



Northern
Ireland
Office

CONSULTATION

Non–Jury Trials

Justice and Security (Northern Ireland) Act
2007

6th December 2018

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Foreword by the Secretary of State

I am pleased to launch this consultation to seek the views of the public on whether to extend non-jury trial provisions in Northern Ireland for a further two years.

The non-jury trial provisions are temporary and last for two years. The current provisions will expire on 31st July 2019 unless they are extended.

Today there is a strong presumption of a jury trial in all cases. Government remains fully committed to seeing an end to non-jury trials in Northern Ireland, when safe and compatible with the interests of justice. However, due to the continuing threat from terrorism and paramilitary activity in Northern Ireland, non-jury trials are still necessary for a small number of exceptional cases, in cases where there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury. For example, where intimidation, violence or the threat of violence against members of a jury could result in a perverse conviction or acquittal.

The Justice and Security (Northern Ireland) Act 2007 contains provisions for non-jury trials in limited circumstances. These provisions allow the Director of Public Prosecutions for Northern Ireland to certify that a Crown Court trial is to be conducted without a jury in a specific case, provided a statutory test has been met. In 2017 only 0.6% of all Crown Court cases in Northern Ireland were conducted without a jury.

In the spirit of meaningful consultation, all views will be considered carefully. I encourage you to respond to this consultation to help inform my decision on whether it is appropriate to seek an extension of these provisions through Parliament in 2019.

Thank you for taking part.

**THE RT HON KAREN BRADLEY MP
SECRETARY OF STATE FOR NORTHERN IRELAND**

About this consultation

Who can respond to this consultation?

1. The Government is seeking views from all interested parties, individuals and groups from across the United Kingdom on the matters covered by this consultation.

Purpose of this consultation

2. Extending non-jury trial provisions under the Justice and Security (Northern Ireland) Act 2007 requires secondary legislation which must be approved by both Houses of Parliament. The Government recognises the need to keep the public informed and to allow people the opportunity to comment on policy proposals.
3. This consultation therefore invites people to provide views on the extension of non-jury trial provisions under the Justice and Security (Northern Ireland) Act 2007 for a further two years from the end of July 2019.

Scope of the consultation

4. This consultation applies to all of the United Kingdom.

Duration of the consultation

5. The consultation closes to responses on Wednesday 27th February.

How to respond to this consultation

6. You can send your consultation responses:
 - **By email:** NJTconsultation@nio.gov.uk
 - **In writing:**
Public consultation:
Non–Jury Trial Provisions
Northern Ireland Office (SPG)
Stormont House
Stormont Estate Belfast
BT4 3SH
7. When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. We will acknowledge your response.

8. The consultation document will be available in other formats upon request. You can email any queries to: NJTconsultation@nio.gov.uk.

Government response

9. A summary of responses to this consultation and details of the action that the Government will take, or has taken, will be published on the Government website at www.gov.uk/nio.
10. The Northern Ireland Office will aim to publish this information within 12 weeks of the consultation closing date.

How we consult

Consultation principles

1. This consultation is being conducted in line with the Cabinet Office consultation principles published in January 2018. A copy of the principles can be found at:
<https://www.gov.uk/government/publications/consultation-principles-guidance>

Equality

2. It is also being conducted in line with the Northern Ireland Office (NIO) Equality Scheme which can be found at:
<https://www.gov.uk/government/publications/nio-equality-scheme>
3. In accordance with Section 75 of the Northern Ireland Act 1998, the NIO has undertaken an Equality Screening exercise¹ prior to the launch of this consultation to indicate whether or not there are equality of opportunity and/or good relations impacts associated with extending the non-jury trial provisions.
4. The outcome of the screening exercise is that the likely impact of extending the provisions is “minor” in respect of two of the Section 75 categories (religious belief and political opinion) i.e. the policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible, and “none” in respect of the other categories.
5. An Equality Screening of the impact of the proposals in this consultation is available on request. Following the conclusion of this consultation we will review the screening exercise, in light of consultation responses, to make sure that the NIO’s initial assessment about the likely impact of the proposals remains accurate.

