

<b>Title:</b> National Security Bill 2022: civil damages reform and legal aid <b>IA No:</b> MoJ030/2022 <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Legal Aid Agency, Home Office	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 09/05/2022			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
	<b>Contact for enquiries:</b> peter.farr@justice.gov.uk; civil.legalaid@justice.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> Not Applicable	

**Cost of Preferred (or more likely) Option** (in 2022 prices)

Total Net Present Social Value £0m	Business Net Present Value N/A	Net cost to business per year N/A	Business Impact Target Status Not a regulatory provision	
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**What is the problem under consideration? Why is government action or intervention necessary?**

The current civil damages system means that full awards of damages are made irrespective of a claimant's involvement in terrorism and without any assessment of a risk that they will use any award to fund further acts of terrorism. Similarly, the current civil legal aid scheme does not recognise that access to services funded by public money is an advantage of being part of our democratic society.

In its 2019 manifesto, the Government made a commitment that: 'We will combat extremism and do all we can to ensure that extremists never receive public money.' To achieve these aims, the Government is proposing three changes through the National Security Bill. First, civil damages reforms will address the risk of awards of large sums of damages paid out in civil court claims being used to fund and support acts of terror and whether damages are appropriate where a claim in a national security case concerns a claimant's involvement with terrorism. Second, access to civil legal aid will be restricted for individuals convicted of terrorism offences. Third, legal aid will be made available to support the creation of the State Threat Prevention and Investigation Measures (ST-PIM) framework, which is designed to restrict and prevent individuals who work for foreign states from carrying out threats against the UK. Government intervention is required as the Government's intention that terrorists will not receive public money requires legislative changes to legal aid and the civil damages systems.

**What are the policy objectives of the action or intervention and the intended effects?**

The aim of the civil damages reforms is to reduce the risk of court awards of damages being used to fund terrorism and whether damages are appropriate where a claim in a national security case concerns a claimant's involvement with terrorism. The overarching policy objective behind the legal aid proposals is to maintain public confidence in the legal aid scheme.

- What policy options have been considered, including any alternatives to regulation?**
- Do nothing: No changes are made to civil damages system or to the legal aid scheme.
  - Option 1: Make applications for a court to determine whether damages should be payable in a national security case involving terrorist conduct by a claimant.
  - Option 2: Make applications for freezing and forfeiture orders to prevent sums of damages being used to fund acts of terror.
  - Option 3: Introduce a restriction on accessing civil legal aid from those convicted of terrorism offences.
  - Option 4: Make legal aid provision available to those subject to a ST-PIM.

**Will the policy be reviewed?** It will be reviewed.

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	<b>Micro</b> Yes/No	<b>Small</b> Yes/No	<b>Medium</b> Yes/No	<b>Large</b> Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b>		<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

A handwritten signature in black ink, consisting of several loops and strokes, positioned above a horizontal dashed line.

Date:

09.05.22

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Make applications for a court to determine whether damages should be payable in a national security case involving terrorist conduct by a claimant.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	£0m	£0m	N/A

### Description and scale of key monetised costs by 'main affected groups'

- It has not been possible to estimate the monetised costs of this option.

### Other key non-monetised costs by 'main affected groups'

- There are likely to be increased legal costs to all affected parties.
- There will be some small familiarisation costs to HMCTS and a small increase in required hearing time
- Claimants who are UK citizens will lose out on the money they would otherwise have received.
- Where the claimant is a UK citizen, any of the damages that would have been spent in the UK on ordinary spending is considered a transfer which has no economic benefit.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	£0m	£0m	N/A

### Description and scale of key monetised benefits by 'main affected groups'

- It has not been possible to estimate the monetised benefits of this option.

### Other key non-monetised benefits by 'main affected groups'

- The primary benefit is an improvement in UK national security by ensuring litigation damages are appropriate and reducing the funds available to terrorists.
- The money no longer paid out can now be used by HMG to contribute to the UK's spending objectives.
- Where the claimant is not based in the UK or a UK citizen, the benefit is the total reduction in the damages paid out. Where they are based in the UK or a UK citizen, the benefit is equivalent to those funds that would have been spent on terrorist activity or overseas.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount</b>	N/A
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- It is assumed that the number of relevant cases will remain low.

