

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT JUSTICE AND SECURITY (NORTHERN  
IRELAND) ACT 2007 (EXTENSION OF DURATION  
OF NON-JURY TRIAL PROVISIONS) ORDER 2019

*Tuesday 4 June 2019*

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**The Committee consisted of the following Members:**

*Chair:* MR LAURENCE ROBERTSON

- |   |   |
|---|---|
| † Abrahams, Debbie ( <i>Oldham East and Saddleworth</i> ) (Lab)     | † Metcalfe, Stephen ( <i>South Basildon and East Thurrock</i> ) (Con) |
| † Bebb, Guto ( <i>Aberconwy</i> ) (Con)                             | † Penrose, John ( <i>Minister of State, Northern Ireland Office</i> ) |
| † Burghart, Alex ( <i>Brentwood and Ongar</i> ) (Con)               | † Pound, Stephen ( <i>Ealing North</i> ) (Lab)                        |
| † Doughty, Stephen ( <i>Cardiff South and Penarth</i> ) (Lab/Co-op) | † Smith, Jeff ( <i>Manchester, Withington</i> ) (Lab)                 |
| † Ellman, Dame Louise ( <i>Liverpool, Riverside</i> ) (Lab/Co-op)   | † Stewart, Iain ( <i>Milton Keynes South</i> ) (Con)                  |
| † Graham, Richard ( <i>Gloucester</i> ) (Con)                       | † Syms, Sir Robert ( <i>Poole</i> ) (Con)                             |
| † Jenkyns, Andrea ( <i>Morley and Outwood</i> ) (Con)               | † Villiers, Theresa ( <i>Chipping Barnet</i> ) (Con)                  |
| Little Pengelly, Emma ( <i>Belfast South</i> ) (DUP)                | Yasin, Mohammad ( <i>Bedford</i> ) (Lab)                              |
| † Mann, John ( <i>Bassetlaw</i> ) (Lab)                             | Hannah Bryce, <i>Committee Clerk</i>                                  |
|   | † <b>attended the Committee</b>                                       |

# First Delegated Legislation Committee

Tuesday 4 June 2019

[MR LAURENCE ROBERTSON *in the Chair*]

## Draft Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2019

4.30 pm

**The Minister of State, Northern Ireland Office (John Penrose):** I beg to move,

That the Committee has considered the draft Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2019.

It is a good to have you in charge of us this afternoon, Mr Robertson. The order is short, even for a statutory instrument. It has precisely two articles—one is the citation, and the second, which is the operative one, is shorter than the footnote it references. It really is genuinely short and sweet.

The order extends for a further two years our ability to run non-jury trials in Northern Ireland. This is a regrettable step, which we have to undertake, if required, once every two years. The order provides for that extension under the terms of the Justice and Security (Northern Ireland) Act 2007. That is all it does. This is one of those things that is, sadly, still required in Northern Ireland; it is not something that anybody particularly wants or desires. Given that the security situation in Northern Ireland remains at severe—we can all think of two very serious events that have occurred in just the last few weeks—it is, sadly, necessary.

I reassure colleagues that the powers are used very sparingly. The latest figures show that, in the six years since 2013, the number of non-jury trials has at no point exceeded 2% of the total number of Crown court cases that have been dealt with in Northern Ireland. In the last four or five years, the number of cases has been running in the mid-teens—there were 17 and 12 cases in 2015 and 2016, and about 19 in 2018. Those are very small numbers overall, and I hope that everybody here shares my hope and expectation that they will remain at that low level.

In that tiny number of cases, where there is a particular risk of juries being put under pressure, these measures are regrettably still needed. It is therefore wise and necessary, sadly, to extend the provisions for a further two years. We have been doing that regularly since the old Diplock court system—this is not that—was replaced in 2007. They have been extended every two years ever since. They have come up again, although I say that with regret and a heavy heart.

**Debbie Abrahams** (Oldham East and Saddleworth) (Lab): Having read the background documents, I will be supporting the Government on this statutory instrument. However, one of the comments in the consultation responses was about reviewing the statutory test for issuing a non-jury trial certificate. Will the Minister expand on whether that will happen? I would feel happy if that were the case.

