

Response by the Independent Reviewer of Terrorism Legislation

1. This document responds to the Northern Ireland Office's consultation on the renewal of the non-jury trial provisions in the Justice and Security Act (Northern Ireland) 2007 until 2023.
2. Terrorism legislation has United Kingdom-wide application, and as Independent Reviewer of Terrorism Legislation I report on how terrorism legislation operates in Northern Ireland. This includes the manner in which offences under terrorism legislation (including offences that are connected to terrorism under the Counter-Terrorism Act 2008) are prosecuted.
3. The short point is that there is no reason for me to differ from the assessment of David Seymour CB, the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007, in his latest, 12th Report. In substance Mr Seymour recommended the continuation of non-jury trials at the present time¹.
4. However, I make the following observations on the nature of the decision, whether or not to renew the provisions in their current form.
5. It is far from clear that the decision is based entirely on the threat of terrorism (currently at SEVERE). Prior to the Justice and Security (Northern Ireland) Act 2007, the non-jury trial provisions were contained in the Terrorism Act 2000².

¹ 12th Report at 16.2.

² Section 75 and Schedule 9.

6. Mr Seymour refers to 14 cases in which non-jury trial certificates were considered in the period 1 August 2018 to 1 July 2019 as follows³:

“The cases involved charges of murder, grievous bodily harm, membership of a proscribed organization, unlawful possession of ammunition, explosives and firearms, unlawful assembly and affray, demanding money with menaces, managing a brothel, blackmail, robbery, arson and the supply of Class A drugs.”

7. Only one of these offences amounts to a charge under terrorism legislation (membership of a proscribed organisation, section 11 Terrorism Act 2000). Having regard to the nature of the offences, it is unlikely that the remaining offences were all connected to terrorism (within the meaning of the Counter-Terrorism Act 2008) or considered by the PSNI to be terrorism-related.
8. Moreover, although terrorism is referred to in the Consultation Document, its principal focus is on the risks of intimidation from “paramilitary organisations”⁴. As I reported last year⁵, much paramilitary activity is not terrorism. It is dealt with by, for example, the Paramilitary Crime Task Force with support from the devolved authorities rather than as a matter of national security, an excepted matter⁶, by the Secretary of State. This is despite the fact that most paramilitary groups are also proscribed under the Terrorism Act 2000.
9. There will be cases in which a risk of juror intimidation derives from a paramilitary group or proscribed organisation that is considered to present a risk to national security, for example certain Dissident Republican groups. However, in other cases the fear of juror intimidation will derive from the baleful hold that paramilitary groups have over parts of society in Northern Ireland that serves those groups’ criminal, rather than terrorist, aims.

³ 12th Report at 14.1.

⁴ Consultation Document at paragraphs 12-14.

⁵ Terrorism Acts in 2018 at 9.25 - 9.34.

⁶ Schedule 2 Northern Ireland Act 1998.

10. How to deal with juror intimidation by criminals would ordinarily be a matter of criminal justice which since 2010 has been a matter for the devolved authorities, and for legislation passed by the devolved authorities, rather than a matter for the Secretary of State.
11. Mr Seymour rightly draws attention to the low threshold for granting a certificate⁷. Assuming that a suspicion-based threshold is justified when dealing with intelligence and national security matters, it is less clear that it is justified when dealing with the risk of non-terrorist intimidation. Non-terrorist provisions enabling non-jury trials under the Criminal Justice Act 2003 requires evidence of a real and present danger of jury tampering⁸.
12. In summary, the fact that the Justice and Security (Northern Ireland) 2007 Act is a Westminster statute, whose non-jury trial provisions derive from the Terrorism Act 2000 which deals with excepted matters, should not obscure the fact that the non-jury trial provisions are capable of being used to deal with risks of non-terrorist intimidation.
13. By way of additional observation, like my predecessors I have drawn attention to the unacceptable delays in prosecuting terrorism offences⁹. Delays in prosecuting terrorism offences undermine public confidence in the use of counter-terrorism powers. The process of certifying terrorism cases as appropriate for non-jury trial inevitably builds in further delay.
14. Despite the significant reduction in time Mr Seymour has recorded for PSNI to respond to requests by the Public Prosecutor Service for information (down from an average of 7 months to an average of 7 weeks)¹⁰, the process of certification adds to

⁷ 12th Report at 15.5.

⁸ Consultation Document at paragraph 23.

⁹ Terrorism Acts in 2018 at 9.99.

¹⁰ 12th Report at 14.3.

that delay. Complexities and therefore delay are also likely to result from the use, in non-jury trials, of a separate disclosure judge¹¹.

15. For this reason I support Mr Seymour's suggestion that proactive measures are taken to find ways of driving down the use of non-jury trials¹².

JONATHAN HALL QC

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¹¹ Rule 2(5)(a) The Crown Court (Criminal Procedure and Investigations Act 1996) (Disclosure) Rules (Northern Ireland) 1997. For an example of the complexities caused and a description of the legal procedure, see *McKeown v United Kingdom*, App.No.6684/05 (11 January 2011), European Court of Human Rights.

¹² 12th Report at 16.1.