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Make applications for freezing and forfeiture orders to prevent sums of damages being used to fund acts of terror.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)			
			Low: N/A	High: N/A	Best Estimate: N/A	
<b>COSTS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant		<b>Total Cost</b> (Present Value)	
Low	N/A		N/A		N/A	
High	N/A		N/A		N/A	
Best Estimate	£0m		£0m		N/A	
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>It has not been possible to estimate the monetised costs of this option.</li> </ul>						
<b>Other key non-monetised costs by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>There will be increased legal costs to both sides.</li> <li>There will also be familiarisation and small increased operational demands on HMCTS.</li> <li>The economic impact of damages that are forfeited is identical to if they had been reduced under Option 1. In cases where the state is not the defendant there may be a gain to the consolidated fund deriving from forfeiture</li> </ul>						
<b>BENEFITS (£m)</b>	<b>Total Transition</b> (Constant Price) Years		<b>Average Annual</b> (excl. Transition) (Constant		<b>Total Benefit</b> (Present Value)	
Low	N/A		N/A		N/A	
High	N/A		N/A		N/A	
Best Estimate	£0m		£0m		N/A	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>It has not been possible to estimate the monetised benefits of this option.</li> </ul>						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>When damages are frozen, the main benefit of preventing funds being used for terrorism is achieved.</li> <li>If the funds are later forfeited, this will reduce the availability of resources to fund terrorist acts.</li> <li>If damages are forfeited, the money no longer paid out or received can now be used by HMG to contribute to the UK's spending objectives.</li> </ul>						
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate</b>	N/A
<ul style="list-style-type: none"> <li>It is assumed that the number of relevant cases will be low.</li> </ul>						

## BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Introduce a restriction on accessing civil legal aid from those convicted of terrorism offences.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)			
			Low: N/A	High: N/A	Best Estimate:	N/A
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant</b>		<b>Total Cost (Present Value)</b>	
Low	N/A		N/A		N/A	
High	N/A		N/A		N/A	
Best Estimate	£0m		£0m		N/A	
<b>Description and scale of key monetised costs by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>It has not been possible to estimate the monetised costs of this option.</li> </ul>						
<b>Other key non-monetised costs by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>The Legal Aid Agency may incur some additional administration costs to implement this option, however we have assumed this will be small.</li> <li>There may be some costs to legal aid providers where they are advised by the LAA that an individual is affected by the restriction and they can no longer pursue the case.</li> <li>Those affected by the restriction will also bear a cost, either in having to apply for Exceptional Case Funding, or in seeking private legal services or in foregoing legal services to which they would otherwise be entitled.</li> </ul>						
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant</b>		<b>Total Benefit (Present Value)</b>	
Low	N/A		N/A		N/A	
High	N/A		N/A		N/A	
Best Estimate	£0m		£0m		N/A	
<b>Description and scale of key monetised benefits by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>It has not been possible to estimate the monetised benefits of this option.</li> </ul>						
<b>Other key non-monetised benefits by 'main affected groups'</b>						
<ul style="list-style-type: none"> <li>We expect this option to help maintain public confidence in the legal aid scheme.</li> </ul>						
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate</b>	N/A
<ul style="list-style-type: none"> <li>We have assumed that any administration burden will be small, including any increase in Exceptional Case Funding applications.</li> </ul>						

## BUSINESS ASSESSMENT (Option 3)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Summary: Analysis & Evidence

# Policy Option 4

**Description:** Make legal aid provision available to those subject to a State Threat Prevention and Investigation Measure.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2023	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: £0m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	£0m	£0.1m	£0.9m

### Description and scale of key monetised costs by 'main affected groups'

- This option is expected to increase the costs of the Legal Aid Fund by £0.1m per year in steady state.

