

JUSTICE PRESS RELEASE

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JUSTICE: Lords should dismiss Government request for unfair, unnecessary and unjustified exemption from open, adversarial justice

Lords debate the Government's Justice and Security Bill today. JUSTICE considers that proposals in the Bill to expand the use of secret evidence could undermine public confidence in the administration of civil justice and damage the credibility of our judiciary.

- This Bill makes closed material procedures (CMP) – where a party to proceedings and his lawyers (together with the public and the press) are excluded while his opposition speaks to the judge in private – an ordinary part of the civil justice “toolkit” in cases involving “national security” (Clauses 6 – 10, Part 2).

JUSTICE considers that that the operation of CMP is inherently unfair and that normalising the use of these controversial and previously exceptional hearings risks undermining the credibility of our judges and public confidence in the civil justice system. They are unfair, unnecessary and unjustified.

- Clauses 13 and 14 of the Bill would oust the jurisdiction of our courts to consider ordering the disclosure of information in the public interest where an individual seeks redress in an arguable case which the UK is shown to be mixed up in wrongdoing, however innocently. This ouster would provide no exception for individuals seeking redress in cases involving evidence of UK complicity in torture or other serious human rights violations.

JUSTICE notes:

- Parliament rejected previous Government attempts to extend the use of secret evidence in inquests, not once, but twice. The Government has publicised that this Bill will not extend to inquests. However, bereaved families seeking compensation in the civil courts could yet find their case heard firmly behind closed doors if the Bill is passed. In addition, it creates a power for Ministers to expand its scope in future, including covering Coroners' Courts.
- Parliament's own watchdogs have criticised the proposals. The Joint Committee on Human Rights (JCHR) concluded that there was no evidence to support change of this magnitude and rejected the Government's case as based on “vague predictions” and “spurious allegations”.
- The House of Lords Constitution Committee warns that the Bill challenges the principles of open and natural justice. They stress that the Bill would give the Government a “constitutionally inappropriate” role as “gatekeeper” to secret justice in claims involving Government interests.

- The Special Advocates – security cleared lawyers who would represent claimants shut out of closed proceedings – have dismissed CMP as “inherently unfair” and openly criticised the detailed proposals in the Bill.

Angela Patrick, JUSTICE’s Director of Human Rights Policy said:

The Government’s proposals to expand secret hearings have been rightly criticised by politicians of all parties, civil society and the press. Even the security cleared lawyers who the Government want at the heart of the scheme say “No” to the Bill.

It’s time for the Lords to speak up for the principles of open, adversarial and equal justice.

For further comment, please contact Angela Patrick on 020 7762 6415 (direct line) or apatrick@justice.org.uk.

Notes for editors

1. The House of Lords will debate the Justice and Security Bill Second Reading this afternoon (Tuesday 19 June 2012). JUSTICE’s briefing for the House of Lords Second Reading Debate is available here: <http://www.justice.org.uk/resources.php/325/justice-and-security-bill>
2. JUSTICE’s response to the Government’s Green Paper on Justice and Security is available here: <http://www.justice.org.uk/resources.php/314/secret-evidence-in-civil-proceedings-unnecessary-unfair-and-unjustified-justice-responds-to-governme>
3. The Joint Committee on Human Rights (JCHR) will also hear evidence on the Bill this afternoon: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/news/justice-and-security-bill-evidence-session-19-july/> .
4. The JCHR’s highly critical report on the Green Paper proposals can be found here: <http://www.publications.parliament.uk/pa/jt201012/jtselect/jtrights/286/28602.htm>
5. The House of Lords Constitution Committee Report on the Bill, published earlier this week, is available here: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/news/justice--security-bill--publication/>
6. The Special Advocates latest submission on the Bill, in evidence to the JCHR, is available, here: <http://adam1cor.files.wordpress.com/2012/06/js-bill-sa-response-final-final.pdf>
7. JUSTICE intervened in the case of *Al-Rawi*, where the Supreme Court held that it did not have the jurisdiction to introduce closed material procedures in civil cases, as the Government had requested. The Green Paper is the Government’s response to the decision of the Supreme Court that it did not have the inherent jurisdiction to use closed procedures – like the use of closed procedures and special advocates in SIAC – in ordinary civil claims. The Supreme Court concluded that this would be a fundamental procedural shift which would significantly impact on the principles of open and natural justice. Only Parliament could act to change the civil justice system in this way. JUSTICE’s reaction to the Supreme Court’s decision in *Al-Rawi* can be found here: <http://www.justice.org.uk/data/files/resources/292/press130711.pdf>

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