



# Justice and Security (Northern Ireland) Act 2007

## 2007 CHAPTER 6

### *Trials on indictment without a jury*

#### **1 Issue of certificate**

- (1) This section applies in relation to a person charged with one or more indictable offences (“the defendant”).
- (2) The Director of Public Prosecutions for Northern Ireland may issue a certificate that any trial on indictment of the defendant (and of any person committed for trial with the defendant) is to be conducted without a jury if—
  - (a) he suspects that any of the following conditions is met, and
  - (b) he is satisfied that in view of this there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.
- (3) Condition 1 is that the defendant is, or is an associate (see subsection (9)) of, a person who—
  - (a) is a member of a proscribed organisation (see subsection (10)), or
  - (b) has at any time been a member of an organisation that was, at that time, a proscribed organisation.
- (4) Condition 2 is that—
  - (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.
- (5) Condition 3 is that an attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and—
  - (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.

- (6) Condition 4 is that 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) In subsection (6) “religious or political hostility” means hostility based to any extent on—
- (a) religious belief or political opinion,
  - (b) supposed religious belief or political opinion, or
  - (c) the absence or supposed absence of any, or any particular, religious belief or political opinion.
- (8) In subsection (6) the references to persons and groups of persons need not include a reference to the defendant or to any victim of the offence or offences.
- (9) For the purposes of this section a person (A) is the associate of another person (B) if—
- (a) A is the spouse or a former spouse of B,
  - (b) A is the civil partner or a former civil partner of B,
  - (c) A and B (whether of different sexes or the same sex) live as partners, or have lived as partners, in an enduring family relationship,
  - (d) A is a friend of B, or
  - (e) A is a relative of B.
- (10) For the purposes of this section an organisation is a proscribed organisation, in relation to any time, if at that time—
- (a) it is (or was) proscribed (within the meaning given by section 11(4) of the Terrorism Act 2000 (c. 11)), and
  - (b) its activities are (or were) connected with the affairs of Northern Ireland.

## **2 Certificates: supplementary**

- (1) If a certificate under section 1 is issued in relation to any trial on indictment of a person charged with one or more indictable offences (“the defendant”), it must be lodged with the court before the arraignment of—
- (a) the defendant, or
  - (b) any person committed for trial on indictment with the defendant.
- (2) A certificate lodged under subsection (1) may be modified or withdrawn by giving notice to the court at any time before the arraignment of—
- (a) the defendant, or
  - (b) any person committed for trial on indictment with the defendant.
- (3) In this section “the court” means—
- (a) in relation to a time before the committal for trial on indictment of the defendant, the magistrates' court before which any proceedings for the offence or any of the offences mentioned in subsection (1) are being, or have been, conducted;
  - (b) otherwise, the Crown Court.

### 3 Preliminary inquiry

- (1) This section applies where a certificate under section 1 has been issued in relation to any trial on indictment of a person charged with one or more indictable offences.
- (2) In proceedings before a magistrates' court for the offence or any of the offences, if the prosecution requests the court to conduct a preliminary inquiry into the offence the court must grant the request.
- (3) In subsection (2) “preliminary inquiry” means a preliminary inquiry under the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
- (4) Subsection (2)—
  - (a) applies notwithstanding anything in Article 31 of that Order,
  - (b) does not apply in respect of an offence where the court considers that in the interests of justice a preliminary investigation should be conducted into the offence under that Order, and
  - (c) does not apply in respect of an extra-territorial offence (as defined in section 1(3) of the Criminal Jurisdiction Act 1975 (c. 59)).

### 4 Court for trial

- (1) A trial on indictment in relation to which a certificate under section 1 has been issued is to be held only at the Crown Court sitting in Belfast, unless the Lord Chief Justice of Northern Ireland directs that—
  - (a) the trial,
  - (b) a part of the trial, or
  - (c) a class of trials within which the trial falls,is to be held at the Crown Court sitting elsewhere.
- (2) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under subsection (1)—
  - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).
- (3) If a person is committed for trial on indictment and a certificate under section 1 has been issued in relation to the trial, the person must be committed—
  - (a) to the Crown Court sitting in Belfast, or
  - (b) where a direction has been given under subsection (1) which concerns the trial, to the Crown Court sitting at the place specified in the direction;and section 48 of the Judicature (Northern Ireland) Act 1978 (c. 23) (committal for trial on indictment) has effect accordingly.
- (4) Where—
  - (a) a person is committed for trial on indictment otherwise than to the Crown Court sitting at the relevant venue, and
  - (b) a certificate under section 1 is subsequently issued in relation to the trial,the person is to be treated as having been committed for trial to the Crown Court sitting at the relevant venue.
- (5) In subsection (4) “the relevant venue”, in relation to a trial, means—

- (a) if the trial falls within a class specified in a direction under subsection (1)(c) (or would fall within such a class had a certificate under section 1 been issued in relation to the trial), the place specified in the direction;
  - (b) otherwise, Belfast.
- (6) Where—
- (a) a person is committed for trial to the Crown Court sitting in Belfast in accordance with subsection (3) or by virtue of subsection (4), and
  - (b) a direction is subsequently given under subsection (1), before the commencement of the trial, altering the place of trial,
- the person is to be treated as having been committed for trial to the Crown Court sitting at the place specified in the direction.

