



# House of Commons

Tuesday 5 February 2013

## PUBLIC BILL COMMITTEE PROCEEDINGS

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### JUSTICE AND SECURITY BILL [*LORDS*]

[*FIFTH AND SIXTH SITTINGS*]

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Clause 6.

Another Amendment (No. 55) proposed, in page 4, line 21, to leave out subsections (2) to (6) and insert—

(1B) The court may make such a declaration if it considers that the following two conditions are met.

5 (1C) The first condition, in a case where the court is considering whether to make a declaration on the application of the Secretary of State or of its own motion, is that—

(a) a party to the proceedings (whether or not the Secretary of State) would be required to disclose sensitive material in the course of the proceedings to another person (whether or not another party to the proceedings), or

10 (b) a party to the proceedings (whether or not the Secretary of State) would be required to make such a disclosure were it not for one or more of the following—

(i) the possibility of a claim for public interest immunity in relation to the material,

15 (ii) the fact that there would be no requirement to disclose if the person concerned chose not to rely on the material,

(iii) section 17(1) of the Regulation of Investigatory Powers Act 2000 (exclusion for intercept material),

20 (iv) any other enactment that would prevent the party from disclosing the material but would not do so if the proceedings were proceedings in relation to which there was a declaration under this section.

25 (1D) The first condition, in a case where the court is considering whether to make a declaration on the application of a party to the proceedings (other than the Secretary of State), is that—

(a) the applicant would be required to disclose sensitive material in the course of the proceedings to another person (whether or not another party to the proceedings), or

30 (b) the applicant would be required to make such a disclosure were it not for one or more of the following—

(i) the possibility of a claim for public interest immunity in relation to the material,

(ii) the fact that there would be no requirement to disclose if the applicant chose not to rely on the material,

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- 35 (iii) section 17(1) of the Regulation of Investigatory Powers Act 2000 (exclusion for intercept material),
- (iv) any other enactment that would prevent the applicant from disclosing the material but would not do so if the proceedings were proceedings in relation to which there was a declaration under this section.
- 40 (1E) The second condition is that it is in the interests of the fair and effective administration of justice in the proceedings to make a declaration.
- (1F) The two conditions are met if the court considers that they are met in relation to any material that would be required to be disclosed in the course of the proceedings (and an application under subsection (1A)(a) need not be based on all of the material that might meet the conditions).
- 45 (1G) A declaration under this section must identify the party or parties to the proceedings who would be required to disclose the sensitive material (“a relevant person”).’.—(*James Brokenshire*)

*Agreed to on division*

As Amendments to James Brokenshire’s proposed Amendment (No. 55):—

Dr Julian Huppert  
Mike Crockart

*Negated on division (a)*

Line 1, leave out ‘(6)’ and insert (4)’.

Mr Andy Slaughter

*Negated on division (d)*

Line 2, leave out ‘two conditions are’ and insert ‘condition is’.

Mr Andy Slaughter

*Not called (e)*

Line 4, leave out ‘first’.

Dr Julian Huppert  
Mike Crockart

*Negated on division (b)*

Line 4, leave out from ‘condition’ to ‘is’ in line 5.

Mr Andy Slaughter

*Not called (f)*

Line 5, after ‘State’, insert ‘or a party’.

Mr Andy Slaughter

*Not called (g)*

Line 9, leave out from ‘proceedings,’ to end of line 46 and insert—

- ‘(b) such a disclosure would be damaging to the interests of national security,
- (c) the degree of harm to the interests of national security if the material is disclosed would be likely to outweigh the public interest in the fair and open administration of justice, and
- (d) a fair determination of the proceedings is not possible by any other means.

Justice and Security Bill [*Lords*], *continued*

- (1C) In deciding whether a party to the proceedings would be required to disclose material, the court must ignore—
- (a) section 17(1) of the Regulation of Investigatory Powers Act 2000 (exclusion for intercept material), and
  - (b) any other enactment that would prevent the applicant from disclosing the material but would not do so if the proceedings were proceedings in relation to which there was a declaration under this section.
- (1D) Before making an application under subsection (1), the Secretary of State must consider whether to make, or advise another person to make, a claim for public interest immunity in relation to the material on which the application would be based.
- (1E) Before making a declaration under subsection (1), the court must consider whether a claim for public interest immunity could have been made in relation to the material.’.

Dr Julian Huppert  
Mike Crockart

*Not called* (c)

Leave out lines 23 to 40.

Dr Julian Huppert  
Mike Crockart

*Not called* 52

Clause 6, page 5, line 3, leave out ‘subsection (2)’ and insert ‘this section’.

