



Northern
Ireland
Office

CONSULTATION RESPONSE

Non-Jury Trials

Justice and Security (Northern Ireland) Act 2007

29 April 2019

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Introduction

Consultation on Non-Jury Trials in Northern Ireland

1. On 6 December 2018, the Northern Ireland Office launched a 12-week public consultation¹ seeking views on whether non-jury trial provisions within the Justice and Security (Northern Ireland) Act 2007² should be extended for a further two years.
2. The consultation closed on 27 February 2019. This Consultation Response contains an analysis of the responses received (Pages 7-11) and the subsequent decision that the Secretary of State for Northern Ireland has made (Page 18) on whether to extend the non-jury trial provisions.

Consultation Principles

1. This consultation process 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 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 Northern Ireland Office undertook an Equality Screening exercise³ prior to the launch of the consultation to indicate whether or not there were equality of opportunity and/or good relations impacts associated with extending the non-jury trial provisions.

¹ The Northern Ireland Office 2018/19 Consultation Document on Non-Jury Trials can be found here: <https://www.gov.uk/government/consultations/secretary-of-state-launches-consultation-on-non-jury-trials>

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

³ Please click here for more information on the Equality Commission's Section 75 guidance or go to <http://www.equalityni.org/S75duties>

4. The outcome of the screening exercise was that the likely impact of extending the provisions was “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. Following the conclusion of the consultation, the Northern Ireland Office reviewed the screening exercise in light of the consultation responses and have assessed that the initial assessment about the likely impact of the proposals remains accurate.
6. An Equality Screening of the impact of the proposals in this consultation is available on request.

Accessibility

3. This document is publicly available at www.gov.uk/nio. You may make additional copies of this document without seeking permission. It can also be made available, on request, in different formats for individuals with particular needs.
4. If you require any additional copies or have any concerns or questions about this consultation process, you can contact:

- **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

Non-Jury Trials in Northern Ireland

1. Non-jury trial provisions within the Justice and Security (Northern Ireland) Act 2007 apply only in Northern Ireland. The provisions allow the Director of Public Prosecutions for Northern Ireland 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 Director of Public Prosecutions can consider issuing a certificate for a non-jury trial. 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.
3. The vast majority of Crown Court cases in Northern Ireland are jury trials. During 2017 (the last year for which verified figures are available), 22 certificates for a non-jury trial were issued by the Director of Public Prosecutions. Of all Crown Court cases that occurred in Northern Ireland in 2017 only 0.6% were conducted without a jury. This figure has been less than 2% for the last 10 years.
4. The non-jury trial provisions in the Justice and Security (Northern Ireland) Act 2007 expire after a period of 2 years, but may be extended for a further period of two years by secondary legislation, approved in both Houses of Parliament. There is no limit to the number of times that the non-jury trial provisions may be extended in this way. However, it is important to note that they were designed to be a temporary measure.
5. 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.

Consultation Responses

Responses Received

1. The consultation received 15 responses. These were from (*in alphabetical order*):

1. Alliance Party
2. The Bar of Northern Ireland
3. Lord Carlile (former Independent Reviewer of Terrorism Legislation and National Security Arrangements in Northern Ireland)
4. David Seymour (Independent Reviewer of the Justice and Security (NI) Act 2007)
5. Democratic Unionist Party
6. Director of Public Prosecutions for Northern Ireland
7. Law Society of Northern Ireland
8. MI5
9. Member of Public 1
10. Member of Public 2
11. Northern Ireland Human Rights Commission
12. Office of the Lord Chief Justice of Northern Ireland
13. Professor Clive Walker (Professor of Criminal Justice Studies, University of Leeds)
14. Police Service of Northern Ireland (PSNI)
15. Social Democratic and Labour Party

2. After analysing the responses, the Northern Ireland office has assessed that:
 - **eight** respondents **support/ accept** extending the provisions,
 - **three** respondents **object** to extending the provisions; and
 - **four** respondents **neither clearly support nor object** to extending the provisions.

