - Provisions for a valuation of the premium payable to the landlord based on the “reversion” value of the property and the “term” or ground rent owed.

- Provisions for legal services during the enfranchisement process.
- For leaseholders living in a shared building or block of flats, the threshold of consent for converting the site in question to a commonhold basis should be relaxed to 50%. Should this threshold be met, all leaseholders – including non-consenting ones, would be required to take the title to their commonhold unit. The maximum proportion of non-residential use in a building for eligibility for commonhold conversion should be raised from 25% to 50%.
- The introduction of a “sections” framework – in which the management of a commonhold building can be divided up into different parts to accommodate mixed-use.

These provisions will require the amendment of the Commonhold and Leasehold Reform Act of 2002.

### Territorial extent and application

England and Wales.

### Impact of the Bill

These changes will increase the enfranchisement of leaseholders and expand the take-up of commonhold in shared buildings. Importantly too, they will do so in such a way as not to deter future development on a commonhold basis; as it stands, developers have every incentive to continue selling residential units on a leasehold basis. Banning future leasehold sales, whilst making commonhold development more practical, will ensure that leasehold enfranchisement does not come at the expense of badly needed new housing supply.

If just 10% of leaseholders were enfranchised and their properties placed on a commonhold footing by 2030, this would yield an additional 500,000 freeholders in the UK with the sense of stake and security that only genuine property ownership provides.

### Further evidence and background

The leasehold system has medieval origins but became widespread as a tenure type in the twentieth century, firstly as changes to the laws governing rental arrangements incentivised landlords to offer long-leases of their properties, and secondly with the expansion of blocks of flats in UK cities after 1945.

Since then, various Government reforms have been introduced to provide further protections to leaseholders. Wilson’s Labour Government delivered the Leasehold Reform Act 1967 which enabled leaseholders of houses to acquire their freehold on a compulsory basis, Thatcher introduced the Landlord and Tenant Act 1987 which gave leaseholders a right of first refusal when landlords wished to sell their freehold, and Blair legislated for commonhold in the Commonhold and Leasehold Reform Act 2002.

Nevertheless, many issues with the leasehold system remain, and the uptake of commonhold over the last two decades has been disappointing – just 20 such projects have been established in England and Wales.

The Law Commission has undertaken significant research into these challenges: in particular, on why the commonhold framework has had limited take-up for new developments, and why existing sites have rarely converted to a commonhold footing. Many of the recommended legislative changes here reflect the Law Commission's proposals. The key here is to promote a framework such that future development is not deterred by the practical difficulties that currently exist with commonhold.



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# Parental Right to Know Bill

## The purpose of the Bill is to:

Introduce a 'Parental Right to know' to ensure parents have full transparency on what their children are learning at school with regards to Relationships, Sex and Health Education (RSHE) and to ensure they are made aware if their child discloses feelings of gender distress at school.

## The bill is needed because:

As Policy Exchange's work has demonstrated over the past year, public concern about the influence of gender identity beliefs in the classroom and with regard to child safeguarding protocol have been elevated. Currently, there is wide variety in schools' approaches to this issue, with little democratic consensus.

As Policy Exchange has found, [only 28 per cent](#) of secondary schools are reliably informing parents as soon as a child discloses feelings of gender distress. Schools are not routinely understanding gender distress as a safeguarding risk, and subsequently are not applying well-established safeguarding principles.

With regard to teaching gender identity beliefs, [72 per cent](#) are teaching children that people have a gender identity that is different from their biological sex, [25 per cent](#) are teaching that some people or children 'may be born in the wrong body' and [30 per cent](#) are teaching pupils that a person who self-identifies as a man or a woman should be treated as a man or woman in all circumstances, even if this does not match their biological sex. Concerns have also been raised about the teaching of contentious political ideologies, such as critical race theory, in breach of the impartiality requirements in the Education Act (1996).

Despite this, parents are not routinely being given the right to know what their children are learning about in RSHE, [or being able to view the materials](#) being used to teach them.

