

*These notes refer to the Fraud (Trials without a Jury) Bill as introduced
in the House of Commons on 16th November 2006 [Bill 6]*

FRAUD (TRIALS WITHOUT A JURY) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Fraud (Trials without a Jury) Bill as introduced in the House of Commons on 16th November 2006. They have been prepared by the Home Office in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. Section 43 of the Criminal Justice Act 2003 (the 2003 Act) provides for the prosecution to apply for a trial of a serious and complex fraud case to proceed in the absence of a jury. The judge may order the case to be conducted without a jury if he is satisfied that the length or complexity (or both) of the case is likely to make the trial so burdensome upon the jury that the interests of justice require serious consideration to be given to conducting the trial without a jury.

4. Section 330(5)(b) of the 2003 Act provides that the commencement of section 43 is to be subject to an affirmative resolution of both Houses of Parliament. The requirement for an affirmative resolution is repealed by this Bill, with the result that section 43 could be implemented by means of a commencement order made by the Secretary of State without further parliamentary procedure. The Bill also amends section 43 by adding a requirement that applications for non-jury trial under that section, and any non-jury trials resulting from such applications, should be heard by a High Court judge.

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COMMENTARY ON CLAUSES

Clause 1: Commencement of section 43 of the Criminal Justice Act 2003

5. Clause 1 repeals section 330(5)(b) of the 2003 Act, which provides for the commencement of section 43 to be subject to the affirmative resolution procedure.

Clause 2: Jurisdiction under section 43 of the Criminal Justice Act 2003

6. Clause 2 amends sections 43(2) and 48 of the 2003 Act to require that applications for non-jury trial under section 43, and any non-jury trials resulting from such applications, should be heard by a High Court judge (sitting as a judge of the Crown Court).

Clause 3: Section 43 of the Criminal Justice Act 2003: Northern Ireland

7. Clause 3 amends section 50 of the 2003 Act, which makes modifications to section 43 (amongst other provisions in Part 7) for Northern Ireland. Section 43 applies only to serious and complex fraud cases, and this limitation is secured in relation to England and Wales, by reference to section 51B of the Crime and Disorder Act 1998, which provides for such cases to be sent to the Crown Court. Clause 3 inserts a reference to the corresponding Northern Ireland provision in Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988.

Clause 4: Commencement, extent and short title

8. The Bill extends to England and Wales and Northern Ireland.

FINANCIAL EFFECTS OF THE BILL

9. The Bill will not lead to any increase in public expenditure.

PUBLIC SERVICE MANPOWER EFFECTS OF THE BILL

10. The Bill will have no impact on public service manpower.

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REGULATORY IMPACT

11. The Bill will have no impact on business, charities or voluntary organizations.

EUROPEAN CONVENTION ON HUMAN RIGHTS

12. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement, before second reading, about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act). The Rt. Hon. Dr John Reid MP, Secretary of State for the Home Department, has made the following statement:

In my view the provisions of the Fraud (Trials without a Jury) Bill are compatible with the Convention rights.

13. The Bill does not itself give rise to any Convention issues. Article 6 of the Convention guarantees a right to a fair trial and will apply to cases heard under section 43 of the 2003 Act once in force. Both trial by jury and trial by judge alone are compatible with the requirements of procedural fairness imposed by that Article.

COMMENCEMENT

14. The Bill comes into force two months after Royal Assent.