Analysis of Responses

Responses Supporting/ Accepting

1. There were **eight** responses that the Northern Ireland Office assessed to be in support of/accepting the need to extend non-jury trial provisions for a further two years.
2. These were received from:

- Alliance Party
- David Seymour (Independent Reviewer of the Justice and Security (NI) Act 2007)
- Democratic Unionist Party
- Director of Public Prosecutions for Northern Ireland
- Lord Carlile (Former Independent Reviewer of Terrorism Legislation and of National Security Arrangements in Northern Ireland)
- MI5
- Northern Ireland Human Rights Commission
- PSNI

3. These respondents mainly justified their support/acceptance with reasons such as:
 - the current SEVERE threat level⁴ from Northern Ireland related terrorism in Northern Ireland
 - continued paramilitary activity and coercive control of communities
 - non-jury trials being appropriate in limited and exceptional cases
 - having the option of a non-jury trial is in the best interests of the administration of justice in Northern Ireland.

⁴ 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. Some examples of these respondents' views include:

Lord Carlile, former Independent Reviewer of Terrorism Legislation and National Security Arrangements in Northern Ireland

“...it would be a serious and unnecessary risk to repeal the provisions now. Hopefully there will be even fewer Non-Jury Trials in the next 2 years [...]. I believe that the time will come when there will be no justification for any Non-Jury Trials in Northern Ireland. I do not believe that moment has arrived yet.”

David Seymour, Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007

“...I have looked carefully at the operation of these provisions in my last two reports to the SoS [Secretary of State] under section 40 of the Justice and Security (Northern Ireland) Act 2007. The process involved in the issuing of a non jury certificate is set out in the 2007 Act and, having thoroughly examined the case rules of the Director of Public Prosecutions and the PSNI in 40 cases where the issue of such a certificate has been considered, I am satisfied that the process is carried out in a highly professional manner. Concern about non jury trials is muted. There is some concern about the lack of transparency of the statutory process for the issue of non jury certificates and I have made some modest recommendations in that respect.

However, in all the circumstances, I reluctantly conclude that it is in the best interests of the administration of justice in NI that these provisions in the Justice and Security (Northern Ireland) Act 2007 be extended for a further two years until July 2021.”

MI5

“The MI5 view is that an extension [of the non-jury trial provisions] is appropriate...”

PSNI

“...the provisions of the Justice and Security Act (Northern Ireland) 2007 remain necessary and proportionate in regard to ensuring the administration of justice is not subject to interference. [It is the PSNI] view that the provisions within Justice and Security (Northern Ireland) Act 2007 need to be retained”

5. Although accepting that a further extension of the provisions is necessary at this time, most respondents in this category also expressed a will for the provisions to be removed when it was safe and compatible with the interests of justice. This mirrors the Government’s vision.
6. An example of this was from the Director of Public Prosecutions:

Director of Public Prosecutions

“The wish to see an end to the underlying circumstances that give rise to the need for trial by single judge is shared by us all. Unfortunately, in a small minority of Crown Court cases, the statutory test as set out within section 1 of the Justice and Security (Northern Ireland) Act 2007 continues to be met based upon the evidence and information provided to my office.”

Responses Objecting

7. There were **three** responses that the Northern Ireland Office assessed to object to the need to extend non-jury trial provisions for a further two years.
8. These were received from:
 - The Bar of Northern Ireland
 - Member of the Public 1
 - Member of the Public 2
9. These respondents mainly objected due to reasons such as:
 - questioning whether a non-jury trial equates to a fair trial
 - temporary provisions being extended for a sixth time

- Northern Ireland should move towards the regime under the Criminal Justice Act (2003)⁵. *More information on the Criminal Justice Act (2003) can be found on Page 15.*

10. Some examples of these respondents' views include:

The Bar of Northern Ireland

"The Bar sees no justification for the continued maintenance of non-jury trial provisions in the 2007 Act [Justice and Security (Northern Ireland) Act 2007] and takes the view that Northern Ireland should seek to move towards the regime operated under the Criminal Justice Act 2003 as soon as it is considered practically possible."

Member of the Public 1

"None [sic] jury trials in Ireland [sic] are unacceptable. What should happen if there is a local problem forming a jury for whatever reason to have a bank of jurors outside that local area to be called upon. So for example find jurors in England whose parentage reflects both religious denominations via marriage."

