

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT JUSTICE AND SECURITY (NORTHERN
IRELAND) ACT 2007 (EXTENSION OF DURATION
OF NON-JURY TRIAL PROVISIONS) ORDER 2021

Wednesday 7 July 2021

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The Committee consisted of the following Members:

Chair: †RUSHANARA ALI

Barker, Paula (<i>Liverpool, Wavertree</i>) (Lab)	† Mann, Scott (<i>Lord Commissioner of Her Majesty's Treasury</i>)
Caulfield, Maria (<i>Lewes</i>) (Con)	† Owatemi, Taiwo (<i>Coventry North West</i>) (Lab)
Cruddas, Jon (<i>Dagenham and Rainham</i>) (Lab)	† Pursglove, Tom (<i>Corby</i>) (Con)
Davies, David T. C. (<i>Parliamentary Under-Secretary of State for Wales</i>)	Throup, Maggie (<i>Lord Commissioner of Her Majesty's Treasury</i>)
† Dines, Miss Sarah (<i>Derbyshire Dales</i>) (Con)	Timms, Stephen (<i>East Ham</i>) (Lab)
Eagle, Maria (<i>Garston and Halewood</i>) (Lab)	† Turner, Karl (<i>Kingston upon Hull East</i>) (Lab)
Harris, Rebecca (<i>Lord Commissioner of Her Majesty's Treasury</i>)	† Walker, Mr Robin (<i>Minister of State, Northern Ireland Office</i>)
Jones, Mr Marcus (<i>Vice-Chamberlain of Her Majesty's Household</i>)	Whittome, Nadia (<i>Nottingham East</i>) (Lab)
Mak, Alan (<i>Lord Commissioner of Her Majesty's Treasury</i>)	Seb Newman, <i>Committee Clerk</i>
	† attended the Committee

Eighth Delegated Legislation Committee

Wednesday 7 July 2021

[RUSHANARA ALI *in the Chair*]

Draft Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-Jury Trial Provisions) Order 2021

2.30 pm

The Chair: Before we begin, I remind hon. Members to observe social distancing and sit only in places that are clearly marked. I also remind Members that Mr Speaker has stated that face coverings should be worn unless Members are exempt or are speaking. *Hansard* colleagues would like you to send your speaking notes to hansardnotes@parliament.uk.

The Minister of State, Northern Ireland Office (Mr Robin Walker): 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 2021.

It is a pleasure to serve under your chairmanship, Ms Ali. The draft order was laid before the House on 26 April. Under the order, trials without a jury can take place in Northern Ireland for a further two years from 1 August 2021; the current provisions expire on 31 July. Following a public consultation, my right hon. Friend the Secretary of State for Northern Ireland considered it necessary to seek an extension of the provisions in order to ensure the continued safe administration of justice in specific cases.

In Northern Ireland today, there is a presumption of jury trial in all cases. In 2020, only 1% of all Crown court cases in Northern Ireland were conducted without a jury. I must make it clear that this is in stark contrast to the old Diplock system, in which the default was a non-jury trial for certain offences. Non-jury trials are now the exception, and there is a presumption of jury trial in all cases before the Crown court. Non-jury trials are not Diplock courts.

I point out that the non-jury trial provisions are available in Northern Ireland only in exceptional circumstances in which a risk to the administration of justice is suspected by the Director of Public Prosecutions for Northern Ireland. That could be through, for example, jury tampering, whereby intimidation, violence or the threat of violence against members of the jury could result in a perverse conviction or acquittal. It could also be due to jury bias. There is the potential for jury bias as a result of the defendant's alleged association with a proscribed organisation, or if the offence being tried is in connection with religious or political hostility. Such cases are high profile and continue to provoke strong public opinion on both sides of the community in Northern Ireland.

Decisions for non-jury trials are made on a case-by-case basis, taking into account the circumstances of both the offence and the defendant. First, the Director of Public

Prosecutions must suspect that one or more of four conditions are met. The conditions are specified in the Justice and Security (Northern Ireland) Act 2007 and relate to association with proscribed organisations or offences connected with religious or political hostility. Let me be clear that a case that falls within one of the four conditions will not automatically be tried without a jury. The DPP must also be satisfied that there is a risk that the administration of justice might be impaired if a jury trial were to be held.

