

THE **LAW SOCIETY**
OF NORTHERN IRELAND



HM Government and NIO Consultation

**Extending non-jury trial provisions under the Justice and
Security (Northern Ireland) Act 2007 (“the 2007 Act”)**

**Response of the Law Society of
Northern Ireland**

February 2021

*96 Victoria Street
Belfast BT1 3GN
Tel: 02890 23 1614
Fax: 02890 232606
Email: enquiry@lawsoc-ni.org
Website: www.lawsoc-ni.org*

ABOUT THE LAW SOCIETY

The Law Society of Northern Ireland (the Society) is a professional body established by Royal Charter and invested with statutory functions primarily under the Solicitors (Northern Ireland) Order 1976 as amended. The functions of the Society are to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests.

The Society represents over 2,800 solicitors working in approximately 480 firms, based in 65 geographical locations throughout Northern Ireland and practitioners working in the public sector and in business. Members of the Society thus represent private clients, Government and third sector organisations. This makes the Society well placed to comment on policy and law reform proposals across a range of topics.

Since its establishment, the Society has played a positive and proactive role in helping to shape the legal system in Northern Ireland. In a devolved context, in which responsibility for the development of justice policy and law reform takes place at a local level, this role is as important as ever.

February 2021

RESPONSE OF THE LAW SOCIETY

The Law Society of Northern Ireland (The Society) welcomes the opportunity to provide a response to HM Government Consultation on whether to extend Non-Jury Trials provisions under the Justice and Security (Northern Ireland) Act 2007 (the 2007 Act).

It is noted that the Government is committed to ending non-jury trials in this jurisdiction when it is safe to do so, so as to be compatible with the interests of justice. At this point, when the provisions of the 2007 Act are being reviewed, the terrorism threat in Northern Ireland remains at Severe, thus deeming non-jury trials necessary in a small number of cases to eliminate the impairment of the administration of justice.

The Society notes that the Independent Reviewer Mr David Seymour CB recommended in his 12th report, that the NIO should set up a multi-disciplinary working group of justice system stakeholders, to consider practical measures that could be taken to reduce the number of non-jury trials that take place. But for the current Covid-19 and public health restrictions, it appears that the proposed group might have met and had the opportunity to consider the provisions and deliver findings on a way forward. It is useful that the NIO will now take this forward at this juncture if the Secretary of State decides to renew the non-jury provisions following this consultation exercise.

The Society established a working group to meet and consider the Consultation paper. The group consisted of experienced criminal law solicitors who are particularly familiar with non-jury trial procedures. The group agreed that the number of such trials taking place in this jurisdiction have reduced considerably in recent years, although it is of interest that there are two on going at this point in time in Belfast. It would therefore not be unreasonable to conclude that the overall percentage in terms of Crown Court cases may increase in 2021 from the 1% suggested for 2019.

In general terms the group agreed the NIO multi-disciplinary working group should be established to consider various options including consideration that all accused should be able to avail of a choice to be tried by a judge alone or by a jury.

To a lesser extent this option already exists as an accused charged with an either way offence may elect to remain in the Magistrates' Court and be tried by judge alone; or elect to go to the Crown court to be tried before a jury. If an accused undergoes a non-jury trial and is convicted, then they are afforded an opportunity to have the judgement against them fully explained which is not available if convicted by a jury. Also, a non-jury trial attracts an automatic right to appeal.

For the last 10 years the threat posed from terrorism has remained at Severe in this jurisdiction. Therefore, as security threat levels have remained unchanged it is the Society's view that the non-jury trial provisions provided for under the 2007 Act should be maintained. This position should remain until such times as the NIO establish a multi-disciplinary stakeholder group as recommended by the Independent Reviewer, Mr David Seymour, in his 12th Report published in April 2020. The recommendation was that this group should look at practical measures that could be advanced to reduce the number of non-jury trials taking place. It is difficult to see why this recommendation has not been taken forward despite the current pandemic as the group could easily have met and deliberated on a virtual platform. This may have resulted in suggested ways forward which could have fed into the current review of the provisions.

CONCLUSION

In conclusion it is the Society's position that the current arrangements for non-jury trials should continue until such times as the NIO working group are established and have reported on suggested ways forward.

We trust our contribution is constructive and are happy to meet and discuss any of the issues raised in our response.

We would like to be kept informed of any subsequent proposals formed as a result of this consultation and also any changes to the overall policy direction of the topic under discussion along with a stated rationale.