Given there is currently little consensus both on how schools should treat gender distressed children at school, and how contentious topics should be taught, specific legislation is necessary to ensure that parents have authority over their child's education.

## The main elements of the bill are:

The Bill would:

- Establish a mandatory duty on schools to inform parents as soon as a child discloses feelings of gender distress at school, unless there is a legitimate safeguarding risk.

- Require RSHE lesson plans to be publicly available to access on every school's website as well as place a duty on schools to give access to parents to view all materials and lesson plans their child is being taught in RSHE.
- Establish a duty on schools to provide parents the name and relevant qualifications of any individual who is teaching their children, regardless of whether that person is employed by a school or an external provider.
- Cause any clauses in contracts (existing or future) between schools and external providers that prevent parents from being able to view materials being used to teach their children to no longer be binding.
- Require Ofsted, as part of inspections, to routinely check that the duty to access is in place and that parents are being informed of decisions regarding their child's feelings of gender distress. They would also inspect schools on whether they are adequately complying with the Education Act 1996 with regard to political impartiality.
- While parents are already able to sue schools under [A2P1 of the Human Rights Act 1998](#), it has not been attempted, and a clearer right of action is needed. The Bill would create a new right for parents to directly enforce their right to know in court, and to obtain an injunction to prevent a school teaching materials that are age inappropriate, against government guidance or politically partial.

### Territorial extent and application

England only.

### Impact of the Bill

Introducing the Parental Right to Know would strengthen the parental rights set out in the Children's Acts of 1989 and 2004 which state explicitly that parental involvement in the life of their child is paramount, and that no other body is to assume responsibility for a child unless the court intervenes. Similarly, the Education Act of 1996, requires local authorities to have regard to parents' wishes when it comes to the education of their children.

This Bill would make it clear that if a child discloses information that is not known by their parents, their school is required to disclose this information unless there is a legitimate safeguarding risk. It would also ensure that full transparency is provided to parents who have a right to know what their children are learning at school in RSHE.

The Parental Right to Know would foster good communication between schools and parents, and ensure schools are abiding by safeguarding protocols when it comes to the issue of gender distressed children at school.

## Further evidence and background

There is ample evidence to demonstrate that many schools are teaching contested political beliefs as facts, despite Sections 406 and 407 of the Education Act 1996 prohibiting schools from promoting partisan political views. As well Policy Exchange's own research outlined above, The New Social Convent Unit's report [What is being taught in Relationships and Sex Education in our schools?](#) contains a dossier of RSHE materials that many parents view as age-inappropriate and highly partisan, including teaching on 'sex positivity' and the teaching of gender identity beliefs as facts. It is clear from this document, as well as [polling](#) from Civitas, that children are being exposed to a wide range of partisan beliefs that extend well beyond the remit of the RSHE statutory curriculum guidance [first released in 2019](#) and updated [in 2022](#), following concerns that schools were not following their obligations to be politically impartial.

Linked to what schools are teaching with regard to gender identity beliefs is how they are dealing with children who present with gender distress. Following [Dr Hilary Cass' review](#) into the Gender Identity Development Service (GIDS), which is responsible for the clinical provision of gender distressed children, there has been widespread scrutiny over how children who wish to transition to become the opposite gender should be treated in clinical settings. Given clinical provision for this condition is still contested, it is entirely inappropriate that schools are not understanding gender distress as a safeguarding risk, as they would with other conditions.

As highlighted in previous Policy Exchange reports, introducing the parental right to know is essential to ensuring that parents have a full picture of what is going on if their child does disclose gender distress, so that both parents and their child's school can do what is best for that child. Further evidence can be found in the following Policy Exchange Reports:

- [Asleep at the Wheel: An Examination of Gender and Safeguarding in Schools](#)
- [The Watchmen Revisited](#)

## Parliamentary Franchise (Referendum Lock) Bill

### The purpose of the Bill is to:

The purpose of this Bill is to protect the parliamentary franchise, the electoral system, and the structure of Parliament from being changed without the support of the British people in a referendum.