Confidentiality

6. The information you send us may need to be shared with colleagues within the NIO, other relevant Government departments and relevant Northern Ireland Executive departments. The information might also be published in a summary of responses received and referred to in the published consultation report. The Government summary of responses to this consultation and published consultation report will include a list of organisations that responded but not personal names without receiving permission from the individual. Other contact details will not be published.

¹ Please click here for more information on the Equality Commission’s Section 75 guidance or go to <http://www.equalityni.org/S75duties>

7. All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of this public consultation exercise, it is understood that you consent to its possible disclosure and publication. If this is not the case, you should limit any personal information provided, or omit it entirely. If you want the information in your response to the consultation to be kept confidential, you should state so clearly in your response, although this cannot be guaranteed.
8. To find out more about the general principles of Freedom of Information and how it is applied in the NIO, please contact: foi@nio.gov.uk.
9. In some consultations, external analysts may be contracted for the purpose of response analysis. If external analysts are used with this consultation, the NIO may share information you provided in response to the consultation, including personal data, with a third party of contracted external analysts.
10. The NIO is the data controller in respect of any personal data that you provide and NIO's Information Charter, which sets out the standards you can expect in respect of the handling of your personal data, can be found at: <https://www.gov.uk/government/organisations/northern-ireland-office/about/personal-information-charter>

Consultation

Non-Jury Trials in Northern Ireland

1. Non-jury trial provisions in the Justice and Security (Northern Ireland) Act 2007², which apply only in Northern Ireland, allow the Director of Public Prosecutions for Northern Ireland (DPP) to certify that a trial on indictment (tried in the Crown Court) is to be conducted without a jury in a specific case.
2. There are statutory conditions that must be met before the DPP can consider issuing a certificate for a non-jury trial. These statutory conditions are set out in more detail on page 14.
3. In a non-jury trial, a single judge sits alone to hear the case. The judge must give reasons for a conviction. Any person convicted before a non-jury court has a right of appeal on either sentence or conviction without leave. The majority of Crown Court cases in Northern Ireland are jury trials. During 2017, 22 certificates for a non-jury trial were issued by the DPP. This means that, in 2017, only 0.6% of all Crown Court cases in Northern Ireland were conducted without a jury.
4. More information about the background to non-jury trials can be found at page 11 and more information about how non-jury trials work in practice in Northern Ireland can be found at page 16.

Extended Provisions

5. The non-jury trial provisions are temporary, but may be extended for a period of two years by secondary legislation approved in both Houses of Parliament. The provisions were last extended in July 2017 and will expire in July 2019. This was the fifth extension since their establishment in 2007.
6. There are no limits to the number of times these non-jury trial provisions may be extended. However, it is important to note that they were designed to be a temporary measure. The Government remains fully committed to seeing an end to non-jury trials in Northern Ireland, when safe and compatible with the interests of justice.
7. Statistics are available on page 18, which show that the use of non-jury trials in Northern Ireland has steadily declined in recent years.

² Justice and Security (Northern Ireland) Act 2007 can be found here: <https://www.legislation.gov.uk/ukpga/2007/6/contents>

Terrorist Threat in Northern Ireland

8. Today there still exists a SEVERE³ threat from Northern Ireland-related terrorism. The presence of violent paramilitary groups continues to pose risks to the criminal justice system. Threats and acts of violence towards the police and public bodies demonstrate continued attempts at intimidation of individuals and communities.⁴
9. Given this unique context, it is the NIO's position that juries can still be at risk from tampering in Northern Ireland. The NIO believes that this risk to the administration of justice would justify the temporary continuation of non-jury trials provisions for a further two years.
10. The NIO expects that the provisions would only be used in a small number of cases, due to the limited circumstances provided for in the Justice and Security (Northern Ireland) Act 2007 and the decline in non-jury trials in recent years.

