

Summary

- The proposals in the National Security Bill – if enacted – would unjustly limit access to justice.
- Justice for violations of people's rights is crucial for democracy, peace and equality, and we argue that the proposals in the Bill conflict with the UK's international human rights obligations.
- First, the Bill proposes to expand the definition of 'national security proceedings' and the types of evidence that would be allowed in such proceedings. By introducing certain evidence, the UK government could single-handedly turn any case into a 'national security' one, triggering many of the other effects of the National Security Bill that harm people's rights – such as reduced compensation for unlawful acts and making a person ineligible for legal aid in the future.
- The government's proposals would treat people with terrorism convictions as less human than others, by preventing them from getting legal aid to challenge any human rights violations – including ones unrelated to their crimes. In practice, this means anyone who happened to be convicted of a terrorism offence in the past could be abused with impunity in the future. UK terrorism laws are expansive, so these harms could affect many people.
- Additionally, the government would require courts to consider reducing a damages award for people who have been 'involved with terrorism' – a broadly defined term – effectively reducing the consequences to the government of engaging in wrongdoing and denying justice to people who have genuinely been harmed. Coupled with plans to 'reform' human rights laws in the UK, the Bill will effectively remove government accountability for unlawful acts.
- To comply with human rights laws, which are premised on the equal humanity of all people, the UK government should remove clauses 82-85 and 87-88 from the National Security Bill.

About Rights & Security International

Rights & Security International (RSI) is a London-based charity working to eliminate human rights abuses committed in the name of national security. We challenge religious, racial and gender bias in national security policies, and advocate for justice and transparency for victims of human rights abuses.

Arbitrary application of 'national security proceedings' to increase inequality of arms

1. The government proposes, in Clause 82 of the Bill, an overly broad definition of 'national security proceedings'.¹ In doing so, the government seeks to grant itself the ability to transform any case into a 'national security proceeding' by introducing evidence or submissions 'relating to national security'.
2. Then, through clauses 83-84, the government requires the courts to consider reducing the damages available to claimants in these 'national security proceedings' who say the government has broken the law. Coupled with the effect of clauses 87-88 discussed below – which remove access to legal aid for certain categories of offender – we believe that these provisions undermine our democratic values by making it more difficult, and in some cases practically impossible, to challenge unlawful government action.
3. Damages are the main form of justice available to people who experience violations of the law, particularly when the government or a public body has committed an unlawful act. As the unlawful act has already occurred, courts will not be able to prevent an individual or group from being negatively affected by a violation of their legal rights; instead, a court can order that the individual or group be compensated for the harm.²

¹ [National Security Bill](#), Clause 82(1)(c).

² Courts may also, for instance, order that an ongoing unlawful act cease.

4. Although Clause 82(1)(b) would prevent these rules from applying to cases in which someone alleges that a public body has breached the European Convention on Human Rights (ECHR), clauses 83-84 have the effect of preventing people from accessing their other legal rights – primarily under tort law, or otherwise when the case involves military or other intelligence activities. We argue that there is no objective and legitimate reason for restricting these rights, and indeed, these clauses may push the government toward using police forces and intelligence services improperly, since they will have less accountability.

5. Clause 82(1)(b) should also be seen in light of proposed reforms to the Human Rights Act 1998, whereby human rights claims resulting from UK military actions with effects overseas may no longer be challengeable before the courts, as well as other legislation restricting legal claims challenging unlawful acts committed during overseas military operations.³ In many instances, a civil claim under tort law may soon be the only legal avenue for a claimant who wishes to challenge a government action that takes place overseas – but now the government wishes to prevent these claimants from obtaining damages. This would essentially create impunity for wrongdoing, including potentially for serious offences such as torture, sexual violence, disappearances, ‘extraordinary rendition’ and extrajudicial executions.

Restricting access to legal aid as a secondary form of punishment and to increase the government’s prospects of success in legal challenges