### Other key non-monetised costs by 'main affected groups'

- Implementation and ongoing processing costs to the Legal Aid Agency are expected to be negligible.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	£0m	£0.1m	£0.9m

### Description and scale of key monetised benefits by 'main affected groups'

- The provision of legal aid to individuals subject to a State Threat Prevention and Investigation Measure (ST-PIM) will amount to an increase in funding for providers of £0.1m.
- Individuals subject to a ST-PIM and receiving advice and/or representation will gain a benefit equal to the value of the cost paid above, depending on the amount of advice given in individual cases.

### Other key non-monetised benefits by 'main affected groups'

- N/A

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
<ul style="list-style-type: none"> <li>We have assumed that 10 people per annum will be subject to a ST-PIM and that all 10 will pass the means and merits eligibility tests.</li> <li>We assume the value of the benefit of additional services provided to the client is equal to the cost of providing the legal service.</li> </ul>		

## BUSINESS ASSESSMENT (Option 4)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Evidence Base

## A. Background

### National Security Bill

1. The reforms within the National Security Bill are intended to protect our national security, the safety of the nation and our interests from the hostile activities of foreign states. Terrorists have extreme and polarising beliefs, which oppose central values of our society such as democracy, the rule of law, liberty, and equality.
2. To further achieve this vital aim, the Bill is proposing reforms to the payment of civil damages and the provision of civil legal aid. The civil damages reforms are designed to address the risk of terrorism being funded by means of large sums of damages paid out in civil claims, and in particular the threat to public protection such funding may serve. The legal aid reforms are designed to maintain public confidence in the legal aid scheme.

### Civil damages reforms

3. A small number of largely overseas-based terrorists have brought actions against UK intelligence services for injuries or restrictions on their rights connected to their involvement in terrorist activities. The current civil damages system means, however, that full awards of damages are made irrespective of a claimant's involvement in terrorism and without any assessment of a risk that they will use any award to fund further acts of terrorism.
4. Where a court makes a finding that a defendant is liable for a harm to a claimant and that compensation is payable for the harm, the court assesses the award of an appropriate sum of damages. The principle is that of putting the person back in the position they would have been if the tort had not occurred.
5. This principle is applied in all cases where damages are awarded. The Government believes that UK intelligence services should be able to make applications to the court in relation to the award of damages to people involved in terrorism in two respects. Firstly, when the case concerns national security and the claim relates to a claimant's involvement in terrorism, the state may apply so as to ensure the court considers whether damages should be reduced, and the court might make a declaration on their consideration of the award of damages. Secondly, in any case where it is considered that there is a real risk the claimant will use their damages to fund acts of terror, an application may be made to the court for an order to freeze all or part of the damages. Such an order will last two years, renewable by extension for two more years and – if the risk of funding terrorism is regarded as ongoing – an application may be made for a forfeiture order to permanently withhold the damages.
6. The Government has a duty to protect the public, and believes that it is appropriate and proportionate to enable the Crown to make applications to the court in cases that meet the legislation's criteria. The sums of awards are generally not in the public domain – in part as the cases have often been settled out of court. However, the awards, being of a significant order – sometime five and six figure sums – that gives rise to concerns about the potential use of such damages and the consequent need to address that risk by ensuring the context is properly considered.
7. We estimate that fewer than 50 claims have been brought in the last ten years which would be likely to generate an application made under these civil damages reforms. However, we are legislating to reduce the risk that large sums of money will be paid out in awards of damages to claimants where there is a real risk of their using it to support acts of terror.

## Legal aid

8. Access to services funded by public money, such as civil legal aid, is an advantage of being part of our democratic society. The current legal aid scheme pursues four key objectives to keep public confidence in the scheme:
  - Discourage unnecessary and adversarial litigation at public expense;
  - Target legal aid at those who need it most;
  - Make savings to the cost of the scheme; and
  - Deliver overall value for money for the taxpayer.
9. There are currently three eligibility tests which applicants for civil legal aid must pass to be granted legal aid:
  - The applicant must have a legal issue listed in Schedule 1 of Part 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012;
  - The applicant must pass a merits test, which is designed so that the state does not fund cases which are unlikely to be successful; and
  - The applicant must pass a financial eligibility test, to show that they cannot afford to pay for private legal advice.
10. The Government is proposing to make two changes to the legal aid scheme through the National Security Bill 2022 to further maintain public confidence in the scheme.
11. Firstly, the Bill proposes a restriction on access to civil legal aid for those convicted of terrorism offences. Secondly, the Bill proposes to make civil legal aid available to individuals subject to State Threat Prevention and Investigation Measures (ST-PIM).
12. The options within this Impact Assessment (IA) will therefore address the use of public money by terrorists by preventing the exploitation of our civil legal aid and civil damages systems.

