UNLOCKING THE POWER TO GOVERN · PAPER 01

Paper I: The Courts

Restoring the Appellate Committee and the Lord Chancellor and returning judicial review to its purpose.

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Governments are elected to govern. In Britain they increasingly cannot. Ministers announce policies that are then delayed, diluted or struck down. Each new government discovers what the last one learned: the decisions it was elected to make are no longer fully its own.

This series examines the three institutions that most constrain that power: the courts, arm's-length bodies and the charitable sector. None of them governs Britain. Together they make it very difficult for anyone else to. This is the veto state.

This first paper deals with the courts. The problem is not an independent judiciary, which is one of the great achievements of the English constitution. It is the expansion of judicial power over three decades into territory that belongs to Parliament, and an appointment system that has removed the judiciary from any line of democratic accountability.

The Constitutional Reform Act 2005 abolished the judicial role of the House of Lords, created a Supreme Court built on a separation of powers foreign to the English tradition, stripped the Lord Chancellor of his historic functions and placed judicial appointments with a commission answerable to no one elected. Alongside the Human Rights Act 1998, it gave the courts both the means and the institutional standing to act as a check on Parliament rather than its servant.

This paper proposes a programme to restore the balance. Abolish the Supreme Court and restore the Appellate Committee of the House of Lords. Repeal the Constitutional Reform Act 2005 and restore the historic office of Lord Chancellor, returning judicial appointments to the Lord Chancellor with parliamentary confirmation of senior judges. Narrow standing and grounds for judicial review and require courts to give effect to the clear words of Parliament. Reconstitute the immigration and asylum tribunals. Introduce a statutory code of judicial conduct, with removal by resolution of the House of Commons, and a time-limited review of the most serious cases. Bring sentencing guidelines under parliamentary control.

Judges will continue to decide cases independently. They will not be removed for their rulings as such. But the law they apply will be the law Parliament made, and those who hold judicial office will answer to the elected House for their conduct.

Repeal of the Human Rights Act and withdrawal from the European Convention on Human Rights are set out in Restoration and Renewal. This paper builds on them.

1 How the courts became a veto point

For most of its history the English constitution rested on a simple settlement. Parliament made the law and the courts applied it. The highest court sat within Parliament itself, as the Appellate Committee of the House of Lords, and the Lord Chancellor stood at the meeting point of legislature, executive and judiciary. The arrangement was untidy in theory but worked in practice, because each institution understood its place.

That settlement was dismantled within a decade. The Human Rights Act 1998 required courts to read legislation compatibly with Convention rights wherever possible and to take account of Strasbourg case law that expanded those rights year by year. The Constitutional Reform Act 2005 then gave the judiciary a separate institutional identity, a final court outside Parliament and an appointments system outside ministerial control.

The courts did the rest. Over the same period they developed doctrines that allowed them to review the substance of decisions as well as their legality: proportionality, an expansive principle of legality and narrow readings of provisions in which Parliament had expressly limited review. Each development may have been defensible on its own terms. Together they moved the line between law and policy steadily towards the courts.

The volume of litigation reflects it. Around 3,700 applications for judicial review were made in 2025, more than a third of them in immigration and asylum. Each challenge can delay a policy for months or years, and the threat of challenge shapes policy before it is made.

Parliament has had to correct the judiciary repeatedly. The Judicial Review and Courts Act 2022 reversed the Cart judgment, which had opened a further round of review in immigration cases. In 2025 Parliament legislated to stop sentencing guidance that would have treated offenders differently according to their ethnicity. Each correction came only after the damage was done.

The decisions that shaped the problem

The table sets out decisions that blocked or reversed policy, the legal basis for each and the measure in this programme that answers it.