Research

11. Academic research, commissioned as part of the Fresh Start Agreement in 2015, and joint analysis from PSNI and MI5 in the Report '*Assessment on Paramilitary Groups in Northern Ireland*', suggests that paramilitary organisations continue to use violence or the threat of violence to exert a powerful influence over communities. Details of where to obtain these reports can be found in the Further Information section on page 21.
12. Statistics from the Northern Ireland Housing Executive indicate that 2,061 people were driven out of their homes between 2014 and 2018 (up to mid-November 2018) due to paramilitary and sectarian intimidation.

Consultation

13. In advance of the expiry of the current provisions on 31 July 2019 which allow non-jury trials to occur in Northern Ireland under the Justice and Security (NI) Act 2007, the NIO is seeking your views on extending these provisions for a further two years, to July 2021.

³ The threat level for Northern Ireland-related terrorism is set separately for Northern Ireland and Great Britain (England, Wales and Scotland). For more information go to: <https://www.mi5.gov.uk/threat-levels>

⁴ The most up-to-date statistics available indicated that there were; 1 national security attack, 17 paramilitary style shootings, 59 paramilitary style assaults, 1 security-related death, 45 firearms seized, 0.74kgs of explosives and 3,157 rounds of ammunition seized.

14. Any views submitted as part of this consultation will be used by the Secretary of State for Northern Ireland to decide whether to renew the non-jury trial provisions or allow them to lapse, subject to Parliamentary approval.

Consultation Question

15. The NIO welcomes your views on the following question:

Do you think that the non-jury trial provisions in the Justice and Security (Northern Ireland) Act 2007 should be extended for a further two years?

13. Please give reasons for your answer, providing evidence where possible. The deadline for responses is Wednesday 27th February 2019.

14. To help you respond to this question, more detailed information on non-jury trials can be found in the next sections of this consultation document.

15. Please send your consultation responses to the Northern Ireland Office:

- **By email:** NJTconsultation@nio.gov.uk
- **In writing:**
Public consultation:
Non-Jury Trial Provisions
Northern Ireland Office (SPG)
Stormont House
Stormont Estate Belfast
BT4 3SH

Background Information

The Justice and Security (Northern Ireland) Act 2007

1. Non-jury trial provisions contained within the Justice and Security (Northern Ireland) Act 2007 apply only in Northern Ireland.

Previous Legislative System (commonly referred to as the “Diplock System”)

2. These provisions replaced the “Diplock system” which existed from 1972 until 2007. Lord Diplock argued, in a report in 1972, that the terrorist intimidation of jurors in Northern Ireland was an obstacle to dealing effectively with terrorist crime in the courts. If a person was charged with a scheduled offence (specified in legislation) they were automatically tried before a Diplock Court, unless the Attorney General certified that the offence was not to be treated as a scheduled offence.
3. The average number of Diplock Court cases in the last five years that the system existed (up until 2007) was 64 per year.

End of Diplock System

4. Following a public consultation on the Diplock arrangements in 2006, and in line with “normalisation” in Northern Ireland, the Secretary of State at that time announced a new system would be put in place. This new system would mean a presumption of jury trial in all cases. Non-jury trials would be retained for certain exceptional cases where there is a risk from paramilitary and community-based pressures on a jury.
5. The new system that was introduced is the current non-jury trial system and the subject of this public consultation.

UK-Wide Criminal Justice Act 2003

6. The Criminal Justice Act 2003⁵, which applies across the UK, provides (in very limited circumstances) for trials to be heard without a jury. However the burden of proof in the Criminal Justice Act 2003 is set far higher than the current system under the Justice and Security (Northern Ireland) Act 2007. Provisions in the UK-wide Criminal Justice Act 2003 are not adequate to deal with Northern Ireland’s unique and terrorist situation.