**John Penrose:** I will endeavour to address that and any other comments in my final remarks, after I have given the Opposition spokesperson, the hon. Member for Ealing North, a chance to make his comments. He has dealt with previous extensions and is highly experienced. I will happily come back to any comments and deal with them, if I can, as a group.

To finish my basic exposition of what the statutory instrument does, it is, sadly, necessary. It provides for a further session of two years. It is the third or fourth such extension since the old Diplock court system was removed. I look forward to responding to any comments and concerns. I am pleased to hear that the hon. Member for Oldham East and Saddleworth plans to support the measure in principle.

4.34 pm

**Stephen Pound** (Ealing North) (Lab): I repeat the comment made by the Minister that it is a pleasure to serve under you, Mr Robertson. I had the honour to serve under you on the Northern Ireland Affairs Committee for many years, and I have huge respect for your involvement, so it is a pleasure, and it is entirely appropriate that you are chairing this debate.

I also welcome the right hon. Member for Chipping Barnet, who was a most distinguished Secretary of State for Northern Ireland. I feel slightly awed to be standing and speaking in her presence. I have no doubt that she will correct me, should I err.

It is not the intention of the Opposition to oppose this instrument. This is the fourth time that I have served on such a Committee to seek an extension of this process. Tragically, the situation in Northern Ireland has not improved. If only we could say that we no longer need these courts and non-jury trials. However, the tragic death of Lyra Catherine McKee and the recent incident of a bomb being found under a police officer's car tell us why the situation is still, rightly, classified as severe.

I would have hoped, after that extraordinary occasion in St Anne's Cathedral in Belfast, at which the Minister and I were both present and heard the extraordinary eulogy—a call for unity and for some good to come from the tragic death of Lyra McKee—that we could move forward. We will have a statement from the Secretary of State on the Floor of the House later. I hope that it will be good news, but as someone who has spent a lot of time on this area, I am inured to a certain in-built pessimism.

We must renew the provisions tonight because, frankly, jury tampering remains a real threat. Intimidation is also a real threat, for not just juries but the judiciary. In the past, judges have actually been killed—we could cite many cases. We therefore have to extend the provisions.

The point made by my hon. Friend the Member for Oldham East and Saddleworth was correct: there has to be an element of oversight, particularly on the certification process. The last time we raised this matter, the role of the Northern Ireland Office, the Northern Ireland civil service, the judiciary and the prosecution service was raised. Some further comment about the physical process of certification might reassure some of my colleagues. I am not aware that any respondents to the consultation raised that issue, but perhaps we should look at it.

It is noteworthy that there has not been an upswell of opposition. The introduction of the Diplock courts led literally to rioting on the streets—bullets were fired. When Diplock courts came in, it was one of the most unpleasant and brutal times in Northern Ireland's history. We have moved on from that, and the Minister rightly said that this is not the Diplock system by another name. We are talking about a tragic necessity in a very sad time.

I support the Minister on this measure, and the Labour party will support the Government. However, we will do so with, as the Minister rightly said, a heavy heart, because we all hope and pray that the day will come when this measure will be unnecessary. That terrorism remains such an inherent problem in Northern Ireland is a terrible indictment of our inability to get to grips with the situation. I am always keen to hear what the Government are doing to try to dial down that severe level of threat.

The information that the Minister has given us about the percentages—we are talking about 2% of all trials in Northern Ireland—is crucial, and needs to be reiterated at all opportunities. Above all, any of us who was at the funeral service for Lyra Catherine McKee would have hoped and felt in our hearts that the sunshine was perhaps breaking through the rain clouds and that there was some hope.

I still think that the basic, inherent decency of the people of Northern Ireland—some of the best people I have ever met—will triumph, and that these dark days will become a memory, as will these statutory instruments. We do not want to be here, but we have to be at the moment. With a heavy heart, I endorse the Minister's comments.

4.38 pm

**Theresa Villiers** (Chipping Barnet) (Con): I, too, pay tribute to your work on Northern Ireland matters, Mr Robertson, and I am pleased to see you in the Chair. I will make one or two brief points that I would be grateful if the Minister could consider. He has heard the them from me before.

Whether one is talking about non-jury or jury trials, I believe we need criminal justice reform in Northern Ireland. It is a concern that the lack of devolved institutions is holding that back. It is difficult enough to deliver at the best of times, but it is obviously more or less impossible in the absence of devolved Ministers to make those kinds of decisions.