DECISION	LEGAL BASIS	RESPONSE
Rwanda flight grounded by an interim order of the European Court of Human Rights (2022)	European Convention on Human Rights	ECHR withdrawal (Restoration and Renewal, D1)
Rwanda scheme ruled unlawful by the Supreme Court (AAA, 2023)	Risk of return to persecution under the Human Rights Act and the Refugee Convention as written into immigration statute	HRA repeal (Restoration and Renewal, D1), with the Refugee Convention route addressed in separate legislation
Home Office's stricter reading of the 'unduly harsh' deportation test rejected by the Supreme Court (HA (Iraq), 2022)	Article 8 through the Human Rights Act and judicial interpretation of the statutory tests set in 2014	HRA repeal and reconstitution of the final court and the immigration tribunals (J2, J10)
Ministerial veto under the Freedom of Information Act overridden (Evans, 2015)	Principle of legality used to narrow an express statutory power	Rules of interpretation and statutory reversal (J7, J9)

DECISION	LEGAL BASIS	RESPONSE
Exclusion of review of the Investigatory Powers Tribunal read narrowly (Privacy International, 2019)	Narrow reading of an ouster clause	Ouster clauses given effect (J7)
Prorogation of Parliament held unlawful (Miller and Cherry, 2019)	Common law constitutional principles applied to a prerogative power	Prorogation made non-justiciable (J8)
Sentencing guideline treating offenders differently by ethnicity (2025)	Guidance issued by an independent council without parliamentary approval	Parliamentary control of guidelines (J15)
Around 3,700 judicial review claims a year	Broad standing and funded strategic litigation	Narrower standing and disclosure of funding (J5)

2 Parliament makes the law and independent courts apply it

Judicial independence means that a judge decides the case before them according to law, free from pressure by ministers, parties or anyone else. That principle is fundamental and this programme preserves it. Ministers will remain bound to uphold the independence of the judiciary, and no judge will be removed for reaching a decision the government dislikes.

Independence in deciding cases is not the same as freedom from accountability. Before 2005 judges were appointed by a minister answerable to Parliament, and the highest court sat within Parliament. That arrangement produced one of the most respected judiciaries in the world. Independence was secured by tenure and convention, not by placing the judiciary beyond the reach of any elected body.

The programme rests on three propositions. Parliament determines the law and the limits of judicial power. Judges apply the law Parliament has made, using the ordinary discretion a common law system requires. Those who hold judicial office answer for their conduct to the elected House.

It does not replace judicial discretion with rigid rules. A common law system depends on judges exercising judgement. The aim is to return that judgement to its proper field, the application of law to facts, and away from the review of policy.

3 The final court

J1 Abolish the Supreme Court and restore the Appellate Committee

Abolish the Supreme Court of the United Kingdom and restore the Appellate Committee of the House of Lords as the final court of appeal. Re-enact the provisions governing Lords of Appeal in Ordinary, updated as necessary, as part of the repeal of the Constitutional Reform Act 2005 under J3.

The Supreme Court was created in 2009 to give visible effect to a separation of powers drawn from continental and American constitutional theory. The English constitution developed differently. Its highest court sat within Parliament, and its judges were members of the legislature who exercised restraint by convention. That placement reminded the court that it served a sovereign Parliament. Its removal encouraged the court to see itself as a constitutional guardian standing apart from Parliament and above it.

Lords of Appeal will be appointed as life peers. They will not take part in the politically contentious business of the House, following the convention that applied before 2009. The Appellate Committee will hear appeals from the courts of England and Wales and Northern Ireland, civil appeals from Scotland and devolution issues. Its membership will include judges from Scotland and Northern Ireland, as before, and it may sit in Edinburgh, Belfast and Cardiff. The Judicial Committee of the Privy Council will continue to hear appeals from overseas jurisdictions.

J2 Reconstitute the final court

Membership of the Appellate Committee will not transfer automatically from the Supreme Court. The Lord Chancellor will nominate its members under the procedure in J4 and Parliament will confirm them. Justices of the Supreme Court may be nominated. Those who are not will keep their judicial office, salary and pension and will sit in the Court of Appeal or the corresponding court of their own jurisdiction.

No judge will lose judicial office through this change. It follows from a structural reform of the final court and applies to every member equally.

