

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT JUSTICE AND SECURITY (NORTHERN
IRELAND) ACT 2007 (EXTENSION OF DURATION
OF NON-JURY TRIAL PROVISIONS) ORDER 2023

Tuesday 23 May 2023

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Saturday 27 May 2023

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The Committee consisted of the following Members:

Chair: MRS SHERYLL MURRAY

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| † Antoniazzi, Tonia (<i>Gower</i>) (Lab) | † Largan, Robert (<i>High Peak</i>) (Con) |
| † Baker, Mr Steve (<i>Minister of State, Northern Ireland Office</i>) | † Menzies, Mark (<i>Fylde</i>) (Con) |
| Bradshaw, Mr Ben (<i>Exeter</i>) (Lab) | † Morris, David (<i>Morecambe and Lunesdale</i>) (Con) |
| † Costa, Alberto (<i>South Leicestershire</i>) (Con) | † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) |
| † Crosbie, Virginia (<i>Ynys Môn</i>) (Con) | Nichols, Charlotte (<i>Warrington North</i>) (Lab) |
| † Elmore, Chris (<i>Ogmore</i>) (Lab) | † Smith, Cat (<i>Lancaster and Fleetwood</i>) (Lab) |
| Greenwood, Margaret (<i>Wirral West</i>) (Lab) | Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Hall, Luke (<i>Thornbury and Yate</i>) (Con) | |
| † Hunt, Tom (<i>Ipswich</i>) (Con) | Bethan Harding, Kay Gammie, <i>Committee Clerks</i> |
| † Johnson, Dr Caroline (<i>Sleaford and North Hykeham</i>) (Con) | |
| | † attended the Committee |

Fourth Delegated Legislation Committee

Tuesday 23 May 2023

[MRS SHERYLL MURRAY *in the Chair*]

Draft Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2023

9.25 am

The Minister of State, Northern Ireland Office (Mr Steve Baker): 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 2023.

The order was laid before the House on 24 April 2023, and I am most grateful to right hon. and hon. Friends and Members for being here for this important statutory instrument. Under the order, trials without a jury can take place in Northern Ireland in limited, prescribed circumstances for a further two years, until 31 July 2025. The current provisions will expire on 31 July 2023.

Following a public consultation, and after consideration of the wider security situation in Northern Ireland, my right hon. Friend the Secretary of State for Northern Ireland considers it necessary to seek an extension to these provisions to ensure the continued safe administration of justice in specific cases. This decision was made carefully and informed by an extensive public consultation process, as well as by the work of the non-jury trial working group. The group was established following recommendations by the former Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 and is composed of representatives from the Public Prosecution Service, the Police Service of Northern Ireland, the court service, the Bar, the Law Society and other independent organisations. The group has worked diligently to produce reports for the independent reviewer and to develop a set of indicators to assist the Secretary of State in determining whether these non-jury trial provisions remain necessary in Northern Ireland. Those indicators included several indices of the current levels of paramilitary activity and intimidation in Northern Ireland. The Secretary of State considered the indicators in conjunction with the consultation responses and determined that they demonstrate that it would not be appropriate to remove the non-jury trial provisions at this time.

None of us should be in any doubt that it is disappointing that the security situation in Northern Ireland necessitates a further extension of these provisions. However, we should not lose sight of the bigger picture and the real progress that has been made. There is a strong presumption in favour of jury trial in Northern Ireland today, and in 2021 only 0.6% of all Crown court cases were conducted without a jury. That stands in stark contrast to the previous Diplock system, in which, for certain offences, the default was non-jury trial. Under the provisions of the 2007 Act, non-jury trials are reserved for use only in

exceptional cases and where the independent Director of Public Prosecutions for Northern Ireland deems it to be a risk to the administration of justice for a trial to take place with a jury.

These measures remain necessary to safeguard against risks such as juror intimidation and juror bias in an extremely small number of cases. A non-jury trial may be permitted in such cases if the defendant is associated 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 by the Director of Public Prosecutions on a case-by-case basis, independent of Government and taking into account the circumstances of both the offence and the defendant. As part of the review process, the DPP routinely rejects applications for non-jury trials, and several expert stakeholders who responded to the public consultation cited this and other measures as evidence of the fact that the current system is proportionate and is currently operating with sufficient checks and balances.