### The bill is needed because:

The case for this Bill is that it will help minimise the risk that a future Parliament may act rashly, enacting legislation that unfairly changes the basic rules of the political game. Nothing in this Bill questions the doctrine of parliamentary sovereignty, which is constitutional bedrock. No Parliament may legally bind its successors but each Parliament exercises its vast law-making authority within the context of the political constitution, which includes constitutional conventions. The point of the Bill is to inform the constitutional context in which future Parliaments would legislate.

Parliament has authority to decide whether to change the franchise – for example, by lowering the voting age or by permitting EU citizens who are resident in the UK to vote – or to change the electoral system from First Past the Post to some other system. But it would clearly be wrong for Parliament to change the franchise or the electoral system for party-political advantage, which would undermine the fundamentals of democracy. It would also be wrong for Parliament to change the franchise or the electoral system if or when the electorate opposed such changes, which might be the case even if there was cross-party support for some change. These evils may be avoided if Parliament only changes the franchise or electoral system when the British people have supported such a change in a referendum. The same analysis holds for legislation that would abolish the House of Lords or that would make provision for peers to be elected. Either change would radically reshape our parliamentary democracy, changing the way in which the government relates to the Houses of Parliament and the way in which they jointly relate to the electorate. Such a major change to parliamentary democracy should not be made without the clear support of the British people.

The Bill would not (and could not) limit Parliament's lawful authority. It would be a political commitment, which would form a constitutional and political constraint on future Parliaments not to legislate about these

matters without first seeking popular support. The Bill would be similar to the European Union Act 2011, which required the support of the electorate in a referendum, as well as an Act of Parliament, before the Government could support further European integration. It is also modelled in part on section 63A of the Scotland Act 1998, in which Parliament has recorded its political commitment not to abolish the Scottish Parliament without the support of the Scottish people. This statutory provision has no legal force – it is not intended to and does not limit Parliament’s freedom in law to abolish the Scottish Parliament – but it clearly changes the constitutional context in which later Parliaments act.

### The main elements of the bill are:

This Bill would provide that the purpose of the Bill is to signify the commitment of Parliament not to change the franchise, the electoral system or the structure of Parliament without the support of the British people. (It would be vital for the Bill to be narrowly drawn to avoid amendment to encompass other constitutional questions, or policy matters, where there is no strong case for making action dependent on support in a referendum.)

The Bill would then provide that in view of this commitment, it is declared that neither the terms of the parliamentary franchise (section 1 of the Representation of the People Act 1983) nor the voting system used in parliamentary elections (Schedule 1, Paragraph 18 of the Representation of the People Act 1983) will be changed except on the basis of a decision of the people of the United Kingdom voting in a referendum.

The Bill would also provide that it is declared that neither would the House of Lords be abolished nor would provision be made for the election of members of the House of Lords except on the basis of a decision of the people of the United Kingdom voting in a referendum.

The final part of the Bill would specify that nothing in the Bill is intended to limit the doctrine of parliamentary sovereignty and that, for the removal of doubt, the Bill does not affect the powers of Parliament to make laws for the United Kingdom or any part thereof (compare section 28(7) of the Scotland Act 1998).

### Territorial extent and application

This Bill would apply across the United Kingdom.

### Impact of the Bill

Importantly, the Bill would not legally disable a future Parliament from changing the franchise or electoral system, or from radically reforming the structure of Parliament, without the support of the British people in a referendum. No legislation could have this effect and no legislation should attempt to have such effect. The Bill is entirely consistent with the doctrine of parliamentary sovereignty, which it would expressly affirm.

The significance of the Bill is that it would help minimise the risk that major constitutional changes would be made without widespread public

support, changes which would risk politicising the franchise or electoral system or unsettling the dynamics of the British form of parliamentary democracy. The Bill would help to introduce and/or reinforce a constitutional convention that this type of change to the basic rules of the political game should not be made without popular support. This would confirm and generalise the practice adopted in relation to proposed changes to the electoral system in 2011 and in relation to many other major constitutional changes in recent years.