Transitional provisions will transfer pending appeals, preserve the authority of existing judgments and amend references to the Supreme Court in the Scotland Act 1998, the Government of Wales Act 2006, the Northern Ireland Act 1998 and other legislation. Arrangements for Northern Ireland will be included in the schedule described in D5 of Restoration and Renewal.

4 The Lord Chancellor and appointments

J3 Repeal the Constitutional Reform Act and restore the Lord Chancellor

Repeal the Constitutional Reform Act 2005 in full and replace it with an Act restoring the office of Lord Chancellor as it stood before 2005. The Lord Chancellor will again be head of the judiciary of England and Wales, preside over the House of Lords and hold responsibility for judicial appointments. Functions transferred to the Lord Chief Justice in 2005, including responsibility for the deployment and discipline of judges, will return to the Lord Chancellor. The office of Lord Speaker will end.

The Lord Chancellor will be a senior lawyer of standing and a member of the House of Lords. The office carries a constitutional duty to the courts that is best discharged by someone who understands the law from the inside. The Lord Chancellor will keep the historic entitlement to sit as a judge but, by convention, will not sit in any case in which the government has an interest.

Responsibility for prisons, probation and criminal justice policy will rest with a Secretary of State for Justice in the House of Commons, who will also answer in that House for the work of the Lord Chancellor's department.

The replacement Act will restate the duty on ministers to uphold the independence of the judiciary, which this programme preserves.

The Judicial Appointments Commission will be abolished. The Lord Chancellor's appointment powers will cover England and Wales and UK tribunals in reserved fields. The Commission was created to take politics out of judicial appointments. In practice it took out accountability. Appointments are made

through a body that answers to no elected institution, using processes that reward a narrow range of professional experience and that until now have been required to encourage demographic diversity. The Lord Chancellor answers to Parliament for every decision.

Below the Court of Appeal, the Lord Chancellor will appoint on the basis of an assessment of legal ability and judicial temperament carried out by serving senior judges. That assessment will advise and the decision will rest with the Lord Chancellor. Selection will be on merit alone, as Restoration and Renewal provides.

J4 Confirm senior judges in Parliament

Members of the Appellate Committee, judges of the Court of Appeal and heads of division will be nominated by the Lord Chancellor and confirmed by a joint committee of both Houses. The committee will hold a public hearing, examine the nominee's record and approach to judicial office and confirm or reject the nomination by simple majority.

Hearings will examine judicial philosophy, including the nominee's understanding of the proper relationship between Parliament and the courts. They will not ask nominees how they would decide particular cases. Where a nomination is rejected the Lord Chancellor will nominate again.

Nominations of Scottish and Northern Ireland judges to the Appellate Committee will be made after consultation with the judicial appointments bodies of those jurisdictions.

5 The law judges apply

Changing the final court and the appointment system will reshape the judiciary over time. The law judges apply determines what they can do now. The measures below return judicial review to its proper purpose: ensuring that public bodies act within the powers Parliament has given them.

J5 Narrow standing and require disclosure of litigation funding

Replace the sufficient interest test for standing in judicial review with a requirement that the claimant is personally and materially affected by the decision challenged. Representative bodies may bring claims only on behalf of identified members who are themselves directly affected.

Where a public body may have acted unlawfully but no one is personally and materially affected, the High Court may grant permission to another claimant on a narrow basis. The claim must allege that the body acted without legal power or contrary to the clear terms of an Act. It must be a case that no directly affected person could bring. The court must be satisfied that the claim is not a means of pursuing a policy dispute. The Attorney General may also bring such claims in the public interest. Unlawful action by public bodies will remain open to challenge, but campaigning organisations will no longer be able to litigate policy disputes on their own account.

Claimants and interveners will disclose who is funding the litigation, including grants from charities and foundations. Interveners will bear their own costs and any costs their intervention causes. Courts will admit interventions only where they add something the parties cannot.

J6 Confine the grounds of review

Courts will not quash a decision on the ground that it is a disproportionate interference with rights or interests, except where an Act of Parliament expressly provides for such review. The grounds of review will be illegality, procedural unfairness and irrationality in its established sense.