The Need for provisions in the Justice and Security (Northern Ireland) Act 2007

7. The system under the Justice and Security (Northern Ireland) Act 2007 was designed specifically to address the unique challenges faced by the Northern

⁵ Criminal Justice Act 2003 can be read in full at:
<https://www.legislation.gov.uk/ukpga/2003/44/contents>

Ireland criminal justice system. These challenges still exist today with the SEVERE⁶ threat from Northern Ireland related terrorism and the persistent challenge of paramilitarism.

Comparison: UK-Wide and Northern Ireland-Specific Non-Jury Trials

8. The following table highlights, in summary, the key differences between non-jury trials under the UK-wide Criminal Justice Act 2003 and the Justice and Security (Northern Ireland) Act 2007. Full provisions are at Section 44 of the Criminal Justice Act 2003 and at Section 1 of the Justice and Security (Northern Ireland) Act 2007.

| | Criminal Justice Act (2003) | Justice and Security (Northern Ireland) Act 2007 |
|------------------------------------|--|---|
| Jurisdiction | England, Scotland, Wales and Northern Ireland | Northern Ireland only |
| Reason for a non-jury trial | There is: 1) evidence of real and present danger of jury tampering; and 2) despite attempts to prevent jury tampering, it is likely that it would still occur | There is a risk of jury tampering. One of four conditions from a statutory test must be met (see page 14) |
| Who requests? | Prosecution makes a request to a judge of the Crown Court | The Police Service of Northern Ireland (PSNI) or the Public Prosecution Service (PPS) make a request to the Director of Public Prosecutions (DPP) |
| Who decides? | Judge of the Crown Court | The DPP by following a statutory test (see page 14) |
| How is the decision made? | Two conditions must be fulfilled: 1) evidence of real and present danger of jury tampering; and 2) despite attempts to prevent jury tampering, it is likely that it would still occur | DPP must conduct a statutory test set out in the JSA under which he must consider whether one (or more) of four key conditions is met (see page 14) |
| How many in last 3 years? | 0 | 35 |

⁶ MI5 Threat Levels can be read in full at: <https://www.mi5.gov.uk/threat-levels>

2016/2017 Public Consultation

9. The NIO carried out a 12-week public consultation on the non-jury trial provisions from 16th November 2016 until 7th February 2017.
10. The views gathered during the 2016/17 consultation indicated that there was a continued need for such provisions to remain in place. Government therefore decided to extend the non-jury trial provisions for another two years. That extension ends in July 2019.
11. The Secretary of State needs to decide if the provisions should be extended for a further two years. This is why the NIO is seeking the views of the public again in the form of this consultation.
12. The NIO issued a response to the 2016 consultation in June 2017. Details of this can be found at:
<https://www.gov.uk/government/consultations/non-jury-trial-provisions-justice-and-security-northern-ireland-act-2007>

Director of Public Prosecutions Test

1. A non-jury trial under the Justice and Security (Northern Ireland) Act 2007 is only possible when the DPP for Northern Ireland issues a certificate for a specific case, in relation to a trial on indictment (tried in the Crown Court).
2. 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.
3. The decision for issuing a certificate is based on a two-stage test set out in Section, subsections (3) to (6), of the Justice and Security (Northern Ireland) Act 2007. The DPP must:
 - i. Suspect that one (or more) of the four conditions is met; and
 - ii. Be satisfied that there is a risk that the administration of justice might be impaired if a jury trial were to be held.

| | |
|------------------------|--|
| Condition One | The defendant is, or is an associate of, a person who: <ol style="list-style-type: none"> (a) is a member of a proscribed⁷ organisation, or (b) has at any time been a member of an organisation that was, at that time, a proscribed organisation. |
| Condition Two | That: <ol style="list-style-type: none"> (a) the offence or any of the offences was committed on behalf of a proscribed organisation, or (b) a proscribed organisation was otherwise involved with, or assisted in, the carrying out of the offence or any of the offences. |
| Condition Three | An attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and— <ol style="list-style-type: none"> (a) the attempt was made on behalf of a proscribed organisation, or (b) a proscribed organisation was otherwise involved with, or assisted in, the attempt. |
| Condition Four | The offence or any of the offences was committed to any extent (whether directly or indirectly) as a result of, in connection with or in response to religious or political hostility of one person or group of persons towards another person or group of persons. |