In particular, the Bill would raise the political cost for a future Parliament to change the parliamentary franchise (enabling persons aged under 18yrs or EU citizens other than citizens of the Republic of Ireland or Malta to vote), or to change the voting system (replacing First Past the Post with some other system) without holding a referendum. It would also make it costly for Parliament to attempt to abolish the House of Lords or, more likely, to fundamentally change the shape of our parliamentary democracy by making provision for peers to be elected, without first holding a referendum.

If there was cross-party support for such legislation, it might be politically possible, and maybe even constitutionally legitimate, for Parliament to legislate without first holding a referendum, despite the Bill, although much would turn on the extent to which the electorate thought that parliamentarians were acting for their own interests. (Referendums are widely used in relation to electoral reform precisely because voters often fear that politicians cannot be trusted to make such decisions responsibly, because the electoral system is so closely related to their future political fortunes.)

A future government might secure a majority in a general election, having campaigned on a clear manifesto to change the franchise or voting system, or the structure of Parliament, without first holding a referendum. In this case, Parliament might well be constitutionally entitled to legislate on the basis of this manifesto commitment, despite the Bill. The impact of the Bill in this case would have been to have encouraged political parties to be open about proposed constitutional changes in advance of a general election and to avoid ambushing the electorate with fundamental change.

### Further evidence and background

[Written evidence](#) by Professor Richard Ekins KC (Hon) to the Public Administration and Constitutional Affairs Committee, inquiry into Lessons Learned from the EU Referendum, September 2016

# Public Order bill

## The purpose of the Bill is to:

The purpose of this Bill is to clarify the criminal law of protest by providing that a person has no defence to an offence on the grounds that a conviction would be a disproportionate interference in his or her “right to protest”.

## The bill is needed because:

This Bill is necessary because the criminal law that governs public protest has become unworkable. Protestors should not be able to obstruct the highway, damage public property, or deliberately interfere with the rights of others in order to make their political point or, worse, to try to compel the government to yield to their demands. Yet protestors, especially in relation to environmental causes but also in protests against the arms trade, have been acquitted on the grounds that they did not seriously disrupt the lives of others. Police are sometimes unclear about when or whether they have lawful grounds to arrest protestors and some trials have been politicised, with the judge or jury invited to decide whether it would be proportionate, all things considered, to convict the protestor of a crime. This is not a question that should be decided by the trial judge or jury; it should be decided by Parliament in enacting the offence. The trial court’s role should be to determine if, on the facts, the elements of the offence are made out; the trial court, including the jury, should have no role to play in deciding whether a conviction would be “proportionate”.

These problems in the criminal law have arisen because of the Supreme Court’s judgment in *Director of Public Prosecutions v Ziegler* [2021] UKSC 23, which held that a person could not be convicted of the offence of obstructing the highway if a conviction would be a disproportionate interference in his or her rights of speech and assembly under the European Convention on Human Rights (ECHR). The Supreme Court held that the offence will not have been committed – the protestor will have a lawful excuse for obstructing the highway – if the trial court concludes that a conviction would be a disproportionate (excessive, unjustified) interference in what is sometimes, inaccurately, termed “the right to protest”. The Ziegler approach has given rise to many absurd outcomes, including (a) the acquittal of a group of protestors earlier this year for obstructing the M25, which the trial judge said was not serious disruption because the police cleared the protest away quickly and because traffic on the M25 is often awful, and (b) the recent acquittal of protestors for blocking the entrance to a factory owned by an Israeli arms manufacturer, reportedly on the grounds that a conviction would be disproportionate in view of the actions that the protestors aimed to disrupt.