Proportionality requires a court to weigh the merits of a policy against its effects. That judgement belongs to ministers answerable to Parliament. Its spread beyond the Human Rights Act has allowed courts to substitute their own assessment for that of the decision maker.

J7 Restore statutory interpretation and give effect to ouster clauses

Legislation will state that the rule of law requires courts to give effect to Acts of Parliament according to their terms. Amend the Interpretation Act 1978 to provide that presumptions of interpretation, including the principle of legality, may not be used to depart from the clear meaning of statutory words.

Where Parliament excludes or limits judicial review of a decision, courts will give that provision effect according to its ordinary meaning. Review will be available only on the narrow grounds the provision itself permits.

J8 Restore the boundary of justiciability

Legislate that the prorogation of Parliament is not subject to judicial review. Apply the same rule to compliance with constitutional conventions, including the Ministerial Code, and to matters of high policy in foreign affairs, defence and national security. The Dissolution and Calling of Parliament Act 2022 already excludes review of dissolution. This measure completes that principle.

These are political questions. Ministers answer for them to Parliament and to the electorate.

J9 Correct remedies, limit interim relief and reverse overreaching rulings

Where a court finds a statutory instrument or other general measure unlawful, it will suspend the quashing order or limit it to future effect unless doing so would cause serious injustice. The Judicial Review and Courts Act 2022 made these remedies available. This measure makes them the presumption for general measures, so that policies are corrected rather than voided retrospectively.

Only a lack of legal power will make a decision void from the outset. Procedural errors and errors of law will make it voidable.

Courts will not grant interim relief preventing the removal of a person from the United Kingdom, or suspending the implementation of a policy approved by Parliament, unless the claimant shows a strong case and a real risk of serious and irreversible harm. Applications made shortly before a scheduled removal will be refused unless there is good reason for the delay.

Reduce the time limit for bringing a claim for judicial review from three months to six weeks, as already applies in planning cases.

Reverse by statute rulings in which courts have narrowed clear statutory powers, beginning with Evans and Privacy International. Justice ministers will publish a schedule of further rulings for correction with the Bill.

6 The immigration and asylum tribunals

J10 Reconstitute the immigration and asylum tribunals

Most decisions that determine whether a person is removed from the United Kingdom are made not in the higher courts but in the Immigration and Asylum Chambers of the First-tier and Upper Tribunals. It is there that the interpretation set by the higher courts is applied case by case, and there that public confidence has been most damaged.

Reconstitute both chambers. All judicial posts will be filled afresh under the appointment system in J3. Serving judges may apply. Those not appointed will be offered judicial roles in other jurisdictions where possible or may retire on full pension. Reconstitution will not itself remove anyone from judicial office.

Where a tribunal allows an appeal against deportation without applying the public interest considerations set by Parliament, the Home Secretary may appeal without needing permission.

7 Judicial conduct and accountability

J11 Enact a statutory code of judicial conduct

Enact a Judicial Standards Act setting a statutory code of conduct for all judges. Judges may not engage in political campaigning, make public statements on contested political questions or belong to organisations that campaign on such questions. Serving judges will have six months from commencement to end any such roles.

The current Guide to Judicial Conduct already asks judges to refrain from political activity, but it has no statutory force. Judges can receive formal advice, warnings or reprimands, or be suspended in limited circumstances, but removal of a senior judge requires an address of both Houses, a procedure never used in England and Wales. The new code gives the existing expectation the force of law and makes serious or repeated breaches a ground for removal under J13.

J12 Require declaration and recusal

Judges will declare past advocacy, campaigning and roles with organisations that litigate or campaign. Declarations will be published. A judge will not sit in a case where a fair-minded and informed observer would conclude that their past advocacy or associations create a real possibility of bias. Parties may apply for recusal on that ground.

J13 Removal by the House of Commons

A senior judge who breaches the statutory code, or who persistently refuses to give effect to clear statutory provisions, may be removed from judicial office by resolution of the House of Commons following an independent inquiry. The inquiry will be conducted by a panel chaired by a retired senior judge, which will hear the judge and report its findings to the House.