6. The government aims, through clauses 87-88, to reduce access to legal aid in civil proceedings for people previously convicted of any terrorism offence – including, in some cases, those who were children when convicted.
7. The proposals would apply to extremely broad sets of people convicted of a terrorism offence in the past, subjecting them to a second form of punishment for the same crime and creating a group that is treated less well than others before the courts in unrelated matters – violating basic concepts of equality and humanity. Coupled with the expansion of terrorism-related offences in the UK over the past decade, these powers could have a significant real-world impact on people’s ability to challenge unlawful government conduct.⁴ It could also help wall off government policies from criticism, as people become unable to challenge potentially illegal government actions because of their past convictions.
8. Examples of civil proceedings include those crucial for the survival and well-being of people and their families, such as housing, domestic violence matters and parenting orders. Other examples of civil proceedings relate to mental health care and mental capacity, services for people with disabilities, discrimination, welfare benefits and support for victims of human trafficking.⁵
9. We are concerned that removing access to legal aid could not only stigmatise and disadvantage certain people for decades, contrary to the concept of equal justice, but also have a particular impact on people and families with low incomes, as the Legal Aid scheme’s income threshold is capped at £2,657 gross per month.⁶
10. Restricting access to the legal aid scheme could also violate the ECHR, which requires that people whose human rights have been violated must have an effective remedy. People in the UK who cannot afford to bring cases before the courts, and are barred from receiving legal aid, are unlikely to have access to an effective remedy.⁷
11. Evidence suggests that claimants with ‘low legal confidence,’ which includes people from lower incomes, are particularly vulnerable because they find it more challenging to receive reliable legal services. The government acknowledges that removing access to the scheme will result in claimants paying more for legal services, which may prevent them from getting help from lawyers, and stop victims of human rights violations from bringing legitimate claims to the courts.⁸

³ See [Bill of Rights Bill](#), Clause 14 and [Overseas Operations \(Service Personnel and Veterans\) Act 2021](#), Part 2 respectively.

⁴ For instance, see [Counter-Terrorism and Sentencing Act 2021](#), Section 1.

⁵ [Legal Aid, Sentencing and Punishment of Offenders Act 2012](#), Part 1.

⁶ Law Society, [Legal Needs of Individuals in England and Wales - Summary Report 2019/2020](#), pp. 6.

⁷ [European Convention on Human Rights](#), Article 13.

⁸ Ministry of Justice, [Impact Assessment: National Security Bill 2022: Civil Damages Reform and Legal Aid](#), (9 May 2022), para. 8.



12. The government has been unwilling or unable to provide estimates on the number of people who will be negatively impacted if the proposed new restrictions to legal aid are successful.⁹

Data sharing to reduce access to legal aid

13. To prevent people who have past terrorism convictions from getting help through the legal aid system, the government proposes, in Clause 88, to amend the Legal Aid, Sentencing and Punishment of Offenders Act 2012 by providing the Director of Legal Aid Casework with the power to request personal data on people applying for legal aid, including information on prior terrorism convictions. The proposal would enable the Director of Legal Aid Casework to reject applications based on previous convictions, even if the individual has served their sentence, honoured any licence conditions, and re-entered society.¹⁰ These powers could amount to an indirect form of monitoring, as the Director will have the authority to request sensitive information on people with convictions who have otherwise complied with any legal obligations tied to their sentences. These potential monitoring powers would extend beyond the Police, Crime, Sentencing and Courts Act 2022, which enables authorities to monitor people with terrorism offences who have been released on licence.¹¹

14. Finally, the government argues that the proposals' primary aim is to demonstrate the consequences of breaking the bond between the State and society.¹² However, imposing permanent punishment, stigmatisation and inequality on people who have certain types of past convictions is not what democracies based on the rule of law and the equality of all people do. In a democracy, isolating certain people from the rest of society and their rights based on past convictions would do nothing to further the integrity or credibility of the government. Effectively denying essential services to certain groups of stigmatised people also bears uncomfortable echoes of segregation and other direct racial discrimination.

15. Furthermore, adopting symbolic legislation will not allow the government to escape its human rights obligations, especially when its proposals could severely impact an individual's livelihood and community. As the Independent Reviewer of Terrorism Legislation, Jonathan Hall QC, noted in his review of the Bill, 'even symbolic restrictions may have practical consequences.'¹³ In this instance, sharing personal data to stop people with past terrorism convictions from getting legal help – for any matter whatsoever – could have significant consequences for the individual's livelihood and survival, and could breach their human rights.

16. **We therefore recommend that the government remove clauses 82-85 and 87-88 from the Bill.**

⁹ Ministry of Justice, [Impact Assessment: National Security Bill 2022: Civil Damages Reform and Legal Aid](#), (9 May 2022), para. 60.

¹⁰ [Rehabilitation of Offenders Act 1974](#), Section 1(1A).

¹¹ [Police, Crime, Sentencing and Courts Act 2022](#), Part 10, Chapter 4.

¹² Ministry of Justice, [European Convention on Human Rights \(ECHR\) Memorandum](#), 12 May 2022, para. 94(a).

¹³ Hall QC, Jonathan, [Independent Reviewer of Terrorism Legislation: Note on Terrorism Clauses in the National Security Bill](#), May 2022, para. 25.