## **B. Rationale & Policy Objectives**

13. The conventional approach to Government intervention is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (for example, monopolies overcharging consumers) or there are strong enough failures in existing Government interventions (for example, waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (for example, to reallocate goods and services to the needier groups in society).

## Civil damages

14. The rationale for intervention in the payment of civil damages is, in this instance, based on national security grounds. The Government intends to legislate to achieve a balance that means the agencies remain subject to proper scrutiny, but that the terrorist's own conduct is considered by the court in the award of an appropriate remedy. The aim of the freezing and forfeiture reforms is to address the risk that awards of civil damages may be used by claimants to fund terrorism where the risk of this occurring is assessed as being a real one.
15. The associated policy aim is to empower the UK intelligence community to exercise with discretion new powers to assist them in seeking to ensure that where damages are awarded



steps can be taken on damages payable to claimants involved in terrorism, or to freeze the award where the claimant is assessed as being at risk of using the award to fund or support terrorism and ensure their liability is correctly assessed. The indicators of success will be numbers of cases brought and case outcomes, and how the new powers are exercised by the Crown and the courts (leading to public protection benefits which will be harder to quantify).

### Legal aid

16. The rationale for government intervention for the legal aid proposals is equity. The legal aid scheme exists to ensure access to the courts and tribunals system is available for individuals with serious legal issues but who have low incomes. It is right for the government to regularly review the scope of civil legal aid to check whether there are other legal issues where legal aid should be provided, and that the objectives of the legal aid scheme are being met.
17. Legal aid is an advantage of the society that we live in, and it cannot be right that individuals who have committed serious terrorism offences against the state qualify for civil legal aid in the same way as those who do not have any terrorism-related convictions. The Government believes that individuals who commit acts of terrorism are rejecting our values and our democracy through their actions, against the very state that provides the benefit of legal aid. It is only right and appropriate that the benefit of civil legal aid is suspended for those individuals, to allow limited public funding to be targeted elsewhere. The restriction also pursues a symbolic aim by marking, in the eyes of the civil legal aid scheme, when an individual cannot benefit from civil legal aid funding as a result of their actions against the state.
18. The associated policy objective is to maintain public confidence in the civil legal aid scheme by ensuring that public money, in the form of legal aid, is properly targeted.

### **C. Affected Stakeholder Groups, Organisations and Sectors**

19. The civil damages proposals within this IA are expected to affect the following groups:
  - HM Government (HMG) including the Ministry of Justice (MoJ), the security services and their legal representatives.
  - Her Majesty's Courts and Tribunal Service (HMCTS).
  - Private individuals or organisations, in the rare cases that they are the defendants and their legal representatives.
  - Claimants in relevant cases and their legal representatives. For the purposes of assessing impacts this is split into;
    - i. Claimants who are UK citizens or UK based
    - ii. Claimants who are not UK citizens or UK based
  - The public.
20. The legal aid proposals within this IA are expected to affect the following groups:
  - Individual convicted of terrorism or terrorism-connected offences that carry a sentence or two years or more and who seek to apply for civil legal aid.
  - Individuals who are subject to a ST-PIM.
  - The public.
  - Providers and barristers doing publicly-funded work.

- The Legal Aid Agency (LAA).

## D. Options under Consideration

21. To meet the policy objectives, the following options are assessed in this IA:

- **Option 0/Do nothing:** No changes are made to civil damages system or to the legal aid scheme.
- **Option 1:** Make applications for a court to determine whether damages should be payable in a national security case involving terrorist conduct by a claimant.
- **Option 2:** Make applications for freezing and forfeiture orders to prevent sums of damages being used to fund acts of terror.
- **Option 3:** Introduce a restriction on accessing civil legal aid from those convicted of terrorism offences.
- **Option 4:** Make legal aid provision available to those subject to a ST-PIM.