The Police, Crime, Sentencing and Courts Act 2022 and the Public Order Act 2023 both aimed to reform the criminal law to address the problems caused by public protest that aimed to disrupt the lives of others. However, both Acts largely fail because the new offences they introduce nearly all include a defence of “lawful excuse” or “reasonable excuse”, which imports the Ziegler approach. The Government attempted to amend the Public Order Bill, as it then was, to make clear what counted as “serious disruption”, which is the test the Supreme Court in Ziegler introduced for when a conviction would be proportionate and thus lawful. However, the amendment was rejected by the House of Lords and in any case would not have been a suitably direct response to Ziegler. Thus, the problems remain.

### **The main elements of the bill are:**

The Bill will consist of two provisions. The first will amend section 137 of the Highways Act 1980, which is the offence of obstructing the highway. This amendment will provide that a person has no lawful excuse for wilfully obstructing the highway – and thus no defence – if (a) the obstruction is intended to intimidate, provoke, inconvenience or otherwise harm members of the public by interrupting their freedom to use the highway or to carry out any other lawful activity, or (b) the obstruction is designed to influence the government or public opinion by subjecting any person, or their property, to a risk of loss or damage. The amendment would also provide that the amended offence would have to be treated by the courts as necessary in a democratic society for the protection of the right of others, which would prevent the Human Rights Act 1998 being deployed to undermine it.

The second provision would extend this same approach more generally. That is, it would amend any other offence that makes conduct unlawful unless the person has a lawful excuse or reasonable excuse for the conduct. The amendment would provide that a person has no excuse for conduct that is intended to intimidate, provoke, inconvenience or harm others by disrupting their freedom to carry on a lawful activity or to influence government or public opinion by subjecting a person or their property to the risk (or a greater risk) of loss or harm. This second provision would apply to offences including criminal damage and the new offences created by the Police, Crime, Sentencing and Court Act 2022 and the Public Order Act 2023.

### **Territorial extent and application**

An amendment made by this Bill would have the same extent as the provision amended, which would usually mean that it would apply only to England and Wales. Note that the Highways Act 1980, Police, Crime, Sentencing and Courts Act 2022 and Public Order Act 2023 each apply only to England and Wales and thus to the extent that this Bill amends the offences created by those Acts this Bill would also apply only to England and Wales.



## Impact of the Bill

The Bill will make clear that it is unlawful for protestors to deliberately to disrupt people's daily lives in order to protest. The Bill will thus make clear to police that they are entitled to arrest – and to courts that they are required to convict – protestors who deliberately obstruct the highway, or commit acts that would constitute other offences, in order to intimidate or harass the public or to put pressure on the government to change policy. The Bill will not limit legitimate protests that do not seek to abuse the rights and freedoms of others in this way. The Bill will prevent trials from being politicised with defence counsel arguing that a conviction would be a disproportionate interference in Convention rights.

## Further evidence and background

For more information on the problems caused by the Ziegler judgment and the importance of legislating to reverse the judgment's effects, see previous Policy Exchange reports and articles, including:

- [The law is not fit to stop Extinction Rebellion's street protests](#)
- [Did the Colston trial go wrong? Protest and the criminal law](#)
- [The 'Just Stop Oil' Protests: A legal and policing quagmire](#)
- [Amending the Public Order Bill](#)
- [Insulate Britain, obstruction and the law. Will the Government take this third chance to get it right?](#)

## Regulatory Reform Bill

### The purpose of the Bill is to:

A bill to stem the proliferation of regulations in both the public and private sector; to restore balance and proportionality to the mandate of key regulators; to reduce the regulatory burden on British businesses; and to promote growth and innovation.

### The bill is needed because:

Delivering growth and reversing a prolonged period of economic stagnation is one of the most pressing imperatives for the UK Government. In the immediate term, the policy options available for achieving this are limited. The inflationary environment demands tight monetary policy. There is limited fiscal headroom for either increases in public investment or tax cuts for households or business.

One policy lever that is available for government, though, is regulatory reform. Across a range of sectors, business leaders – and particularly leaders in small and medium-sized enterprises – cite compliance costs as a key inhibitor of growth. Every pound spent on filling in forms is a pound not spent on investment or training. In the Department for Business and Trade's Small Business Survey, 39% of participating firms cited red tape and regulation as a key obstacle to success. In 2021, research by the Federation of Small Businesses found that reducing red tape was the issue that its members most wanted the Government to prioritise addressing. The total cost of administrative activities to the UK's SME community is estimated to amount to [£55 billion per annum](#).