⁷ Section 1(10) of the Justice and Security (Northern Ireland) Act 2007 provides that an organisation is a “proscribed organisation for the purpose of section 1 if at any time (a) it is (or was) proscribed (within the meaning given by section 11(4) of the Terrorism Act 2000, and (b) its activities are (or were) connected with the affairs of Northern Ireland. More information can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/670599/20171222_Proscription.pdf

Challenge

4. A legal⁸ challenge can be brought against the issue of a non-jury trial certificate⁹ only on the grounds of:
 - dishonesty;
 - bad faith; or
 - other exceptional circumstances such as lack of jurisdiction or error of law.

Protecting sensitive information in a judicial review

5. Non-jury trial certificates state which conditions in the DPP's test have been met. This means that when someone challenges a non-jury trial certificate, they will have some information on which to base their challenge. They may not have access to all the information which informed the DPP's decision (for example confidential material such as intelligence or other sensitive national security related information).

⁸ Relevant case law includes:

R v DPP, ex p. Kebilene [2000] 2 AC 326

Shuker & Ors, Re Applications for Judicial Review [2004] NIQB 20

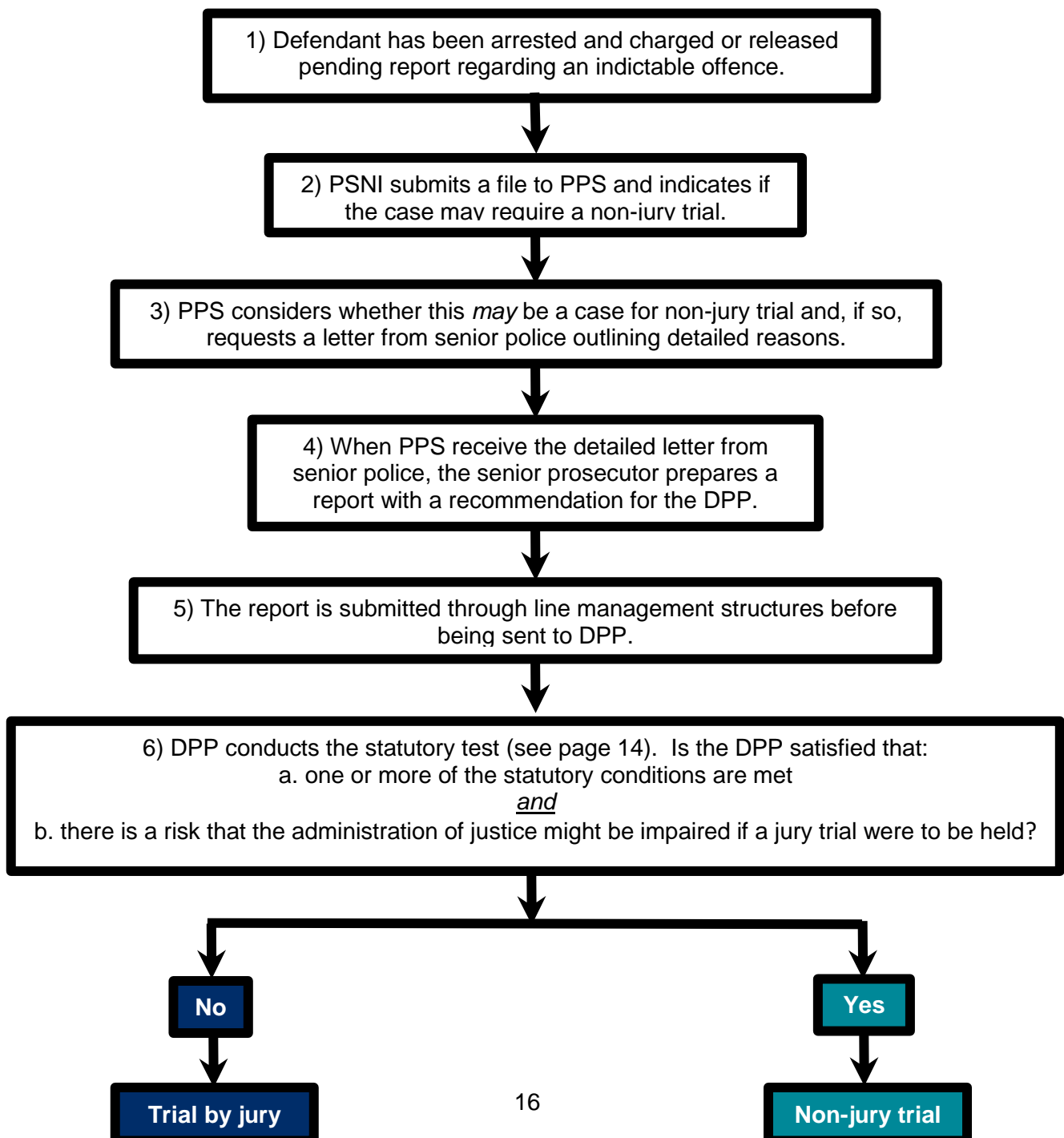
Re Brian and Paula Arthurs [2010] NIQB 75