22. **The Government's preferred approach is to implement options 1-4.**

### Option 0: Do nothing

23. Under the "do nothing" option, the current system of civil damages will continue to apply, e.g., compensation will remain unchanged for claims brought against UK Intelligence Agencies and others, and damages awarded to suspected or known terrorists may be used to fund terrorism causing threats and potentially compromising national security. Likewise, no changes would be made to the civil legal scheme.

### **Option 1: Make applications for a court to determine whether damages should be payable in a national security case involving terrorist conduct by a claimant.**

24. Under this option, the courts will be able to withhold or reduce damages in national security cases when they find for the claimant, but they take into account the claimant's own conduct in relation to terrorist activities.

### **Option 2: Make applications for freezing and forfeiture orders to prevent sums of damages being used to fund acts of terror.**

25. Under Option 2, and in cases where damages are awarded, the Crown will be able to apply for an Order to freeze the damages if there is a risk the money would be used to fund terrorist activities or, at a later date, for the award to be forfeited where the claimant is assessed as representing an ongoing risk in terms of supporting terrorism.

26. The Crown will have discretion on which cases to make applications for either a reduction in damages or an order to freeze the damages (and ultimately for the forfeiture of the damages). The courts will decide, independently, on the balance of probabilities from the evidence submitted, whether a reduction in damages is appropriate - and in applications for a freezing or forfeiture order - whether there is a real risk of the claimant using the sum to fund terrorism.

### Options 1 and 2

27. Options 1 and 2 are designed to increase public protection and national security. There are existing legislative measures that provide for freezing and seizure of terrorist and other criminal assets, but by creating a process within existing court proceedings these reforms address the risk of funds being instantly spirited away.

28. These options are intended to legislate to achieve a balance that means the agencies remain subject to proper scrutiny, but courts will be required to consider (when the Crown makes an application) whether the remedy should also reflect the claimant's conduct and involvement in terrorism in the action giving rise to the claim. They are also designed to counter the risk of civil damages being used to fund or support terrorism.
29. An analysis was undertaken on whether existing legislation provided sufficient safeguards, but the conclusion was that bespoke primary legislation was required to enable damages to be frozen at the point of award by a court, and thereafter subject to potential forfeiture.
30. Other reforms were considered as part of the process of addressing the problems identified, for example measures to make it more difficult for inappropriate claims to be brought by claimants involved in terrorism on matters of national security, but were rejected in view of the fundamental principle of access to justice and the need for public bodies to be subject to proper public scrutiny.

**Option 3: Introduce a restriction on accessing civil legal aid from those convicted of terrorism offences.**

31. Under Option 3 if the National Security Bill is passed, there will be a fourth eligibility check on whether the applicant for civil legal aid has a relevant terrorism conviction that means the applicant will not be eligible to receive civil legal aid, except in exceptional circumstances.
32. The restriction on civil legal aid will apply to individuals convicted of terrorism offences or terrorism-connected offences since 2001 that carry a sentence of two years or more. The restriction will last for 30 years for individuals convicted as adults, and 15 years for individuals convicted when under 18. The restriction will apply to future legal aid applications made after the Bill comes into force.
33. Where the restriction is found to apply, convicted terrorists may be able to access civil legal aid through the Exceptional Case Funding Scheme, where they can demonstrate that without legal aid, there is a risk that their human rights might be breached, and they pass financial eligibility and merits tests.

