

JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Trials on indictment without a jury

Section 1: Issue of certificate

18. This section enables the Director of Public Prosecutions for Northern Ireland ('DPP(NI)') to issue a certificate in relation to any trial on indictment of a defendant (and anyone tried with that defendant). The effect of the certificate is that the trial is conducted in the Crown Court without a jury. The test that the DPP(NI) must apply in deciding whether or not to issue a certificate is set out in *subsection (2)*. He has the discretion to certify a case if it falls within one of the conditions set out in the section and the DPP(NI) assesses that there is a risk that trial by jury might impair the administration of justice (for example, that there might not be a fair trial).
19. Condition 1 is set out in *subsection (3)*. It covers circumstances where the defendant has a link to a proscribed organisation that is connected with the affairs of Northern Ireland. The defendant could be a present or former member of a proscribed organisation or be an associate of a member or former member. *Subsection (9)* defines who would be considered to be an associate of a member or former member of such an organisation and *subsection (10)* defines 'proscribed organisation'.
20. Condition 2 is set out in *subsection (4)*. This covers circumstances where an offence is committed on behalf of a proscribed organisation that is connected with the affairs of Northern Ireland, or such an organisation is otherwise involved with, or assists in, the carrying out of the offence.
21. Condition 3 is set out in *subsection (5)*. This covers circumstances where a proscribed organisation that is connected with the affairs of Northern Ireland interferes, or assists with interference, with the investigation or prosecution of an offence. This could include, for example, interference with a crime scene or the intimidation of witnesses not to give or to withdraw their evidence.
22. Condition 4 is set out in *subsection (6)*. This covers circumstances where the offence occurred as a result of, or in connection with, sectarianism (i.e. in connection with religious belief or political opinion). *Subsection (7)* clarifies that 'religious belief and political opinion' includes their absence and any assumptions made about religious beliefs or political opinions. *Subsection (8)* provides that the persons and groups of persons referred to in *subsection (6)* need not include the defendant or victim.
23. A case that falls within one of the conditions will not automatically be tried without a jury – non-jury trial will only happen if the DPP(NI) issues a certificate because he is satisfied that there is a risk that the administration of justice might be impaired.

Section 2: Certificates: supplementary

24. *Subsection (1)* requires any certificate issued under section 1 to be lodged with the court prior to arraignment. Arraignment is the stage in the case at which the defendant pleads guilty or not guilty to the charges. It is the last stage before a jury is selected to hear the case and the trial begins.
25. *Subsection (2)* enables the DPP(NI) to make changes to the certificate at any time before arraignment. He can amend the certificate (perhaps to reflect changes to the charges the defendant will face) and he can withdraw the certificate. If a certificate is withdrawn, the defendant will be tried before a jury.
26. *Subsection (3)* clarifies that the certificate can be lodged with either the magistrates' court or the Crown Court as appropriate, depending on the stage the legal proceedings have reached.

Section 3: Preliminary inquiry

27. This section enables the prosecution to request a preliminary inquiry rather than a preliminary investigation when a section 1 certificate case is being returned for trial to the Crown Court. The court must grant the request unless they consider a preliminary investigation to be in the interests of justice (*subsection (4)(b)*) or the offence is an extra-territorial offence under the Criminal Jurisdiction Act 1975 (*subsection (4)(c)*). Preliminary inquiry is a paper-based process whereas preliminary investigation requires the calling of witnesses. Preliminary inquiry should help to protect witnesses from intimidation.

Section 4: Court for trial

28. The default position under this section is that all non-jury trials will be held in Belfast. However, under *subsection (1)* of section 4 the Lord Chief Justice of Northern Ireland ('LCJ') can direct that one particular trial, a part of a trial or a class of trials, be held at the Crown Court sitting elsewhere. *Subsection (2)* enables the LCJ to delegate that power to another judge.
29. *Subsection (3)* requires a case where a DPP(NI)'s certificate has been issued under section 1 to be returned for trial to the Crown Court in Belfast (or the place specified in any direction under *subsection (1)*). *Subsection (4)* deals with cases where a DPP(NI)'s certificate is issued after the case has been returned for trial but before arraignment and *subsection (6)* deals with cases where the LCJ's direction under *subsection (1)* is made after the case has been returned for trial.