## 5 Mode of trial on indictment

- (1) The effect of a certificate issued under section 1 is that the trial on indictment of—
- (a) the person to whom the certificate relates, and
  - (b) any person committed for trial with that person,
- is to be conducted without a jury.
- (2) Where a trial is conducted without a jury under this section, the court is to have all the powers, authorities and jurisdiction which the court would have had if the trial 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 (including a provision of Northern Ireland legislation) to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial conducted without a jury under this section, as a reference to the court, the verdict of the court or the finding of the court.
- (4) No inference may be drawn by the court from the fact that the certificate has been issued in relation to the trial.
- (5) Without prejudice to subsection (2), where the court conducting a trial under this section—
- (a) is not satisfied that a defendant is guilty of an offence for which he is being tried (“the offence charged”), but
  - (b) is satisfied that he is guilty of another offence of which a jury could have found him guilty on a trial for the offence charged,
- the court may convict him of the other offence.
- (6) Where a trial is conducted without a jury under this section and the court convicts a defendant (whether or not by virtue of subsection (5)), 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.
- (7) A person convicted of an offence on a trial under this section may, notwithstanding anything in sections 1 and 10(1) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47), appeal to the Court of Appeal under Part 1 of that Act—
- (a) against his conviction, on any ground, without the leave of the Court of Appeal or a certificate of the judge of the court of trial;
  - (b) against sentence passed on conviction, without that leave, unless the sentence is fixed by law.

- (8) Where a person is convicted of an offence on a trial under this section, the time for giving notice of appeal under section 16(1) of that Act is to run from the date of judgment (if later than the date from which it would run under that subsection).
- (9) Article 16(4) of the Criminal Justice (Northern Ireland) Order 2004 (S.I. 2004/1500 (N.I. 9)) (leave of judge or Court of Appeal required for prosecution appeal under Part IV of that Order) does not apply in relation to a trial conducted under this section.

## **6 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 1 to 5.
- (2) Without limiting subsection (1), rules of court may in particular make provision for time limits which are to apply in connection with any provision of sections 1 to 5.
- (3) Nothing in this section is to be taken as affecting the generality of any enactment (including a provision of Northern Ireland legislation) conferring powers to make rules of court.

## **7 Limitation on challenge of issue of certificate**

- (1) No court may entertain proceedings for questioning (whether by way of judicial review or otherwise) any decision or purported decision of the Director of Public Prosecutions for Northern Ireland in relation to the issue of a certificate under section 1, except on the grounds of—
  - (a) dishonesty,
  - (b) bad faith, or
  - (c) other exceptional circumstances (including in particular exceptional circumstances relating to lack of jurisdiction or error of law).
- (2) Subsection (1) is subject to section 7(1) of the Human Rights Act 1998 (c. 42) (claim that public authority has infringed Convention right).

## **8 Supplementary**

- (1) Nothing in sections 1 to 6 affects—
  - (a) the requirement under Article 49 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) that a question of fitness to be tried be determined by a jury, or
  - (b) the requirement under Article 49A of that Order that any question, finding or verdict mentioned in that Article be determined, made or returned by a jury.
- (2) Schedule 1 (minor and consequential amendments relating to trials on indictment without a jury) shall have effect.
- (3) The provisions of sections 1 to 7 and this section (and Schedule 1) apply in relation to offences committed before, as well as after, the coming into force of those provisions, but subject to any provision made by virtue of—
  - (a) section 4 of the Terrorism (Northern Ireland) Act 2006 (c. 4) (transitional provision in connection with expiry etc of Part 7 of the Terrorism Act 2000 (c. 11)), or

(b) section 53(7) of this Act.

- (4) An order under section 4 of the Terrorism (Northern Ireland) Act 2006 may make provision disregarding any of the amendments made by Schedule 1 to this Act for any purpose specified in the order.

## **9 Duration of non-jury trial provisions**

- (1) Sections 1 to 8 (and Schedule 1) (“the non-jury trial provisions”) shall expire at the end of the period of two years beginning with the day on which section 1 comes into force (“the effective period”).
- (2) But the Secretary of State may by order extend, or (on one or more occasions) further extend, the effective period.
- (3) An order under subsection (2)—
- (a) must be made before the time when the effective period would end but for the making of the order, and
  - (b) shall have the effect of extending, or further extending, that period for the period of two years beginning with that time.
- (4) The expiry of the non-jury trial provisions shall not affect their application to a trial on indictment in relation to which—
- (a) a certificate under section 1 has been issued, and
  - (b) the indictment has been presented,
- before their expiry.
- (5) The expiry of section 4 shall not affect the committal of a person for trial in accordance with subsection (3) of that section, or by virtue of subsection (4) or (6) of that section, to the Crown Court sitting in Belfast or elsewhere in a case where the indictment has not been presented before its expiry.
- (6) The Secretary of State may by order make any amendments of enactments (including provisions of Northern Ireland legislation) that appear to him to be necessary or expedient in consequence of the expiry of the non-jury trial provisions.
- (7) An order under this section—
- (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.