**Option 4: Make civil legal aid provision available to those subject to a ST-PIM.**

34. Under Option 4, and under provisions contained in the National Security Bill, if passed, the Home Secretary will be given the power to impose a ST-PIM on individuals who meet the relevant criteria. Briefly, the Home Secretary must reasonably believe that the individual is or has been involved in foreign state threat activity and that it is necessary to impose the specific prevention or restriction measures on the individual.
35. The ST-PIM regime is intended to be wide-ranging and may place a number of restrictive and preventative measures on an individual, such as restrictions on their residence location or travel, or preventative requirement such as regular reporting to a police station. The ST-PIM regime has been modelled on the Terrorism Prevention and Investigation Measure ("TPIM") regime, where legal aid is available to individuals subject to a TPIM.
36. Any combination of ST-PIM measures may have severe consequences on an individual's liberty and private life, and the National Security Bill proposes to make legal aid available to individuals subject to a ST-PIM, on the same basis as that available to TPIM subjects.

**E. Cost & Benefit Appraisal**

37. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
38. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the options under consideration. The costs and benefits of each proposal are compared to option 0, the do nothing or 'baseline' case. As the 'baseline' option is compared to itself, the costs and benefits are necessarily zero.
39. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those which are non-monetisable.
40. Where costs and benefits are monetisable, we have estimated the steady state implications of the proposed policy changes, as the cases involved are relatively short and so steady state will be reached very quickly.
41. Values over £50,000 are rounded to the nearest £0.1m, while values under this are rounded to the nearest £10,000, apart from average fee values which are quoted to the nearest £100. The net present value is calculated using the 2022 price year, assuming implementation in 2023, and a 10 year appraisal period. No optimism bias has been applied.

## **Data & Methodology**

### Civil damages

42. There are gaps in the evidence base due to the difficulties in assessing the difference the options would have had on historic cases, or how parties and courts would have responded to the discretionary powers which the legislation will make available. This does not affect the fundamental policy position nor the concern about having powers available to enable such risks to be addressed.
43. The nature and low volume of these cases also means that it is not possible to quantify the costs and benefits as the future volume and scale of these cases is highly uncertain. Therefore, the impacts cannot be monetised and instead a descriptive approach of the impacts of Options 1 and 2 is presented below.

### Legal aid

44. It is not possible to monetise the costs or benefits of Option 3. The restriction on civil legal aid introduces a new eligibility test in the form of a criminal conviction check. A criminal conviction is not currently relevant for a grant of civil legal aid and so the MoJ does not have any data on how many past recipients of civil legal aid may have been caught by this restriction if it already existed.
45. Option 4 of this IA estimates the new cost of providing advice on a ST-PIM. Legal aid funding is divided into Legal Help (initial advice and assistance) and Legal Representation (representation before a court or tribunal) and both types of legal aid will be available to ST-PIM subjects who satisfy the financial eligibility and merits tests.
46. *Volumes*: The volumes for this work will depend on the number of ST-PIMs imposed on individuals, and the uptake of legal aid amongst the ST-PIM subjects.

47. For the purposes of this IA, we have used the uptake of legal aid for TPIMs as a comparison point. There are fewer than 10 grants of Legal Representation per year. We cannot accurately track how many individuals subject to a TPIM additionally receive Legal Help, since it is more likely for them to move straight to Legal Representation.
48. We have assumed that 10 people per year will be granted Legal Representation for a ST-PIM. Future volumes will depend on the use of such measures by the Home Secretary and the eligibility of the affected cohort.
49. *Costs:* The unit cost used here is based on the existing legal aid average cost for representation in proceedings under the Terrorism Prevention and Investigation Measures Act 2011. This is because TPIMs are the best proxy for cost that is available for this new measure. Since 2018-19 there have been 13 completed cases, and the average values for these cases have been used.
50. The income received by legal aid providers was around £11,500 per case, which is paid either by the legal aid fund, or by the Home Office where costs were awarded by the court from the opponent.

**Option 1: Make applications for a court to determine whether damages should be payable in a national security case involving terrorist conduct by a claimant.**

**Costs of Option 1**

51. The primary impact of Option 1 will be a transfer of the awarded funds in relevant cases from Claimants to HMG or private defendants in national security cases. As this is a transfer benefitting the defendant, typically the Government, at the equal expense of the claimant there is no direct economic impact. The indirect impact of this is discussed in the “Benefits” section below.
52. In line with Green Book principles, this only applies to claimants who are UK based or UK citizens. Any losses to claimants who are neither of these is not counted and the impact of the reduction in damages is solely a benefit to HMG.
53. Beyond that, there are likely to be additional legal costs for both parties if HMG representatives attempt to claim that awarded damages are likely to be used for terrorism. This will include cases where the judge finds in favour of the claimant (i.e., that funds are not likely to be used for terrorism) and so would increase the Governments costs in those cases.
54. There will additionally be additional costs to HMCTS in familiarisation time for staff and judges as well as additional operational demand on HMCTS to process applications under the new powers.