Section 5: Mode of trial on indictment

30. This section sets out the manner in which cases are to be tried when a certificate under section 1 has been issued. *Subsection (1)* provides that the case is tried without a jury. *Subsection (2)* grants the court hearing the case the same powers and jurisdiction as if the trial were conducted with a jury. *Subsection (3)* provides that references to juries in other legislation are interpreted as references to the court where a case is tried under these provisions.
31. *Subsection (4)* makes clear that the trial court may not draw any adverse inferences from the fact that the DPP(NI) has issued a certificate under section 1.
32. *Subsection (5)* enables the court to find a person guilty of an alternative lesser charge (for example, manslaughter as an alternative to murder), even if the defendant is not being tried for that charge. This is equivalent to the power of the jury in trials on indictment with a jury.
33. *Subsection (6)* requires the court to provide a reasoned verdict if the defendant is convicted of one or more offences. The verdict must be provided at the time of

conviction or as soon as is practicable afterwards. There is no requirement for the court to provide a reasoned verdict for an acquittal.

34. *Subsections (7) and (9)* remove restrictions on the right of appeal that would otherwise apply: a defendant can appeal sentence or conviction, and the prosecution can appeal sentence directly to the Court of Appeal, without seeking the leave of the court first. *Subsection (8)* provides that the period for giving notice of appeal runs from the date of the judgment in the case.

Section 6: Rules of court

35. This section grants a general power to make rules of court in connection with the non-jury trial provisions of sections 1 to 5.

Section 7: Limitation on challenge of issue of certificate

36. This section restricts the grounds on which the issue of a certificate by the DPP(NI) under section 1 may be challenged, whether by judicial review or otherwise. Challenge will be possible where it is alleged there has been dishonesty, bad faith or other exceptional circumstances (*subsection (1)*). It will be for the courts to decide what constitutes exceptional circumstances (though subsection (1)(c) makes clear that this may include exceptional circumstances relating to lack of jurisdiction or error of law).
37. This reflects the current case law in *In Re Shuker and Others* [2004 NI 367] which confirmed that the procedure for determining mode of trial of the accused, as applies in Diplock cases, is not a process suitable for the full panoply of judicial review. Judicial review of the Attorney General's decision not to deschedule a Diplock case is reviewable, however, on grounds such as bad faith or dishonesty.

Section 8: Supplementary

38. This section makes supplementary provision about non-jury trial under this Act. It gives effect to Schedule 1 (consequential amendments) and provides that juries must still decide issues of fitness to be tried, even where the substantive case is to be tried without a jury. *Subsection (3)* makes clear that the DPP(NI) may issue a certificate in relation to an offence committed before as well as after the coming into force of these provisions. *Subsection (4)* is intended to enable the consequential amendments in Schedule 1 to be disapplied in relation to cases being heard or to be heard by a court under section 75 of the Terrorism Act 2000 at the time of the coming into force of these provisions.

Section 9: Duration of non-jury trial provisions

39. This section provides that the provisions in sections 1 to 8 of the Act will expire at the end of the period of two years beginning with the day on which section 1 comes into force. The Secretary of State may extend the duration of the provisions for further consecutive periods of two years by means of an affirmative resolution order. This section also provides, in *subsections (4) and (5)*, that the expiry of the non-jury trial provisions is not to affect trials on indictment being held under these provisions where the indictment has already been presented before their expiry, or the committal of a person for trial under section 4 where the indictment was not presented before the expiry of the provisions. *Subsection (6)* enables the Secretary of State to make, by affirmative resolution order, amendments to other legislation consequential on the expiry of the non-jury trial provisions.