



Domestic Violence, Crime and Victims Act 2004

2004 CHAPTER 28

PART 2

CRIMINAL JUSTICE

Trial by jury of sample counts only

17 Application by prosecution for certain counts to be tried without a jury

- (1) The prosecution may apply to a judge of the Crown Court for a trial on indictment to take place on the basis that the trial of some, but not all, of the counts included in the indictment may be conducted without a jury.
- (2) If such an application is made and the judge is satisfied that the following three conditions are fulfilled, he may make an order for the trial to take place on the basis that the trial of some, but not all, of the counts included in the indictment may be conducted without a jury.
- (3) The first condition is that the number of counts included in the indictment is likely to mean that a trial by jury involving all of those counts would be impracticable.
- (4) The second condition is that, if an order under subsection (2) were made, each count or group of counts which would accordingly be tried with a jury can be regarded as a sample of counts which could accordingly be tried without a jury.
- (5) The third condition is that it is in the interests of justice for an order under subsection (2) to be made.
- (6) In deciding whether or not to make an order under subsection (2), the judge must have regard to any steps which might reasonably be taken to facilitate a trial by jury.

- (7) But a step is not to be regarded as reasonable if it could lead to the possibility of a defendant in the trial receiving a lesser sentence than would be the case if that step were not taken.
- (8) An order under subsection (2) must specify the counts which may be tried without a jury.
- (9) For the purposes of this section and sections 18 to 20, a count may not be regarded as a sample of other counts unless the defendant in respect of each count is the same person.

18 Procedure for applications under section 17

- (1) An application under section 17 must be determined at a preparatory hearing.
- (2) Section 7(1) of the 1987 Act and section 29(2) of the 1996 Act are to have effect as if the purposes there mentioned included the purpose of determining an application under section 17.
- (3) Section 29(1) of the 1996 Act is to have effect as if the grounds on which a judge of the Crown Court may make an order under that provision included the ground that an application under section 17 has been made.
- (4) The parties to a preparatory hearing at which an application under section 17 is to be determined must be given an opportunity to make representations with respect to the application.
- (5) Section 9(11) of the 1987 Act and section 35(1) of the 1996 Act are to have effect as if they also provided for an appeal to the Court of Appeal to lie from the determination by a judge of an application under section 17.
- (6) In this section—
 - “preparatory hearing” means a preparatory hearing within the meaning of the 1987 Act or Part 3 of the 1996 Act;
 - “the 1987 Act” means the Criminal Justice Act 1987 (c. 38);
 - “the 1996 Act” means the Criminal Procedure and Investigations Act 1996 (c. 25).

19 Effect of order under section 17(2)

- (1) The effect of an order under section 17(2) is that where, in the course of the proceedings to which the order relates, a defendant is found guilty by a jury on a count which can be regarded as a sample of other counts to be tried in those proceedings, those other counts may be tried without a jury in those proceedings.
- (2) Where the trial of a count is conducted without a jury because of an order under section 17(2), the court is to have all the powers, authorities and jurisdiction which the court would have had if the trial of that count had been conducted with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).
- (3) Except where the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to the trial of a

count conducted without a jury because of an order under section 17(2), as a reference to the court, the verdict of the court or the finding of the court.

- (4) Where the trial of a count is conducted without a jury because of an order under section 17(2) and the court convicts the defendant of that count—
 - (a) the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction, and
 - (b) the reference in section 18(2) of the Criminal Appeal Act 1968 (c. 19) (notice of appeal or of application for leave to appeal to be given within 28 days from date of conviction etc) to the date of the conviction is to be read as a reference to the date of the judgment mentioned in paragraph (a).
- (5) Where, in the case of proceedings in respect of which an order under section 17(2) has been made, a jury convicts a defendant of a count, time does not begin to run under section 18(2) of the Criminal Appeal Act 1968 in relation to an appeal against that conviction until the date on which the proceedings end.
- (6) In determining for the purposes of subsection (5) the date on which proceedings end, any part of those proceedings which takes place after the time when matters relating to sentencing begin to be dealt with is to be disregarded.
- (7) Nothing in this section or section 17, 18 or 20 affects the requirement under section 4A of the Criminal Procedure (Insanity) Act 1964 (c. 84) that any question, finding or verdict mentioned in that section be determined, made or returned by a jury.

20 Rules of court

- (1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of sections 17 to 19.
- (2) Without limiting subsection (1), rules of court may in particular make provision for time limits within which applications under section 17 must be made or within which other things in connection with that section or section 18 or 19 must be done.
- (3) Nothing in this section is to be taken as affecting the generality of any enactment conferring powers to make rules of court.

21 Application of sections 17 to 20 to Northern Ireland

- (1) In their application to Northern Ireland, sections 17 to 20 have effect subject to the modifications in Schedule 1.
- (2) Sections 17 to 20 do not apply in relation to a trial to which section 75 of the Terrorism Act 2000 (c. 11) (trial without jury for certain offences) applies.