

**EXPLANATORY MEMORANDUM TO
THE CRIMINAL APPEAL (TRIAL WITHOUT JURY WHERE DANGER OF JURY
TAMPERING AND TRIAL BY JURY OF SAMPLE COUNTS ONLY) RULES
(NORTHERN IRELAND) 2006**

2006 No. 487

1. This explanatory memorandum has been prepared by the Department of Constitutional Affairs (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Rules prescribe the practice and procedure to be followed in relation to an appeal to the Court of Appeal against an order or ruling made by a judge of the Crown Court –

- on an application for trial to be conducted without a jury where there is a danger or jury tampering; or for a trial to be conducted or continued without a jury where jury tampering has taken place, and against a court order to continue a trial in the absence of a jury, or to order a retrial without a jury because of jury tampering (*Part 7 Criminal Justice Act 2003*); and
- on an application for trial by jury of sample counts only (*sections 17 – 20 Domestic Violence, Crime & Victims Act 2004*).

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

3.1 None.

4. Legislative Background

Trial without jury where danger of jury tampering

4.1 Part 7 of the 2003 Act sets out the circumstances in which criminal trials that currently take place on indictment in the Crown Court before a judge and jury will in future be conducted by a judge sitting alone.

4.2 Section 44 of the 2003 Act provides for a trial to be conducted without a jury where there is a real and present danger or jury tampering, or continued without a jury where the jury has been discharged because of jury tampering.

4.3 In order for a trial to be conducted without a jury, the court must be satisfied that the risk of jury tampering would be so substantial (notwithstanding any steps, including police protection, that could reasonably be taken to prevent it) as to make it necessary in the interests of justice for the trial to be conducted without a jury. In trials already under way, where the jury has been discharged because of jury tampering, the trial will continue without a jury unless the judge considers it

necessary in the interests of justice to terminate the trial. In that event, he may order a retrial, and if he does he will have the option of ordering that the retrial should take place without a jury.

- 4.4 Part 7 of the 2003 Act provides a right of Appeal to the Court of Appeal for both prosecution and defence against a determination made by a court on an application for a trial without a jury, and against a court order to continue a trial in the absence of a jury, or to order a retrial without a jury, because of jury tampering.

Trial by jury of sample counts

- 4.5 Sections 17 – 21 of the 2004 Act introduce a new two-stage procedure for trying cases involving multiple counts, whereby only the sample counts would be tried by a jury and, in the event of a conviction, the trial of the remaining counts would be tried by a judge sitting alone.
- 4.6 Section 17 of the 2004 Act makes provision for the prosecution to apply for part of a trial on indictment in the Crown Court to proceed in the absence of a jury. Before granting such an application, the judge must be satisfied 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;
 - if an order were made, each count or group of counts which would be able to be tried with a jury can be regarded as samples of other counts in the indictment, which could accordingly be tried without a jury; and
 - it is in the interests of justice for part of the trial to proceed in the absence of a jury.
- 4.7 Section 18A of the 2004 provides a right of appeal to the Court of Appeal from the order or ruling made by a judge in respect of an application for trial by sample counts under section 17.

5. Extent

- 5.1 This instrument applies to Northern Ireland only.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Criminal Justice Act 2003

- 7.1 The rationale for the provisions carried in the Criminal Justice Act 2003 is reform to court procedure is designed to ensure that criminal trials are run more efficiently and to reduce the scope for abuse of the system. It aims to make trials faster and improve the management of cases through the courts. Part 7 of the Act provides for judge-alone trial in cases involving threats and intimidation of juries.

- 7.2 The trial without jury provisions in relation to jury tampering only operate where the judge is satisfied that the risk of jury tampering is so substantial as to make it necessary in the interests of justice for the trial to be conducted without a trial.

Domestic Violence, Crime and Victims Act 2004

- 7.3 The Law Commission Report "The Effective Prosecution of Multiple Offending", Report Number 277, published in October 2002, recommended a two-stage procedure for trying cases involving sample counts whereby only the sample counts would be tried by a jury. Sections 17 to 21 of the 2004 Act give effect to this recommendation.

Criminal Appeal (Trial without jury where danger of jury tampering and trial by jury of sample counts only) Rules (Northern Ireland) 2006

- 7.4 The Northern Ireland Supreme Court Rules Committee is responsible for making Rules regulating the practice and procedure of any proceedings before the High Court and the Court of Appeal. The Committee includes members of the judiciary as well as representatives from both the Law Society and the Bar. Before Rules are made by the Committee, they are made available publicly on the Court Service website and are provided to the legal professions and the Northern Ireland Human Rights Commission for consideration.
- 7.5 The Rules are procedural in nature and are therefore of limited public interest. It is not considered that the provisions contained in these Rules are politically or legally important.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 This instrument has no impact on the public sector.

9. Contact

- 9.1 Peter Luney at the Northern Ireland Court Service, Telephone number 028 90 41 2282 or e-mail: peterluney@courtsni.gov.uk can answer any queries regarding the instrument.