Of course, regulations are vital; they set the 'rules of the game' for economic actors, establish a level playing field, and offer important protections for consumers and society more generally against negative externalities. But it is clear that we are in many cases getting the balance wrong between the competing objectives of risk-mitigation, competition, growth and innovation. Regulations can impose costs that are passed on to consumers, they can make the job of public sector workers more difficult and take them away from delivering their core responsibilities like fighting crime or treating patients, and they can act to insulate market incumbents from competition.

Regulatory reform is an enormous task that will require a considerable amount of work and attention to detail. This has only been underscored by the Government's decision to row back on a commitment it made to sunset all retained EU laws by the end of 2023. But the provisions in this

bill will enable the Government to make concrete advances in stemming the flow of new regulations and bear down on the overall regulatory burden. It also includes provisions for certain specific regulatory reforms as called for in Policy Exchange's A to Z of Reform.

### The main elements of the bill are:

- Amendments to the Financial Services Act 2012 to change the mandate for the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). The respective mandates should require the regulator to balance risk mitigation with competitiveness, growth and innovation, instead of imposing a tiering of imperatives.
- An extension of the growth duty introduced in 2015 for many non-economic regulators to core economic regulators, including Ofcom, Ofwat and Ofgem.
- A gateway condition for regulatory agencies, which would require them to repeal two regulations for every new regulation issued.
- A new duty that any new regulation should require legislative approval if it has forecasted impact of either:
  - a) £10 million or the economy as a whole; or
  - b) more than £100,000 for a single company.
- In addition to these structural changes, The Bill would enact a number of specific regulatory reforms, including:
  - Scrap the provision under the Town and Country Planning Act 2011 that heat pumps installed within one meter of the boundary of a dwelling require planning permission.
  - Remove the requirement that HGV drivers take a Certificate of Professional Competency (CPC) Course every five years, and instead require that they pass a health examination and eye test. The age at which annual testing is introduced should be increased to match the state pension age.
  - Dramatically reducing and consolidating the 25 professional body supervisors that oversee how anti-money laundering rules are applied.

### Territorial extent and application

Mixed; macroprudential regulations apply across the UK, planning-related regulations apply just to England and Wales.

### Impact of the Bill

We know that these sorts of policies deliver net reductions in red tape. In every year that the Government operated a gateway condition on regulators between 2011 and 2017 apart from 2012, the UK managed to reduce the net regulatory burden. In 2011 and 2017, it was diminished by over £4 billion. More broadly, regulatory creep is not an inevitability. In British Columbia, the Government managed to reduce regulatory requirements

by 49% between 2001 and 2018 without adverse impacts on social or environmental outcomes.

These proposals should result in at least a net reduction in the regulatory burden over the next five years/

### Further evidence and background

The UK is still struggling to define precisely what its economic model post-Brexit should be, and it is failing to articulate one of the principal advantages it gains from its departure: that is, the ability to develop a sovereign approach to regulation.

Policy Exchange's Re-Engineering Regulation project was established to provide the intellectual groundwork for a better, smarter regulatory apparatus in the United Kingdom. The first paper in the project, [A Blueprint for Reform](#), set out the principles that should ground an enhanced system. The second paper, [An A-Z of Reform](#), set out 26 case studies of rules or regulations that are having pernicious unintended consequences, and how they should be improved or scrapped.

The Government announced earlier in 2023 that it would not be sunsetting all 4000 or so retained EU laws by the end of 2023 and would only be able to review around 800 of them. The Business Secretary suggested this was because the civil service would simply not be able to conduct the requisite analysis in time. This is lamentable, but it should not prevent the Government from being ambitious in its reform agenda, particularly since (as set out above) it offers a practical avenue for delivering growth. A recent Department for Business and Trade policy paper set out its plan for "Smarter Regulation to Grow the Economy". The paper established the fundamental principles for a better regulatory framework. The legislation proposed here will give practical effect to those principles.