**Benefits of Option 1**

55. The key benefit is a reduction in the threat from terrorism as funds might otherwise have been used for terrorism are no longer available.
56. The benefit to HMG is that money that would otherwise have been awarded to claimants can now be spent on other objectives that are expected to have a positive impact on the UK economy.

**Option 2: Make applications for freezing and forfeiture orders to prevent sums of damages being used to fund acts of terror.**

## Costs of Option 2

57. Similar to the damages proposal in option 1, there are likely to be additional legal costs for both parties to relevant claims in preparing and arguing the case where HMG makes an application to freeze damages where they either were unsuccessful or did not attempt to use the damages reform. It has not been possible to estimate these costs.
58. Similar to Option 1, and in line with Green Book principles, this only applies to claimants who are UK based or UK citizens. Any losses to claimants who are neither of these is not counted and the impact of the reduction in damages is solely a benefit to the UK economy.

## Benefits of Option 2

59. The benefits from freezing of awarded damages will solely be those of reducing the risk of funds being used for terrorist activities. If, at a later date, the damages were forfeited, the benefits would be the same as those for option 1.

## **Option 3: Introduce a restriction on accessing civil legal aid from those convicted of terrorism offences.**

### Costs of Option 3

#### *Non-monetised Costs*

##### *Legal Aid Agency*

60. Although this option will see eligibility for civil legal aid reduced, we do not know how many people will be caught by the restriction on in scope legal aid. We also do not know how many individuals caught by the restriction will apply for, or be granted, Exceptional Case Funding. We have therefore assumed that the total annual reduction in volume of in scope legal aid grants, and total annual increase in volume of Exceptional Case Funding applications, are negligible.
61. We consider that the costs of implementation are likely to be small. Whilst the exact operational processing of the restriction has not yet been finalised, such as how criminal conviction data will be received and processed by the Legal Aid Agency, we are pursuing an administrative solution that is not unduly burdensome.

##### *Legal aid providers*

62. As we do not know how many people will be caught by the restriction on in scope civil legal aid, we have assumed that there will be a negligible impact on legal aid providers. Legal aid providers may experience a decrease in number of in scope legal aid applications per year. An increase in Exceptional Case Funding cases may occur where individuals are caught by the restriction on in scope legal aid.

##### *Individuals convicted of relevant terrorism or terrorism-connected offences*

63. Individuals convicted of relevant terrorism offences and who are caught by the restriction on in scope legal aid may be eligible for funding under the Exceptional Case Funding scheme. We do not know how many people this may affect. In practice, however, they will receive civil legal aid funding, but via a different route as they would otherwise if the restriction did not exist.

64. Individuals caught by the restriction who do not qualify for Exceptional Case Funding may incur additional costs in paying privately for legal services or by foregoing legal services they would have been entitled to but for the restriction.

### **Benefits of Option 3**

#### Non-monetised Benefits

##### *The public*

65. We expect this policy to maintain public confidence in the legal aid scheme. One of the objectives of the legal aid scheme is to target legal aid funding. The government believes that public confidence in the legal aid scheme will be maintained, and increased, by enforcing this restriction which more appropriately targets legal aid at individuals who participate in our society and democracy.

### **Option 4: Make civil legal aid provision available to those subject to a ST-PIM**

### **Costs of Option 4**

#### Monetised Costs

##### *Legal Aid Agency and Home Office*

66. The cost of this option to the Legal Aid Fund and Home Office, under the assumptions outlined above, is expected to be £0.1m per year in steady state. The present cost of this is over a 10 year appraisal period is expected to be £0.9m.

