

ILPA information sheet

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Justice and Security Bill (HL Bill 27)

8th June 2012

The Justice and Security Bill was published on 29 May 2012. Its consideration in Parliament is to begin in the House of Lords. It is to be debated at Lords' Second Reading on 19 June 2012. The progress of the Bill through Parliament can be followed at:

<http://services.parliament.uk/bills/2012-13/justiceandsecurity.html>

This information sheet provides information about the contents of the Bill, as these relate to immigration.

General

The Justice and Security Bill concerns two types of legal proceedings:

- civil proceedings before the High Court or Court of Appeal (in England and Wales) or Court of Session (in Scotland)
- certain immigration proceedings before the Special Immigration Appeals Commission (throughout the UK)

The Bill extends the use of what is called 'closed material procedure' before these courts/tribunals. The closed material procedure is described further below. It is a procedure by which the State can rely upon evidence against an individual, while denying the individual the opportunity to see or know the content of that evidence. Ken Clarke MP, the Lord Chancellor and Secretary of State for Justice, has said "*the only issue where you will go into closed proceedings will be national security*" (as reported in *The Guardian* 'Secret justice bill not perfect, says Ken Clarke', 29 May 2012). This is only true of civil proceedings before the High Court, Court of Appeal or Court of Session. In immigration proceedings before the Special Immigration Appeals Commission, the closed material procedure can be and is adopted in a wider category of cases than those raising concerns of national security. The Bill introduces measures that were first proposed in the Justice and Security Green Paper, which is available at:

<http://www.official-documents.gov.uk/document/cm81/8194/8194.pdf>

Closed material procedure

This procedure is one by which the State can keep secret from an individual and his or her legal representative oral or written evidence, on which the State intends to rely against that individual. The procedure is initiated by the State. If initiated, the court or tribunal is required to ensure that certain material (e.g. documents or a witness' oral evidence) is kept secret from the individual or his or her legal team. In these circumstances, the court or tribunal may appoint a 'special advocate' to represent the interests of the individual.

A special advocate is permitted to see the material that is kept secret from the individual and his or her legal representative. However, the special advocate may not speak to the individual or legal representative after seeing the material, unless granted permission to do so (by the State); and, if permitted to speak to the individual or legal representative, may not disclose the content of the secret material. In practice, special advocates rarely do speak to the individual or legal representative after seeing the secret material. One reason for this relates to the requirement that the special advocate must be granted permission to do so. To be granted permission, the special advocate must explain to the State the reasons why he or she wants to speak to the individual or legal representative. Giving such an explanation may disclose to the State how the individual's case is to be presented. In other words, seeking permission may increase the prejudice against the individual. The individual be excluded from any knowledge of significant elements of the State's case against him or her. The State would also be given greater knowledge of the case that the individual intends to present.

Keeping material secret causes substantial prejudice to the individual. He or she cannot answer any allegations made in the secret material. The special advocate cannot remove this prejudice.

Material that is kept secret

The Justice and Security Bill provides for a procedure in any civil proceedings before the High Court, Court of Appeal or Court of Session, whereby material (written or oral evidence) must be kept secret – if the Secretary of State says, and the court agrees, it is in the interests of national security to keep the material secret. This is dealt with in clause 6 of the Bill.

The Justice and Security Bill also extends the types of immigration cases to be dealt with before the Special Immigration Appeals Commission (see below). This is done by clause 12 of the Bill. In these cases, the procedure requires that tribunal to keep material secret if the Secretary of State says, and the tribunal agrees, that any of the following apply:

- it is in the interests of national security to keep the material secret
- it is in the interests of relations between the UK and any other country to keep the material secret
- it is in the interests of detecting or preventing crime to keep the material secret
- not keeping the material secret is likely to cause any harm to the public interest

Special Immigration Appeals Commission

The Special Immigration Appeals Commission (often referred to as SIAC) was established by the Special Immigration Appeals Commission Act 1997. Currently it deals with cases where the Secretary of State wishes to rely on secret material in relation to:

- an appeal against a decision by the Secretary of State to refuse leave to enter the UK
- an appeal against a decision by the Secretary of State to deport someone from the UK
- an appeal against a decision by the Secretary of State to strip someone of British citizenship
- an application for bail where the person is detained under immigration powers

The Justice and Security Bill will extend the cases dealt with by the Special Immigration Appeals Commission. Those cases will include cases where the Secretary of State wishes to rely on secret material in relation to:

- a challenge to the Secretary of State's decision that a person (who is not a European Economic Area national) is to be excluded from the UK
- a challenge to the Secretary of State's refusal to grant British citizenship (by naturalisation or registration)