Mr Andy Slaughter

*Not called* 68

- Clause 6, page 5, line 3, leave out from ‘must’ to end of line 5 and insert—
- ‘(a) ensure that the material is disclosed to a special advocate,
  - (b) determine whether a claim for public interest immunity could have been made in relation to any part of the material, and
  - (c) order disclosure of any part of the material to which public interest immunity would not apply.
- (6A) In making a determination pursuant to subsection 2(d), the court—
- (a) must not make such a determination solely by reason of the fact that such material would be excluded by the operation of the doctrine of public interest immunity; and
  - (b) must only make such a determination if otherwise the proceedings would be struck out pursuant to any rule of law; and
  - (c) must only make such a determination if the court is satisfied that the unfairness to the relevant person or the Secretary of State by not making a declaration under this section would be substantially greater than the unfairness to the other parties by making such a declaration.’.

James Brokenshire

*Agreed to* 56

Clause 6, page 5, line 12, leave out ‘the Secretary of State’ and insert ‘a person’.

James Brokenshire

*Agreed to* 57

Clause 6, page 5, line 15, after ‘section’, insert ‘or proceedings for or about such a declaration’.

**Justice and Security Bill [*Lords*], *continued***

James Brokenshire

*Agreed to* **58**

Clause 6, page 5, line 18, leave out 'the Secretary of State' and insert 'a person'.

James Brokenshire

*Agreed to* **59**

Clause 6, page 5, line 19, leave out '(1)' and insert '(1A)(a)'.

James Brokenshire

*Agreed to* **60**

Clause 6, page 5, line 19, leave out 'Secretary of State's' and insert 'person's'.

James Brokenshire

*Agreed to* **61**

Clause 6, page 5, line 20, leave out 'all of the parties' and insert 'every other person entitled to make such an application in relation'.

James Brokenshire

*Agreed to* **62**

Clause 6, page 5, line 22, leave out 'Secretary of State' and insert 'applicant'.

James Brokenshire

*Agreed to* **63**

Clause 6, page 5, line 22, leave out from 'inform' to first 'of' in line 23 and insert 'every other such person'.

Mr Andy Slaughter

*Withdrawn* **69**

Clause 6, page 5, line 32, at end add 'except for proceedings which arise in connection with the claimant's loss of liberty.'

James Brokenshire

*Agreed to* **64**

Clause 6, page 5, line 32, at end add—

“sensitive material” means material the disclosure of which would be damaging to the interests of national security.’.

*Clause, as amended, agreed to on division.*

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Mr Andy Slaughter

*Negated on division* **71**

Clause 7, page 5, line 47, at end add 'and that damage outweighs the public interest in the fair and open administration of justice,'.

Dr Julian Huppert  
Mike Crockart

*Negated on division* **1**

Clause 7, page 6, line 2, leave out 'consider requiring' and insert 'require'.

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 Justice and Security Bill [*Lords*], *continued*

Dr Julian Huppert  
Mike Crockart

*Negated on division* 2

Clause 7, page 6, line 4, at end insert ‘sufficient to enable the party to whom the summary is provided to give effective instructions on the undisclosed material to their legal representatives and special advocates.’.

Dr Julian Huppert  
Mike Crockart

*Not called* 3

Clause 7, page 6, line 5, after ‘ensure’, insert ‘so far as it is possible to do so’.

Mr Andy Slaughter

*Withdrawn* 72

Clause 7, page 6, line 16, leave out ‘authorised’ and insert ‘required’.

Mr Andy Slaughter

*Not called* 73

Clause 7, page 6, line 21, leave out ‘or’ and insert ‘and’.

*Clause agreed to.*

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Mr Andy Slaughthter

*Withdrawn* 74

Clause 8, page 6, line 28, leave out ‘may’ and insert ‘must’.

Mr Andy Slaughter

*Not called* 70

Clause 8, page 6, line 40, at end insert—

‘(4A) Rules of court relating to any relevant civil proceedings in relation to which there is a declaration under section 6 proceedings must secure—

- (a) that, where a party is excluded from such an application, his interests are represented by a special advocate appointed in advance of the court hearing such application and, if the application is granted, for the duration of the section 6 proceedings and related proceedings,
- (b) that the special advocate is afforded the opportunity to take instructions from the party whose interests he is appointed to represent.’.

*Clause agreed to.*

*Clause 9 agreed to.*

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Mr Andy Slaughter

*Withdrawn* 75

Clause 10, page 7, line 16, leave out subsection (2) (b).

Justice and Security Bill [*Lords*], *continued*

Mr Andy Slaughter

*Withdrawn 76*

Clause 10, page 7, line 27, at end insert—

- (2A) Rules of court relating to section 6 proceedings must make provision—
- (a) requiring the court concerned to notify relevant representatives of the media of proceedings in which an application for a declaration under section 6 has been made,
  - (b) providing for any person notified under paragraph (a) to intervene in the proceedings,
  - (c) providing for a stay or sist of relevant civil proceedings to enable anyone notified under paragraph (a) to consider whether to intervene in the proceedings,
  - (d) enabling any party to the proceedings or any intervener to apply to the court concerned for a determination of whether there continues to be justification for not giving full particulars of the reasons for decisions in the proceedings, and
  - (e) requiring the court concerned, on an application under paragraph (d), to publish such of the reasons for decision as the court determines can no longer be justifiably withheld.’

[Adjourned until Thursday at 11.30 am]