

EXPLANATORY MEMORANDUM TO
THE JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007
(EXTENSION OF DURATION OF NON-JURY TRIAL PROVISIONS)
ORDER 2015

2015 No. 1572

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order extends the duration of non-jury trial arrangements specific to Northern Ireland for a further period of two years, from 31 July 2015. These arrangements continue to be required, for the small number of cases in which they are used, in light of the ongoing security situation in Northern Ireland in order to uphold the fair and effective administration of justice.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Sections 1 to 9 of the Justice and Security (Northern Ireland) Act 2007 provide for a system of non-jury trial, applicable in particular circumstances, in Northern Ireland. These are temporary provisions which may be extended by order for a period of two years. The non-jury trial system will expire on 31 July 2015 unless the ‘effective period’ during which the provisions are in force is extended by order for a further two years. The non-jury trial provisions were extended until 31 July 2011 by S.I. 2009/2090, further extended until 31 July 2013 by S.I. 2011/1720 and extended again until 31 July 2015 by S.I. 2013/1619. This is the fourth time an order is being made to extend the effective period and this Order further extends the effective period until 31 July 2017.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

6. European Convention on Human Rights

6.1 The Secretary of State for Northern Ireland (Theresa Villiers) has made the following statement regarding Human Rights:

In my view the provisions of The Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2015 are compatible with the Convention rights.

7. Policy background

7.1 The non-jury trial system contained in the Justice and Security (Northern Ireland) Act 2007 applies only in Northern Ireland. It replaced the old “Diplock” system that existed from 1972 until its repeal in 2007. The system in the 2007 Act is risk-based: it enables the Northern Ireland Director of Public Prosecutions to issue a certificate for a non-jury trial in relation to an indictable offence if he suspects one or more of four conditions in the Act apply, and he is satisfied that in view of that there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury. The four conditions relate to connections between the offence, or the defendant, and a proscribed organisation connected with the affairs of Northern Ireland; an attempt, connected to such an organisation, to prejudice the investigation or prosecution; or connections between the offence and religious or political hostility.

7.2 The system is temporary, and expires on 31 July 2015. However, its operation can be extended for periods of two years. This reflects Government’s view that this is an exceptional system that ought to be kept in force for as short a time as possible. Government has made clear on many occasions its aspiration to return to jury trial for all cases as soon as the security situation in Northern Ireland allows.

7.3 A system of non-jury trial for cases falling in the categories above was, and is, considered necessary to address paramilitary and community-based pressures on jurors that create a risk to the administration of justice. These risks are considered more significant in Northern Ireland than elsewhere in the UK.

7.4 The non-jury trial system remains an exceptional one, used in very limited circumstances. The decision for holding a non-jury trial is made on a case by case basis taking into account the circumstances of both the offence and the defendant. Although non-jury trials can take place in respect of any indictable offence (so long as the conditions are met), there is a prevalence of jury trials in the vast majority of criminal cases and for the vast majority of defendants in Northern Ireland. In 2013 non-jury trials accounted for 1.1% of all Crown Court cases received in that year in Northern Ireland; in 2014 this figure was 1.7%.

8. Consultation outcome

8.1 No formal public consultation was held on this issue. However, views on extension were sought from 35 interested groups and individuals, including political parties, independent reviewers, NGOs and practitioners in the criminal justice system in Northern Ireland. Out of the 19 responses received by the Northern Ireland Office, five provided views clearly in favour of extension, three responses clearly opposed extension and 11 expressed no clear preference but did not object to extension.

8.2 Those in favour of extension cited the current security situation in Northern Ireland as justification for continuing with the provisions, considered necessary, proportionate and valid for the administration of justice in a small number of cases, to protect against the risk of perverse acquittals that may result from the intimidation of jurors. One of those in favour indicated that the intimidation of jurors is a form of perverting the course of justice that can be formidably difficult to detect.

8.3 Some of those opposed argued for an end to the current system of non-jury trial based on their view that the threats to the administration of justice in Northern Ireland are now effectively no different to those in the rest of the United Kingdom. Even if presented with a legitimate and specific threat, it is argued that there are other ways to protect the integrity of trial by jury. Calls were also made to engage in a full and thorough public and parliamentary debate on the matter, to introduce stricter conditions by which the Director of Public Prosecutions can issue a certificate for non-jury trial, and to better enable certificates to be challenged. The non-jury trial system was also said to undermine Northern Ireland's progress towards normalisation.

8.4 Some of those expressing no clear preference nonetheless provided information that could support the extension of the provisions for a further two years, including that the security situation in Northern Ireland has not changed greatly since the provisions were last reviewed in 2013. One view also indicated that the current arrangements for challenging a certificate are considerably limited but acknowledges that in 2010 the High Court held that the arrangements did not engage or breach Article 6(1) of the European Convention on Human Rights. Another view indicated that although the provisions were designed to be temporary, non-jury trials are still at this time serving a useful function. It was recognised by some that an end to non-jury trial in Northern Ireland would be a positive step towards normalisation as and when this is deemed possible.

9. Guidance

9.1 As this Order continues in force existing provisions it is not considered necessary to provide guidance.

10. Impact

10.1 The Order has no impact on business, charities or voluntary bodies.

10.2 The Order has no impact on the public sector: it continues existing provisions in force. Without the Order, other measures necessary to protect a jury in those cases that would otherwise have been conducted under non-jury trial conditions would be required, at significant additional expense to the PSNI.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The temporary nature of the provisions means that the necessity for them is reviewed every two years. Prior to the expiry of the provisions in July 2017 there will be a comprehensive review of the non-jury trial system in Northern Ireland to include an examination of the criteria by which a certificate for a non-jury trial may be issued and a defendant's ability to challenge a certificate.

13. Contact

13.1 The Northern Ireland Office Tel: 028 90527954, or email: the.secretary@nio.x.gsi.gov.uk can answer any queries regarding the instrument.