Senior judges are those of the High Court and above, including members of the Appellate Committee. Other judges may be removed from office by the Lord Chancellor on the same grounds, following the same form of inquiry.

This replaces the requirement for an address of both Houses under the Senior Courts Act 1981 and the corresponding provisions for the final court. Accountability for judicial office will rest with the elected House.

No judge will be removed for reaching a particular decision. The grounds are breach of the code or a persistent pattern of refusing to apply the law as Parliament made it, established by inquiry. The Act replacing the Constitutional Reform Act 2005 will re-establish a process for ordinary complaints about judicial conduct, overseen by the Lord Chancellor, with the existing sanctions of formal advice, warnings, reprimands and suspension.

J14 Hold a time-limited Judicial Conduct Review

Establish a time-limited Judicial Conduct Review to examine serving judges against defined criteria. These are political activity in breach of the conduct guidance applying at the time, failure to recuse in cases connected to the judge's own advocacy and a pattern of decisions overturned for failure to apply clear statutory provisions. Statistical evidence, such as appeal outcomes far outside the range of comparable judges, may prompt examination but will not itself establish a finding.

An independent panel chaired by a retired senior judge will be appointed by the Lord Chancellor with the approval of the Commons Justice Committee. Each judge will be told the case against them, given the opportunity to respond and heard before any finding is made. The panel will publish its findings.

The panel may recommend no further action, formal advice, withdrawal from hearing cases in a particular jurisdiction, transfer to another jurisdiction or, in serious cases, removal under J13. A finding by the panel will satisfy the inquiry requirement in J13. The Review will report within two years.

8 Sentencing

J15 Bring sentencing guidelines under parliamentary control

Sentencing guidelines shape the punishment of every offender in England and Wales. They are written by the Sentencing Council, an arm's-length body. In 2025 the Council issued guidance that would have made pre-sentence reports more likely for offenders from certain groups, including ethnic minorities, and Parliament had to legislate to stop it.

The Sentencing Act 2026 now requires the Lord Chancellor and the Lord Chief Justice to approve new guidelines. Build on that reform. Every new or amended guideline will be laid before Parliament and may be annulled by resolution of the House of Commons. Guidelines will apply the same principles to every offender, consistent with C1 of Restoration and Renewal. The Council's remit will be confined to promoting consistency in applying the sentences Parliament has set.

9 Territorial application

The final court serves the whole United Kingdom. The appointment and conduct reforms apply to the judiciary of England and Wales and to UK tribunals in reserved fields. Scotland and Northern Ireland have their own judicial appointment systems, which this programme leaves in place.

FIELD	APPLICATION
Final court	United Kingdom, with judges from Scotland and Northern Ireland and transitional arrangements included in the D5 schedule
Appointments and the Lord Chancellor	England and Wales and UK tribunals in reserved fields. Nominations of Scottish and Northern Ireland judges to the Appellate Committee after consultation with their appointing bodies.
Judicial review	England and Wales. The Scottish Government will be invited to make equivalent changes in the Court of Session. Northern Ireland will be treated under the D5 schedule.
Immigration and asylum tribunals	United Kingdom
Judicial conduct and removal	Judges of England and Wales, UK tribunals and the Appellate Committee
Sentencing guidelines	England and Wales

10 Legislation and delivery

Justice ministers will lead the programme through three Bills.

BILL	MEASURES	CONTENT
Constitutional Reform (Restoration) Bill	J1 to J4 and J11 to J14	Repeal of the Constitutional Reform Act 2005, the office of Lord Chancellor, abolition of the Supreme Court, the Appellate Committee, appointments, confirmation hearings, the conduct code, removal and the Judicial Conduct Review
Judicial Review Bill	J5 to J9 and J15	Standing, funding disclosure, grounds of review, interpretation, ouster clauses, justiciability, remedies, interim relief, time limits, statutory reversals and sentencing guidelines
Immigration and Asylum Tribunals Bill	J10	Reconstitution of the immigration and asylum tribunals and Home Office appeal rights