Member of the Public 2

"...surely justice is not best served by not having a jury!?, as it is the Jury who decides the innocence or guilt of accused & not a singular entity."

11. The most detailed response objecting to extending the provisions came from the Bar of Northern Ireland. Whilst it acknowledged the SEVERE threat from terrorism and continuing paramilitary activity, the Bar was concerned by the lack of evidence linking this to jury tampering.

12. In its response it stated that following a meeting with the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 in his role in reviewing non-jury trials, the Bar was unclear as to whether the grounds giving rise to the

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

retention of non-jury trials were based on actual or theoretical risks. The Bar was also concerned that the ability to challenge the issuing of a certificate is too limited. The Bar, in its response, has called for Northern Ireland to rely solely on the provisions in the Criminal Justice Act (2003).

Responses Neither Supporting Nor Objecting

13. There were **four** responses which neither clearly supported nor objected to the need to extend non-jury trial provisions for a further two years.

14. These were received from:

- Law Society of Northern Ireland
- Office of the Lord Chief Justice of Northern Ireland
- SDLP
- Professor Clive Walker (Professor Emeritus of Criminal Justice Studies, University of Leeds)

15. These respondents had mixed responses. Some examples of views raised included:

- The Law Society of Northern Ireland raised concerns around subjectivity and the limited ability to challenge a certificate
- The Lords Chief Justice's Office had no concerns about how the present system is operating
- Professor Clive Walker (Professor Emeritus of Criminal Justice Studies, University of Leeds) suggested that the process would benefit from more transparency

Independent Reviewer

The Justice and Security (Northern Ireland) Act 2007

1. When Parliament agreed to the Secretary of State extending non-jury trial provisions in 2017, the Northern Ireland Office undertook to keep the provisions under regular independent review by including non-jury trials in the annual report by the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007, David Seymour.

Annual Reports

2. The first annual report that included a review of non-jury trial provisions was the 10th Annual Report (published in April 2018). The 11th Annual Report (published in March 2019) also included consideration of non-jury trial provisions.
3. The Independent Reviewer, in both reports, addresses many of the concerns that respondents raised during this consultation. The reports also provide a number of recommendations to improve the management of the non-jury trial process in Northern Ireland, some of which have already been addressed.
4. The 10th Annual Report was the first to include a review of the entire non-jury trial system, as well as suggesting improvements that could be made to the existing process. In this report the Independent Reviewer determined that:

“The existing arrangements work well given the prevailing situation in Northern Ireland. The PSNI, and, in particular, the PPS perform their important roles thoroughly and to a high professional standard. Indeed, I did not detect any great concern in the legal community in Northern Ireland about NJTs other than a general concern about “lack of transparency”.”

Recommendations

5. Paragraph 23 of the 10th Annual Report outlined a number of recommendations on the non-jury trial provisions and how they are used, and paragraph 19 of the 11th Report detailed the responses from the Public Prosecution Service and PSNI to those recommendations. As a result, both organisations agreed to:

- improve the speed in which the PSNI responds to the Public Prosecution Service request for an initial view on whether a non-jury trial certificate should be issued;
- meet annually to discuss how to handle non-jury trial cases to ensure that learning is shared and a consistent approach is established;
- reflect in the non-jury trial certificate what considerations in regards to alternative juror protection measures have been given; and
- improve record keeping so that relevant files can readily be retrieved to be sampled by the Independent Reviewer.

Conclusion

Background

1. As the Northern Ireland Office has stated previously, Government remains fully committed to seeing an end to non-jury trials in Northern Ireland, when safe and compatible with the interests of justice.
2. Non-jury trial provisions are used in a small number of exceptional cases, and non-jury trials continue to make up a small minority of all Crown Court cases (less than 2% of cases in each of the last ten years.)

Consultation Responses

3. The Northern Ireland Office has assessed that the majority of respondents mainly support, or at least accept the need for, an extension of non-jury trial provisions in Northern Ireland. Many of the concerns that were raised have already been addressed by the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 who will continue to review and report on non-jury trial provisions in Northern Ireland.