It is usually worth turning to history when considering which policy levers are likely to be most effective at achieving a given end, and regulatory reform is no exception to this rule. The 'one in two out rule' appears on the surface to be a blunt tool for instigating improvements to the way we generate new rules (and dispose of old, unwanted ones). But this is to miss the point of a gateway condition: a one in two out requirement forces the proposer of a new rule to assess the costs and benefits of introducing a new rule more fully, as well as the broader trade-offs, whilst simultaneously acting as an incentive for getting rid of rules that may not have much value but add to overall burden placed upon the regulated. And so this has been borne out when such a policy has been implemented. In the last two decades, 'one in two (or even three) out' have been the single most effective means for reducing red tape in the UK, and when since these gateways were removed in 2017, the net burden of regulation has increased. In the United States, to take one example, Idaho managed to cut or simplify 95% of their rules and regulations in three years using a 'one in two out' rule. Since 2010, Idaho has been the fastest growing state in the country.

The requirement that any particularly costly or burdensome regulation

be subject to legislative approval is a supplementary reform which recognises that not all regulations are equally burdensome or valuable. This requirement will ensure that two fairly costless regulations are not scrapped to make way for a single, far more costly new rule. The extension of the growth duty to three further agencies will support the move towards a more proportionate regulatory framework that better balances the various imperatives that a regulator must take into consideration.

## Sentencing Reform bill

### The purpose of the Bill is to:

Contribute to fulfilling the first job of any government - to keep its people safe. This Bill would cut crime and make a substantial contribution to ensuring the public are kept safe from individuals who, through their prolific criminal offending, have chosen to repeatedly cause misery to victims, families and communities.

### The bill is needed because:

Although they represent only a small minority of offenders (9%), the most prolific offenders receive nearly half of criminal sentences (10.5 million) and just over half of all convictions (52%).<sup>87</sup> The impact of their criminality means that these individuals have a substantial negative impact on our society, on their victims, and our communities.

Of the 5.89 million people convicted of criminal offences (between 2000 and 2021) 243,000 are categorised as being the most prolific adult offenders. These prolific adult offenders commit 8 times as many offences per offender (20.13 offences) compared to non-prolific offenders (2.49 offences).<sup>88</sup> Prolific offenders are most likely to start their criminal career with convictions for theft (shoplifting) with many going on to commit serious offences. Currently, on their most recent conviction, only 23.9% of prolific offenders are sentenced to an immediate term of imprisonment, enabling the remaining 76% to continue their criminal behaviour.<sup>89</sup>

Property crime, and shoplifting, in particular is posing significant challenges to retailers and shop-workers. Over the last year police recorded property crime has increased – with 'theft person' up 28%, shoplifting up 24%, robbery up 13% and burglary up 4%. The economic impact of this type of crime is substantial with the impact disproportionately targeting the poorest in our society as a result of higher prices.

This Bill would ensure that those individuals who choose to prolifically commit crimes are kept away from the law-abiding public for a defined period and receive a punishment appropriate to the totality of their criminal lifestyle. By sentencing the most prolific offenders to minimum terms of imprisonment this Bill would have a substantial impact and actively contribute to cutting crime in our society.

This Bill would ensure that the Criminal Justice System is on the side of the law-abiding public. Dealing with the most prolific offenders in a robust and effective way would contribute to cutting crime, better protecting the public and ensuring the public's confidence that the Criminal Justice System is on their side.