⁹ Section 7 of the Justice & Security (Northern Ireland) Act 2007 can be found at:

<https://www.legislation.gov.uk/ukpga/2007/6/section/7>

How Non-Jury Trials Work in Northern Ireland

1. A non-jury trial certificate can be lodged with the court at any point before arraignment (i.e. the start of the criminal trial, where the charges are read to the defendant and the defendant is invited to enter a plea).
2. In a non-jury trial, a single judge sits alone to hear the case. If the decision is made to make a conviction, the judge must give their reasoning. Any person convicted before a non-jury court has a right of appeal on either the sentence or the conviction without leave.
3. The following chart summarises the process for non-jury trials:



Independent Reviewer

1. In February 2014 David Seymour was appointed as an independent reviewer under Section 40 of the Justice and Security (Northern Ireland) Act 2007 by the then Secretary of State for Northern Ireland.
2. David Seymour reviews the legislation annually and provides any recommendations for improvements after liaising with relevant stakeholders.
3. When the non-jury trial provisions were last extended for a further two years in July 2017, it was agreed in Parliament that the operation of the provisions would be kept under regular, independent review by David Seymour.

Latest Report

4. Findings on non-jury trial provisions were included, for the first time, in the *10th Annual Report of the Independent Reviewer of Justice & Security (NI) Act 2007*, which was published in April 2018.
5. You can find the full report at:
www.gov.uk/government/publications/10th-annual-report-of-independent-reviewer-of-justice-security

Statistics

- The following tables provide statistics on non-jury trials in Northern Ireland, under the Justice and Security (Northern Ireland) Act 2007. Please note that the figures for 2018 are provisional and the most up to date that the NIO was able to obtain for inclusion in this consultation.

Table 1: Certificates issued and refused for non-jury trial by the DPP (2007 – 2018)

| Year | Certificates Issued | Certificates Refused |
|------|---------------------|----------------------|
| 2007 | 12* | 2 |
| 2008 | 25 | 2 |
| 2009 | 11 | 0 |
| 2010 | 14 | 0 |
| 2011 | 28 | 0 |
| 2012 | 25 | 3 |
| 2013 | 23 | 3 |
| 2014 | 14 | 1 |
| 2015 | 15 | 0 |
| 2016 | 19 | 1 |
| 2017 | 22 | 1 |
| 2018 | 10** | 1* |