Terrorism and Paramilitarism

4. Today there still exists a SEVERE threat from Northern Ireland related terrorism. The intent and capability of violent dissident republicans has been highlighted most recently by the tragic murder of 29 year old journalist Lyra McKee on 18 April in the Creggan area of Derry/Londonderry. Lyra McKee was shot by a violent dissident republican gunman as he fired at police with a handgun during rioting which also saw up to 50 petrol bombs being thrown at police and three hijacked vehicles set on fire. PSNI had been conducting searches for illegally held firearms and explosives. There was also a reckless and indiscriminate attack in January 2019, in which a device located inside a vehicle was detonated outside Derry/Londonderry Courthouse.
5. As well as the national security threat from violent dissident republicans, paramilitary groups, both loyalist and republican, continue to carry out brutal

attacks against members of their own communities in an attempt to exert control.

6. PSNI, in its response to the consultation, provided detail on the capability and intent of paramilitary groups, as well as the effect that this continues to have on people and communities in Northern Ireland:

(PSNI, February 2019)

"[NIO comments made in the Consultation] are validated by police data, wherein a total of 54 paramilitary style attacks have occurred including 10 republican shootings and 2 loyalist shootings. A total of 28 firearms, 1.07kg explosives, 1 detonator and almost 1,000 rounds of ammunition were also seized during a recording period from Apr-Nov 2018. Police statistics have recorded 13 bombing incidents within which 7 devices exploded and in addition to a total of 25 terrorist related shooting incidents chronicled, 10 persons were charged with terrorist related offences."

Fear and Intimidation

7. The Northern Ireland Housing Executive reported that over 2,000 households presented themselves as homeless between April 2015 October 2018, with 1,488 (73%) of them citing intimidation from paramilitaries as the reason.
8. A report commissioned by the Department of Justice, *Perceptions of Paramilitarism in Northern Ireland*, published in March 2019⁶, found that 29% of those living in mainly loyalist areas and 25% of those living in mainly republican areas think that paramilitaries create fear and intimidation, compared with 15% in Northern Ireland generally.
9. This controlling influence can cause a risk of jury threat or intimidation in cases where it is suspected⁷ that a defendant, or the crime, is associated with a

⁶ The Perceptions of Paramilitarism in Northern Ireland report can be found here: <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/8-2019-nilts-perceptions-paramilitarism.pdf>

⁷ The Director of Public Prosecution's decision for issuing a certificate is based on a two-stage test set out in law in section 1 of the Justice and Security (Northern Ireland) Act 2007. You can read this part

proscribed organisation⁸. This real fear and intimidation caused by terrorists and paramilitary groups within communities across Northern Ireland is a key reason to extend the non-jury trial provisions under the Justice and Security (Northern Ireland) Act 2007 for a further two years.

Jury Bias

10. In addition to the risk of juror intimidation, there is also the potential for jury bias as a result of a defendant's suspected association with a proscribed organisation or if the offence being tried is in connection with religious or political hostility (for example some historic Troubles related cases). Non-jury trial provisions also protect against the risk of impairment to the administration of justice arising from a hostile jury, a circumstance more likely in Northern Ireland than the rest of the UK. The Director of Public Prosecutions and PSNI also raised the issue of bias in their responses:

Director of Public Prosecutions

"...both my predecessors and I have issued certificates (in the context of historical cases unrelated to current paramilitary activity) in which the risk to the administration of justice is that of potential jury bias."

PSNI

"[Non-jury trials] obviate a perverse verdict based on community attitudes or perspective."

Criminal Justice Act (2003)

11. Part 7 of the Criminal Justice Act (2003), which applies in England, Wales and Northern Ireland, provides, in very limited circumstances, for trials to be heard

of the legislation in full here: <https://www.legislation.gov.uk/ukpga/2007/6/crossheading/trials-on-indictment-without-a-jury>

⁸ 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 in relation to any time 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

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.

12. Whilst appropriate for other UK jurisdictions, the provisions under the Criminal Justice Act (2003) are not adequate to deal with Northern Ireland's unique security situation. The current non-jury trial system under the Justice and Security Act (2007) was designed specifically to address the unique and ongoing challenges in Northern Ireland. It would therefore be inappropriate, at this time, to solely rely on the Criminal Justice Act (2003).

