

**SUBMISSION TO THE INDEPENDENT REVIEW OF ADMINISTRATIVE LAW**  
**BEING CARRIED OUT BY A PANEL CHAIRED BY LORD EDWARD FAULKS QC**

1. The power of Judicial Review by the Courts is a very important aspect of the Administrative Law of England and Wales.
2. A United Kingdom citizen's ability, through applying to the Courts for Judicial Review, to ensure that the Government at all times acts only in accordance with the law and that the acts and omissions of the Government as well as of local and other public authorities and state agencies (together "Public Bodies") and of those acting on behalf of the Government and/or Public Bodies, are subject to scrutiny by the Courts, is one of a citizen's fundamental rights.
3. It is such a fundamental right because it enables the citizen to have a means of securing the curbing of any unlawful or improper exercise of power by an overweening or overmighty state.
4. The advice given by the Prime Minister to the monarch as to the exercise of prerogative rights of the Crown, including, without limitation, as to the prorogation of Parliament, should also continue to be subject to scrutiny by means of Judicial Review.
5. A key aspect of both the rule of law and of democracy is that the legal system should enable citizens to challenge both acts or omissions of the Government and Public Bodies and of those acting on their behalf and also advice given by the Prime Minister to the monarch as to the exercise of the prerogative rights of the Crown. Good government by definition means observance of the law and the power of Judicial Review by the Courts is necessary in order to ensure that the country is governed in accordance with the law.
6. It is essential that if, on a Judicial Review, a Court rules that the Government and/or a Public Body or someone acting on its behalf has acted, or is proposing to act unlawfully or beyond its powers, the Court can grant a meaningful remedy not only to rule as to its unlawfulness and/or its impropriety, but can also grant a remedy to compensate the citizen for any loss or damage caused by such unlawful act or omission. The Court should also be able to grant a meaningful remedy where unlawful or improper advice has been given, or is proposed to be given by the Prime Minister to the monarch as to the exercise of the prerogative rights of the Crown.
7. I do not think that the current power of Judicial Review threatens good government, parliamentary democracy, and the rule of law. On the contrary, I believe that it enhances each of them. I very much agree with the conclusion reached by Lord Dyson, then the Master of the Rolls, when giving the Sultan Azlan Shah Lecture in November 2015 entitled "Is Judicial Review a Threat to Democracy?", in which he reviewed relevant case law, that Judicial Review is not a threat to democracy in the United Kingdom.
8. There should be no new restrictions imposed on the right of a citizen to apply for Judicial Review or any new limitations or exceptions imposed on the Courts in

respect of their powers of Judicial Review. To impose any such restrictions or limitations or to introduce any exceptions would be a retrograde step.

9. I consider that the Judgment of the Supreme Court in the cases of *R (on the application of Miller) v The Prime Minister* and *Cherry v Advocate General for Scotland* [2019] UKSC 41 was correctly given. It represents a fundamental bulwark necessary to safeguard the rights of citizens of the United Kingdom, including, without limitation, against steps taken by the Prime Minister to prevent Parliament from sitting by an unlawful attempt to prorogue Parliament.
10. In my view the four points made by Lady Hale and Lord Reed in paragraphs 30 to 34 of the Supreme Court's Judgment which they gave are correct. I also consider that the Judgment's conclusions on justiciability and the alternative ground of challenge by the Prime Minister are correct.
11. Having watched the proceedings in the Supreme Court and having listened to the submissions made by Lord Pannick QC on behalf of Ms Miller, Sir James Eadie QC on behalf of the Prime Minister and Lord Garnier QC (who appeared on behalf of Sir John Major), I was struck by the fact that no Witness Statement was filed in the proceedings in support of the Prime Minister's case. This meant that there was no explanation of the Prime Minister's position before the Supreme Court which was verified by a Statement of Truth.
12. I disagree with the views of Professor John Finnis as expressed by him in his paper "The unconstitutionality of the Supreme Court's prorogation judgment."
13. UK citizens should continue to have the right to bring claims in UK Courts against the Government and Public Bodies for breach of the European Convention on Human Rights as they are currently able to do.
14. The Human Rights Act 1998 should not be repealed. Neither should it be amended so as to limit its application.

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