Source: Northern Ireland Director of Public Prosecution's Office

*Provisions under the 2007 Act were brought into effect on 1 August 2007

**Provisional figures

Table 2: Non-Jury trial cases as a percentage of all cases in the Crown Court (2013-2018)

| Year | Non-Jury Trial Cases | Other | Total | % Non-Jury Trial Cases |
|-------|----------------------|-------|-------|------------------------|
| 2013 | 36 | 1917 | 1953 | 1.8% |
| 2014 | 28 | 1660 | 1688 | 1.7% |
| 2015 | 17 | 1063 | 1080 | 1.6% |
| 2016 | 12 | 1628 | 1640 | 0.7% |
| 2017 | 9 | 1400 | 1409 | 0.6% |
| 2018* | 9 | 664 | 673 | 1.3% |

Source: NI Courts & Tribunals Service

*Provisional figures

Table 3: Number (with percentages) of cases where conditions of the DPP statutory test have been met (2011-2018)*

| Year | Number of Cases in which Condition Met | | | | Certificates Issued |
|-------|--|-------------|-------------|-------------|---------------------|
| | Condition 1 | Condition 2 | Condition 3 | Condition 4 | |
| 2011 | 27 (96%) | 23 (82%) | 4 (14%) | 8 (29%) | 28 |
| 2012 | 21 (84%) | 16 (64%) | 1 (4%) | 10 (40%) | 25 |
| 2013 | 22 (96%) | 16 (70%) | 3 (13%) | 21 (91%) | 23 |
| 2014 | 18 (100%) | 12 (67%) | 0 (0%) | 16 (89%) | 18 |
| 2015 | 14 (93%) | 13 (87%) | 0 (0%) | 7 (47%) | 15 |
| 2016 | 10 (91%) | 11 (100%) | 0 (0%) | 7 (64%) | 11 |
| 2017 | 9 (100%) | 6 (67%) | 0 (0%) | 8 (89%) | 9 |
| 2018* | 10 (100%) | 7 (70%) | 1 (10%) | 6 (60%) | 10 |

| | | | | | |
|--------------------------|-----------|-----------|--------|----------|-----|
| Total 2011-18 | 131 (95%) | 104 (76%) | 9 (5%) | 83 (64%) | 139 |
|--------------------------|-----------|-----------|--------|----------|-----|

Source: Northern Ireland Director of Public Prosecution's Office

*Provisional figures

Table 4: Acquittal rates for Crown Court defendants *where a plea of not guilty is entered in* non-jury trials, compared with those in jury trials (2013-2018)

| Year | Non-Jury Trials | Jury Trials |
|--------------|------------------------|--------------------|
| 2013 | 13.54% | 24.87% |
| 2014 | 27.45% | 25.21% |
| 2015 | 47.62% | 20.80% |
| 2016 | 11.1% | 23.71% |
| 2017 | 44.00% | 25.00% |
| 2018* | 30.8% | 24.6% |

Source: NI Courts & Tribunals Service

*Provisional figures

Further Information

- Criminal Justice Act 2003, Section 44
<http://www.legislation.gov.uk/ukpga/2003/44/section/44>
- Justice and Security (Northern Ireland) Act 2007
<http://www.legislation.gov.uk/ukpga/2007/6/contents>
- The Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2017
<https://www.legislation.gov.uk/ukdsi/2017/9780111158456/contents>
- The Fresh Start Panel report on the Disbandment of Paramilitary Groups in Northern Ireland June 2016
<https://www.northernireland.gov.uk/publications/fresh-start-panel-report-disbandment-paramilitary-groups-northern-ireland>
- Joint analysis from PSNI and the Security Service Paramilitary Groups in Northern Ireland
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/469548/Paramilitary_Groups_in_Northern_Ireland_-_20_Oct_2015.pdf
- First Report of the Independent Reporting Commission (reporting on progress towards ending paramilitary activity):
https://www.ircommission.org/sites/irc/files/media-files/IRC-%20First%20Report_1.pdf
- David Seymour's *10th Annual Report of the Independent Reviewer of Justice & Security (NI) Act 2007*, which was published in April 2018:
www.gov.uk/government/publications/10th-annual-report-of-independent-reviewer-of-justice-security

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