Concerns About a Fair Trial

13. Some concerns were raised by members of the public in relation to whether a non-jury trial equated to an unfair trial.
14. The Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 (in his 10th Report) reported that case law made it clear that it would be wrong to equate a non-jury trial with an unfair trial. There was a case in which it was argued that the non-jury trial provisions in the Justice and Security (Northern Ireland) Act 2007 were in breach of Article 6 of the European Convention on Human Rights. However, the Court of Appeal held that:

“The Director’s certificate is not decisive of any issue that falls to be determined in the trial and it does not in itself undermine the right of the applicant to a fair trial which...can happen before a judge alone without infringing his fair trial rights.”

15. It is also worth noting that some respondents supporting an extension of non-jury trial provisions were keen to point out the comparable, and in some years, favourable, rates of acquittal in non-jury trials when compared to jury trials.

Concerns About Transparency

16. Some respondents raised concerns around the transparency of the current process. These concerns included the discretion held by the Director of Public

Prosecutions in issuing a non-jury trial certificate. The Independent Reviewer (in his 10th annual report) conducted a thorough analysis of non-jury trials in Northern Ireland. He determined that the non-jury trial system did allow opportunity for scrutiny regarding the issue of a certificate, and that the procedure was robust.

Concerns About Challenging a Certificate

17. Some respondents raised concerns about the limited ability to challenge the Director of Public Prosecution's decision in the issue of a non-jury trial certificate. The Independent Reviewer had considered this concern (in his 10th annual report) and made no recommendations on the matter.

Independent Reviewer

18. The fact that a review of non-jury trials was added to the remit of the role of the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007, in itself, also helps to bring a further degree of transparency to non-jury trials in Northern Ireland. In his reports, the Independent Reviewer concluded that the decision making under current arrangements is very thorough and meets high professional standards.

Secretary of State Decision

19. Having reviewed and analysed the responses to the public consultation on non-jury trials and taken into account the ongoing security situation in Northern Ireland, the Secretary of State for Northern Ireland has decided:

- 1) that it is necessary to seek approval of a further extension of non-jury trial provisions under the Justice and Security (Northern Ireland) Act 2007 for a further two years, through both Houses of Parliament; and
- 2) that the operation of the provisions should continue to be kept under regular, independent review.

Next Steps

Statutory Instrument

1. An affirmative statutory instrument making provision for the extension of the non-jury trial provisions under the Justice and Security (Northern Ireland) Act 2007 will be laid in Parliament on 30 April, which will need to be approved by both Houses of Parliament.
2. Northern Ireland Office Ministers will host debates in both Houses of Parliament seeking approval of the statutory instrument before the current provisions expire on 31 July 2019.

Parliamentary Debates

3. If both Houses of Parliament approve this extension, the statutory instrument will extend the non-jury trial provisions from 1st August 2019. Their new expiry date will become 31st July 2021. Information on Parliamentary debates can be found on the Parliament website: www.parliament.uk.

Useful Information

- Northern Ireland Office Consultation on Non-Jury Trials (December 2018)
<https://www.gov.uk/government/consultations/secretary-of-state-launches-consultation-on-non-jury-trials>
- Justice and Security (Northern Ireland) Act 2007
<http://www.legislation.gov.uk/ukpga/2007/6/contents>
- Criminal Justice Act 2003, Section 44
<http://www.legislation.gov.uk/ukpga/2003/44/section/44>
- 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>
- Perceptions of Paramilitarism in Northern Ireland Report
<https://www.justice-ni.gov.uk/sites/default/files/publications/justice/8-2019-ni-lts-perceptions-paramilitarism.pdf>
- David Seymour's 10th Annual Report of the Independent Reviewer of Justice & Security (NI) Act 2007 (April 2018)
www.gov.uk/government/publications/10th-annual-report-of-independent-reviewer-of-justice-security
- David Seymour's 11th Annual Report of the Independent Reviewer of Justice & Security (NI) Act 2007 (March 2019)
<https://www.gov.uk/government/publications/11th-annual-report-of-independent-reviewer-of-justice-security>
- 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 (October 2015)

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 (October 2018)

https://www.ircommission.org/sites/irc/files/media-files/IRC-%20First%20Report_1.pdf

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