Hon. Members are likely to be aware that the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 has reported on the functioning of non-jury trials since 2017. Recommendations made by the independent reviewer have led to more efficient engagement between the Police Service of Northern Ireland and the Public Prosecution Service; a reduction in processing times; and improvements to the administration of the process.

It will not have escaped the Committee's notice that this is the seventh extension of the provisions in the 2007 Act, which were designed to be temporary. This is, of course, a matter of regret to the Government. We remain committed to allowing the provisions to expire when it is safe and compatible with the interests of justice to do so. Unfortunately, we do not believe that the time is right now. Allow me to explain why—as confirmed by the consultation responses—the Secretary of State continues to deem the non-jury trial provisions necessary.

We must recognise that the security situation in Northern Ireland remains unique and volatile. A small number of people continue to try to destabilise, through acts of terrorism, the political settlement. Their activity causes harm to individuals and communities across Northern Ireland. Violent dissident republican terrorist groups continue to plan and carry out attacks against the police, prison officers and members of the armed forces. The level of threat from Northern Ireland-related terrorism remains at “severe” in Northern Ireland, meaning that an attack is highly likely.

In addition to terrorist activity, members of paramilitary groups are still lining their own pockets and using brutal violence, intimidation and fear to exert influence and control in their own communities. They hold their own communities back, deterring investment and jobs and preventing people from moving forward with their lives. Statistics from the Northern Ireland Housing Executive indicate that, since 2014, 2,773 people have been driven out of their home because of paramilitary and sectarian intimidation. In addition, a 2019 report published by the Department of Justice in Northern Ireland found that 15.4% of respondents agreed that paramilitaries create fear and intimidation in their area. The existence of these violent terrorist and paramilitary groups and the coercive control they exert over communities in which they live pose specific risks to Northern Ireland's criminal justice system. The non-jury trial provisions were designed to address those risks.

Where the defendant or the crime is suspected of being associated with a proscribed organisation, the risk of fear and intimidation has the real potential to impact the administration of justice in two ways, either via a direct threat to jurors from members or supporters

of that organisation or via the perceived threat that jurors feel in participating in such a case. Either could lead to a perverse verdict.

I trust Members agree that the safety of people in Northern Ireland is paramount and the administration of justice cannot risk impairment. The Government are of course committed to working strategically with security partners to tackle the threat from Northern Ireland-related terrorism and to support the Northern Ireland Executive's programme to tackle paramilitarism. However, we are not prepared to put the safety of individuals or the administration of justice at risk and believe that further progress on the Northern Ireland security situation is required before we can be confident that the non-jury trial provisions are no longer required.

I mentioned previously that public consultation was held to aid the Secretary of State's decision on whether to seek the extension of the provisions. The consultation ran for 12 weeks and concluded in February this year. It received a total of 13 responses from interested stakeholders and organisations, many of whom have in-depth specialist knowledge of this issue. The content of all consultation responses, whether in the majority or not, were considered in detail by the Secretary of State when reaching a decision.

In addition to the consultation responses, the Secretary of State receives regular briefings on the security situation in Northern Ireland. It was his knowledge in the round that informed the conclusion reached by him. Over the past 10 years, non-jury trials have consistently accounted for fewer than 2% of all Crown court cases. The figure reflects a small but consistent need for non-jury trials in Northern Ireland.

Although we are confident that the decision to extend for two years is necessary at this time, the Government remain committed to ensuring that the Northern Ireland-specific provisions are brought to an end when the time is right. In order to work towards that aim, the Northern Ireland Office will establish a working group, as recommended by the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007. The intention is that the group will identify practical measures that can reduce the number of non-jury trials and examine the indicators that will assist in determining when provisions can be brought to an end.

The working group will be comprised of a mixture of security, legal, academic and other independent bodies. The consultation responses were highly supportive of the formation of this group, with respondents expressing a near unanimous and clear wish to participate.

In the light of all the evidence before him, the Secretary of State has decided to renew non-jury trial provisions for a further two years, but to keep them under regular independent review and to establish the aforementioned working group to examine the issue in further detail. Members of the Committee can rest assured that the decision was not taken lightly and that all relevant factors have been weighed up.