Nevertheless, the Government remain committed to bringing to an end these provisions when it is safe and compatible with the interests of justice to do so, but we firmly believe that now is not the time to take this step. As demonstrated by the increase in the threat level to “severe”, which means an attack is highly likely, and the abhorrent attack on Detective Chief Inspector John Caldwell earlier this year, a small number of people continue to try to destabilise the political settlement through acts of terrorism and violence. Their activity causes harm to individuals and communities across Northern Ireland, and I know that the whole Committee condemns them for it.

Despite courageous work by the PSNI and others across communities in Northern Ireland, terrorist and paramilitary groups continue to exert influence and control in the communities where they operate. In 2021-22, there were 163 recorded offences of intimidation or threats to harm witnesses, and 170 households were accepted as homeless due to intimidation in 2022. It would be counterintuitive to believe that the same issues faced by witnesses would not be replicated should they be asked to sit as a juror in these cases. Furthermore, the most recent results from the Northern Ireland life and times survey in 2021 found that 17% of respondents believed that paramilitary groups create fear and intimidation in their area. As hon. Members will understand, the considered views of those who responded to the public consultation were crucial to the Secretary of State’s decision to seek an extension to these provisions. I would like to express my thanks on the record to everyone who participated.

The only current alternative to the provisions under debate would be the non-jury trial provisions in the Criminal Justice Act 2003. Hon. Members may be aware that, during the public consultation process, significant thought was given to the viability of relying solely on these provisions in Northern Ireland. Although some cited the idea as a long-term goal, many more cautioned against such a reliance at this moment. Numerous respondents noted that relying on the 2003 Act would expose jury members to an unacceptable risk of intimidation and undermine the administration of justice. Indeed,

the provisions of the 2003 Act are so restrictive that only one case has ever been tried from the start by a judge sitting alone under them. That stands in contrast to the small number of cases that the Director of Public Prosecutions authorises under the Justice and Security Act each year. Other responses noted that reliance on the 2003 Act at this stage would impact detrimentally on the potential to obtain sufficient jurors to sit in high-profile terrorist cases.

I hope that hon. Members agree that the safety of people in Northern Ireland and the administration of justice are paramount. The Government remain 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 paramilitary activity. However, we are not prepared to put the safety of individuals or the administration of justice at risk, and we believe that there has not been sufficient change in the Northern Ireland security situation over the last two years to demonstrate that non-jury trial provisions are no longer required.

As part of the consultation process, a number of constructive suggestions were made for alternative arrangements to the non-jury trial provisions in the 2007 Act, as well as proposals to improve the operation of the current regime. Northern Ireland Office officials are considering the viability of these proposals, as well as any recommendations that may be made in the forthcoming report of the independent reviewer of the Justice and Security Act. These will then be tested with the non-jury trial working group before it is determined whether they should be taken forward.

In the light of all the evidence before him, the Secretary of State has decided to seek a renewal of the non-jury trial provisions for a further two years but to keep them under regular, independent review. I assure members of the Committee that the decision was not taken lightly and that all relevant factors have been weighed up. I believe that I can count on the support of the whole Committee in the Government's work to safeguard the

administration of justice in Northern Ireland and to normalise security arrangements as soon as it is safe to do so.

9.33 am

Tonia Antoniazzi (Gower) (Lab): It is an honour to serve under your chairship, Mrs Murray.

I thank the Minister for bringing this instrument forward and for the ongoing work of the Northern Ireland Office in the continuous review of the effectiveness and necessity of non-jury trials. The work undertaken to review this measure, and the continued engagement of the multidisciplinary working group, have provided the assurances that this instrument to extend the duration of non-jury trial provisions is needed, and we will not oppose it.

The provision for non-jury trials is a little-used but vital tool in ensuring the administration of justice in Northern Ireland. Although its use primarily reflects the legacy of the troubles, the current security context, in which the threat level in Northern Ireland was raised in March this year from "substantial" to "severe", means there are serious concerns about the influence that paramilitary groups will attempt to exert on jurors, as the Minister discussed.

This extension is clearly necessary at this time, but I am hopeful that, over the coming years, we will be in position where the non-jury trial system as it stands in Northern Ireland is not needed at all.

9.35 am

Mr Baker: I am most grateful to the hon. Lady for the approach she has taken and for her support. I am also grateful to all the officials, members of the public and others who have participated in bringing forward this order. I finish by saying that I share with the hon. Lady the hope that we can normalise the situation in Northern Ireland together in the spirit of good will.

Question put and agreed to.

9.36 am

Committee rose.