### **Benefits of Option 4**

#### Monetised Benefits

##### *Providers and barristers doing publicly-funded work*

67. Providers will receive a financial benefit of an amount equal to the cost, that is expected to be £0.1m per year in steady state. The present benefit of this is over a 10 year appraisal period is expected to be £0.9m.

##### *Individuals subject to a ST-PIM in England and Wales*

68. Those receiving advice and/or representation in relation to a ST-PIM funded by legal aid would receive a benefit of legal advice worth an amount equal to the cost of delivering the service.

## **F. Assumptions, Risks & Sensitivity Analysis**

### **Assumptions & Risks**

69. The impacts described in this IA are based on certain assumptions which are associated with a degree of risk. The main assumptions and the associated risks are described below.

#### Civil damages

70. The assumption is that there will continue to be a relatively small number of claims made on matters of national security or where it is assessed that there is a real risk of a claimant using civil damages to support terrorism.

## Legal aid

71. The assumptions used to cost these proposals are described in the methodology paragraphs in Section E above. The core risk to Option 3 on the restriction on accessing civil legal aid is the lack of data needed to attempt to quantify the costs or benefits. The core risk to Option 4 is volumes since the ST-PIM regime does not yet exist. The following sensitivity analysis demonstrates this by considering the different total cost due to some realistic scenarios.

### **Sensitivity Analysis**

#### Option 3: Introduce a restriction on accessing civil legal aid from those convicted of terrorism offences.

72. We have not conducted sensitivity analysis for option 3 as it is unlikely that the size of the future cohort of those convicted of terrorism offences will change our expectation that this policy is overall of negligible cost.

#### Option 4: Make civil legal aid provision available to those subject to a ST-PIM.

73. The following table shows some example cost scenarios based on a range of volumes. The costs shown are steady state costs where the given volumes of ST-PIMs are imposed in a year. The low/medium/high scenario volumes have been chosen as possible annual volumes based on variation from existing TPIM case volumes, although it is also possible that volumes below the low scenario could occur. The very high scenario is an extreme case which illustrates possible cost of an unlikely scenario with a very high number of cases – this could also be interpreted as the total cost of a single year where 100 cases are brought, where the cost may be spread out over different years depending on case duration (instead of an annual steady state cost).

<b>Scenario</b>	<b>Volume</b>	<b>Steady State Annual Cost</b>
<b>Low</b>	5	£0.1m <sup>1</sup>
<b>Medium</b>	10	£0.1m
<b>High</b>	20	£0.2m
<b>Very High</b>	100	£1.2m

74. This shows that the likely cost impact of this provision is small, however the eventual cost of the policy will depend on the usage of these new orders which is currently unknown.

## **G. Wider impacts**

### **Equalities**

75. An Equality Impact Assessment will be published alongside other documents for the National Security Bill.

### **Trade Impact**

76. There is no expected impact on international trade.

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<sup>1</sup> The low scenario does cost half of the medium scenario, but both appear in this table as £0.1m due to the rounding convention.



## **Direct costs and benefits to business calculations**

### Civil damages

77. Beyond small impacts on relevant legal firms already discussed there will be no impact on small or micro businesses arising from these reforms.

### Legal aid

78. Legal aid services are provided by businesses of various sizes. The restriction on civil legal aid should have a minimal impact on legal aid providers. The provision of legal aid in ST-PIM cases should have a positive impact for all sizes of business.

### Better Regulation

79. This measure is not classed as a qualifying regulatory provision under the Small Business Enterprise and Employment Act 2015 and is not in scope of the department's Business Impact Target.

## **H. Monitoring and Evaluation**

80. The normal post-legislative scrutiny process will be pursued five years or so after the legislation has come into effect.

### Civil damages

81. The nature of the legislation is such that any applications to use the powers these reforms would make available would either be by the UK's intelligence agencies or supported and informed by them. Liaison with the agencies will provide a ready means of monitoring usage of the new powers and the outcomes in individual cases. If the number of such cases were to dramatically increase, an earlier review to assess the impact of the reforms could be undertaken.

### Legal aid

82. The MoJ and LAA will monitor the impact of these changes within the legal aid scheme from the commencement date.