2.37 pm

Karl Turner (Kingston upon Hull East) (Lab): I do not intend to delay the Committee too long, but it is important to reiterate in the beginning that the provisions renewed under this statutory instrument were designed to be temporary, as the Minister clearly set out in his opening remarks. All of us clearly hope that there would be no necessity for non-jury trials, but we understand

that the environment in which the judicial system is operating in Northern Ireland, greatly changed though it is, still in exceptional instances necessitates their use.

My hon. Friend the Member for Sheffield, Heeley (Louise Haigh), the shadow Secretary of State for Northern Ireland, has spoken in the House about the controlling influence of paramilitaries. It is no coincidence that recent violence has flared in areas of profound deprivation, where educational attainment is too low and, sadly, paramilitary activity, 23 years on from the agreement, is still far too high.

The shocking but thankfully foiled attack on a police officer and a young child in Dungiven demonstrated the lengths that those who wish to drag Northern Ireland back to the past are prepared to go in order to carry out their despicable agenda. There was evidence within the consultation responses of ongoing jury tampering and the potential for jury bias as a result of the impact of the perceived threats to jurors. The Labour Opposition reluctantly support the provisions and acknowledge that only a tiny number of cases are now dealt with in this way—the Minister said under 2%. There were only 11 cases out of 1,403 during the reporting period, and as in previous years the cases involved defendants who had been members or at least associates of a number of proscribed organisations across the political divide.

The figures reveal the way in which the trials are utilised; the report of the independent reviewer is clear that the statutory tests for such a trial were dealt with in a thorough and professional way. Both the small number of cases and the conduct of authorities in that small number of referrals are clearly encouraging evidence of the reticence in their use. Yet in liberal democracy, it is clear that 11 non-jury trials are 11 too many, particularly where they involve cases of significant public interest.

That is why Labour strongly welcome the recommendations of the independent reviewer, first for the Northern Ireland Office to set up a working party of those involved in the criminal justice system to consider whether there are practical measures that could be taken to minimise any risk to the administration of justice. I welcome the Minister's assurance that that will begin. Secondly, the independent reviewer recommends that in marginal cases that could go either way, the DPP should consider not issuing a certificate when the very low threshold is only just met, possibly in conjunction with juror protection measures.

Can the Minister outline the programme for taking forward those recommendations, given it is now some years since they were made? Will he give a commitment to the Committee as to when those recommendations will be acted on? That would give the public confidence that, although the numbers of non-jury trials are small, the direction of travel is to establish ways in which they will not be needed at all in future. We would welcome that outline from the Minister.

2.42 pm

Mr Walker: I welcome the understandably qualified support from the Opposition for what we are doing, and I join the hon. Gentleman in his condemnation of the appalling threatened act of atrocity at Dungiven. When having these debates, it is important that we remember the risks and the threat to uniformed officers in Northern Ireland. He is absolutely right to condemn

[Mr Robin Walker]

the paramilitarism, which is a form of coercive control in communities across Northern Ireland. It does huge harm, and what we are debating today is only one aspect of that.

This is an exceptional system used in only very limited circumstances. The hon. Gentleman is right to point out some of the statistics that show the small and, indeed, declining number of cases going to non-jury trials. It is also important that those same detailed statistics show there is no greater number of appeals, or successful appeals, in those cases. As he says, the independent reviewer has looked carefully at the figures for those and has come forward with recommendations.

The threat from Northern Ireland-related terrorism remains severe in Northern Ireland—the same level it has been for over 10 years. The Government remain committed to tackling the threat from Northern Ireland-related terrorism and to supporting the Executive's programme to tackle paramilitarism, but we believe

that further progress on the security situation is required before we can be confident that the non-jury provisions are no longer required.

The hon. Gentleman raised an important point about the timing of the establishment of the working group, which also came up in the debate in the Lords, and I am glad to be able to tell him that we are planning to send out invitations over the coming week, and hope that a meeting of the working group will be able to take place by the end of the month. The recommendation has been absolutely accepted by the Government and we are looking to set up that working group. We found the process of consultation for this particular statutory instrument useful to detect some of the organisations in the legal and security space that would be willing to participate and support that work. I am glad to say that real progress is being made, and I commend this SI to the Committee.

Question put and agreed to.

2.45 pm

Committee rose.