In many quite serious cases, there are protracted delays. Delays are bad not only for defendants, because they have the charges hanging over them for longer, but for the appropriate administration of justice, because they make it more difficult to establish a successful prosecution, as evidence can obviously weaken over time.

I hope the Government, in their efforts to get Stormont back up and running, or in the absence of that, will not forget the need to ensure that the criminal justice system in Northern Ireland works effectively, not least because of the very serious terrorist threat that is still evident there, as both Front Benchers acknowledged. One way to address that threat is by effectively prosecuting those charged with terrorist offences. Prosecutions are certainly more difficult if they take excessive time, not least

because people who are charged with serious terrorist offences are not infrequently released on bail. For all sorts of reasons, that is unsatisfactory, but it becomes almost inevitable if a trial takes one, two or even three years to get off the ground.

I hope you will forgive me, Mr Robertson, for raising a more general point about the criminal justice system. As I say, it applies to both jury and non-jury trials. It is an important part of normalising Northern Ireland and addressing the security threats to ensure that justice can be delivered effectively and without excessive delays.

4.41 pm

**John Penrose:** I should start by saying that I am delighted to hear that everybody is committed in principle to supporting this measure. That is tremendously reassuring. It is important that we speak on a cross-party basis with one voice and that we remain committed to delivering effective justice, even when people are trying to subvert fair trials in Northern Ireland—admittedly, in a small minority of cases. I am delighted that everybody is on side and willing to support this measure, and I thank them for that.

As I go through my speech, I will address the points that have been made, starting with that made by my right hon. Friend the Member for Chipping Barnet, the former Secretary of State. She is absolutely right that criminal justice reform not just in terms of non-jury trials but more broadly in Northern Ireland is increasingly pressing. This is one of several devolved areas of government in Northern Ireland—the issue is not limited to criminal justice—that are crying out for reform. Had Stormont been sitting for the past two-plus years, we would have expected to see major and significant reforms. Not making reforms creates not just a slower process of justice, but in many cases a much less efficient and more expensive process of justice, or whatever other area of devolved government we are talking about. The fact that we are two-plus years on from the last time Stormont Members were able to address these issues means that the list of things that are less efficient, less timely, slower and just generally being left behind by the passage of time and the progress of events is getting longer and longer.

My right hon. Friend will be aware that there will be a statement in the main Chamber later this afternoon, in which the progress of the Stormont resumption talks will be reported to hon. Members. The talks are moving forward. I do not want to pre-empt what will be said, but there may be an opportunity for her and others to ask for more detail about the progress and prospects for developments. She is right that, ultimately, the only way to solve this is to get Members of the Legislative Assembly back inside the doors of Stormont so they can address these issues. It is far better for those issues to be dealt with within Stormont, rather than from Westminster, principally because it ensures peaceful, democratic problem-solving of Northern Ireland problems in Northern Ireland. Even when people are trying to do their very best here, we are just not quite as close to the issues as the people who have been elected to Stormont for that purpose.

The hon. Member for Oldham East and Saddleworth asked about the four criteria that are used to decide whether something qualifies as a non-jury trial. In fact, there are two levels of criteria, one of which is split

[John Penrose]

into four. Fundamentally, the Director of Public Prosecutions in Northern Ireland has to be satisfied that there is a risk that the administration of justice might be impaired if a jury trial were held. They then have to suspect that one or more of four criteria—to which, I think, the hon. Lady referred—has been satisfied: whether a defendant is an associate of various proscribed organisations, and a whole series of similar but slightly different related criteria.

David Seymour, the independent reviewer of this legislation, came up with a series of recommendations in his 11th report, which we are in the process of addressing. I cannot see a proposal there to change those four criteria, but if the hon. Lady has any particular

proposals she wants to suggest, she should, by all means, write to me, and we will see whether we can address them. In general, David Seymour's recommendations are being taken forward. We are not going to be able to take them all through, but many of them are being dealt with.

It is important that all of us here remember that David Seymour and the Northern Ireland Human Rights Commission have said that they regard this extension of non-jury trials as a regrettable but necessary requirement in the circumstances. I thank all Members again for supporting this measure.

*Question put and agreed to.*

4.46 pm

*Committee rose.*