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87. Ministry of Justice, Prolific Offenders: Update on the characteristics of prolific offenders, 2000-2021, [link](#)

88. Ibid.

89. Ibid.

The main elements of the bill are:

- The introduction of a mandatory additional term of imprisonment for individuals who, on conviction, meet the threshold of becoming an ‘Adult Prolific Offender’. Those who meet the threshold would have an additional term of two years of imprisonment added to their sentence. Judges and Magistrates would be required to impose these mandatory additional sentences, which must be served in their entirety in custody, unless the most exceptional circumstances exist.
- The threshold of an Adult Prolific Offenders would be set using the current definition used by the Ministry of Justice and would be defined in law as those criminals who are 21 years and older and have had a total of 16 or more previous convictions or cautions, with 8 or more convictions or cautions committed since the age of 21.
- A presumption in law would be introduced that those who are not prolific or violent or sexual offenders, have pleaded guilty at the first opportunity and would previously have received a term of imprisonment of less than twelve months would instead receive an Intensive Community Order where they are required to complete an extended period of unpaid work in the community, drug or alcohol treatment (if applicable) and other suitable interventions. There would be a presumption that as part of an Intensive Community Order offenders would be subject to mandatory electronic monitoring.
- Shoplifting of any value would no longer be treated as a ‘summary only’ offence but would become an ‘either way’ offence with enabling prolific offenders to be dealt with in either the Crown Court or Magistrates Court reflecting the totality of their offending behaviour.
- Where an offender has been released from prison on licence but breaches the terms of that licence, the approval by an on-call Magistrate would be required to return the offender to prison. This would be an amendment to the status quo where recalls to prison are administered entirely by the Probation Service.

### Territorial extent and application

This Bill would extend to England and Wales.

### Impact of the Bill

The vast majority of British people play by the rules and go about their lives without committing crime. A very small proportion of individuals, through their prolific campaigns of violence and criminality, cause their victims untold misery and prevent the public from being able to live safely in their homes and in their communities. There can be no doubt of the harm these individuals cause.

This Bill would establish an effective and robust approach to dealing with the most prolific offenders who cause the greatest harm in our society. By removing these individuals from our mainly law-abiding society for a minimum defined period of time on conviction this would lead to substantial reductions in crime.

In every case these individuals, having already been through the Criminal Justice System on a number of previous occasions, have had the opportunity to put their lives on the straight and narrow yet have chosen not to. It is the wider public and the victims of these offenders that suffer as a result.

The wider public would know they are being protected from these offenders because, in every case, prolific offenders would be sentenced to a term of imprisonment of at least two years imprisonment, in addition to their sentence for the original offence. This would include the prolific shoplifters who cause misery for shop-workers and whose offending has a substantial impact on the economic livelihood of poorer neighbourhoods.

This Bill would lead to an increase in the number of prolific offenders both serving terms of imprisonment and the length of their terms of imprisonment.

This would be balanced by a reduction in the number of non-prolific, non-violent or sexual offenders who would previously have received a prison term of less than twelve months who would now serve their sentence under the imposition of an Intensive Community Order.

There is substantial evidence to suggest that offenders who serve a Community Order are less likely to reoffend than those who are sentenced to a short term of imprisonment. The one-year reoffending rate following short term custodial sentences of less than 12 months was higher than if a court order had instead been given (by 4 percentage points). The one-year average number of reoffences per sentencing was also higher following short term custodial sentences of less than 12 months than if a court order had instead been given (by around 65 reoffences more per 100 sentencing occasions).<sup>90</sup>

### Further evidence and background

There are currently 3,492 adults, 131 18-20 year-olds and 22 15-17 year-olds serving terms of imprisonment less than twelve months.<sup>91</sup>

Between January and March 2023 6,824 prisoners were recalled to custody.<sup>92</sup> There are currently 11,901 prisoners in custody having been recalled on licence.<sup>93</sup> It is anticipated that this number would reduce as this Bill. By ensuring a Magistrate approves the revocation of an offender's licence this would ensure that all appropriate safeguards have been met before returning someone to custody.

90. G. Eaton & A. Mews (2019), The impact of short custodial sentences, community orders and suspended sentence orders on reoffending, Ministry of Justice, [link](#)

91. Ministry of Justice, Offender Management statistics quarterly: January to March 2023, [link](#)

92. Ibid.

93. Ibid.

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