

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT JUSTICE AND SECURITY (NORTHERN
IRELAND) ACT 2007 (EXTENSION OF DURATION
OF NON-JURY TRIAL PROVISIONS) ORDER 2015

Monday 20 July 2015

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The Committee consisted of the following Members:

Chair: VALERIE VAZ

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| † Allan, Lucy (<i>Telford</i>) (Con) | † Hall, Luke (<i>Thornbury and Yate</i>) (Con) |
| † Anderson, Mr David (<i>Blaydon</i>) (Lab) | † Hammond, Stephen (<i>Wimbledon</i>) (Con) |
| † Blackwood, Nicola (<i>Oxford West and Abingdon</i>) (Con) | † Harris, Rebecca (<i>Castle Point</i>) (Con) |
| † Borwick, Victoria (<i>Kensington</i>) (Con) | Paisley, Ian (<i>North Antrim</i>) (DUP) |
| † Burgon, Richard (<i>Leeds East</i>) (Lab) | † Pound, Stephen (<i>Ealing North</i>) (Lab) |
| † Butler, Dawn (<i>Brent Central</i>) (Lab) | † Wallace, Mr Ben (<i>Parliamentary Under-Secretary of State for Northern Ireland</i>) |
| † Djanogly, Mr Jonathan (<i>Huntingdon</i>) (Con) | † Whately, Helen (<i>Faversham and Mid Kent</i>) (Con) |
| Elliott, Tom (<i>Fermanagh and South Tyrone</i>) (UUP) | † Wilson, Phil (<i>Sedgefield</i>) (Lab) |
| † Elphicke, Charlie (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Ben Williams, <i>Committee Clerk</i> |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | † attended the Committee |

Third Delegated Legislation Committee

Monday 20 July 2015

[VALERIE VAZ *in the Chair*]

Draft Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2015

6 pm

The Parliamentary Under-Secretary of State for Northern Ireland (Mr Ben Wallace): I beg to move,

That the Committee has considered the draft Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2015.

I welcome you to the Chair of the Committee, Ms Vaz. I also welcome new colleagues to what might be their first statutory instrument Committee—I can sense the excitement in the room. For those who have not experienced such Committees before, we hope that they prove informative, but that instruments are nevertheless not opposed by Government Members.

Under the draft order, trials without a jury may take place in Northern Ireland for a further two years from 1 August 2015. The existing provisions expire on 31 July. This is the fourth such extension of the provisions, I hope to leave Members in no doubt as to the continued necessity for such provisions over the next two years. Hon. Members are aware of the clear and present danger in Northern Ireland from active terrorists, who make use of a range of lethal explosive devices and weaponry to undermine Northern Ireland's progress towards peace and stability. I assure Members that the Government will move to end the exceptional system of non-jury trials as soon as it is no longer necessary, but that should happen only when the security situation allows. Regrettably, the situation today is much the same as it was in 2013. It would be remiss of the Government were we to dispose of the provisions now simply because we have had them long enough.

In the last two years, attacks by dissident republicans have put many innocent lives in danger. Police, prison officers and military targets are the principal targets of dissident attacks. The explosion of a device in Lurgan at the weekend was the latest attempt to murder police officers who are serving the community in Northern Ireland. It was the eighth national security attack in Northern Ireland, underlining the potential lethality and persistence of the threat we face. Terrorist recklessness and disregard for human life can put ordinary members of the public in danger too. In the first half of 2015, for example, a postal improvised explosive device was sent to the Police Service of Northern Ireland headquarters, but it could clearly have also caused harm to postal workers.

The presence of armed terrorists in Northern Ireland means that violence and intimidation remain of concern to the wider community. Over the last year, there has been a rise in paramilitary-style attacks by both republican and loyalist groupings, as a means of exerting fear and

control in their communities. Threats to the police and public bodies demonstrate continued attempts to intimidate individuals and communities in Northern Ireland, with 56 arrests and seven charges relating to terrorism so far this year. Many more attacks have been thwarted and disrupted, which is evidence that the efforts of the PSNI and its partners are working. However, as Lord Carlile comments in his most recent report, "National Security Arrangements in Northern Ireland":

"This is a very dangerous, unpredictable terrorist threat...The number of ongoing investigations remains high".

He says that

"there is no sign of reduced ambition in the minds of terrorists and limited evidence of a lack of capacity on their part."

Non-jury trial provisions are a vital element of the criminal justice system in Northern Ireland. That element allows those suspected of such attacks to be brought before the courts without the risk of juror intimidation and perverse acquittals. Under the provisions, the Director of Public Prosecutions for Northern Ireland may issue a certificate that allows a non-jury trial to be held. A certificate can be issued by the DPP in relation to any trial on indictment of a defendant, and anyone tried with that defendant, if it meets a defined test that falls within one of four conditions: first, that the defendant is, or is an associate of, a member of a proscribed organisation or has at any time been a member of an organisation when it was a proscribed organisation, and the activities of such an organisation are connected with the affairs of Northern Ireland; secondly, that the offence was committed on behalf of a proscribed organisation or that a proscribed organisation was involved with or assisted in the carrying out of the offence; thirdly, that an attempt was made to prejudice the investigation or prosecution by or on behalf of a proscribed organisation or that a proscribed organisation was otherwise involved with or assisted in that attempt; or, finally, that the offence was committed to any extent—directly or indirectly—as a result of, in connection with, or in response to, religious or political hostility.

A case that falls within one of the four conditions will not automatically be tried without a jury, because the DPP must also be satisfied that there is a risk that the administration of justice might be impaired if a jury trial were to be held. There is a clear distinction between this system and the pre-2007 Diplock court arrangements. The Diplock system saw a presumption that all scheduled offences would be tried by a judge alone; today, there is a clear presumption that jury trial will take place in all cases.

Given the security situation, we must recognise that Northern Ireland is still in a unique situation. The non-jury trial provisions in the Justice and Security (Northern Ireland) Act 2007 continue to provide a unique solution to a very small number of cases. Jury trials in Northern Ireland would not be safe from disruption by those involved in paramilitary activity, many of whom make their presence known, be it in the close-knit communities in Northern Ireland or in the public galleries of the courtrooms.

So far in 2015, the DPP has issued just nine certificates for non-jury trials. During 2014, 18 certificates were issued and one was refused. The DPP acts with independence, exercising his or her discretion in deciding whether to issue a certificate. Hon. Members will also be interested to know that in 2014, only 1.7% of all

Crown court cases in Northern Ireland were conducted without a jury. The figure so far for 2015 is 0.7%. Although those figures are low, they reflect an ongoing need for the non-jury trial provisions. I commend the order to the Committee.

6.6 pm

Stephen Pound (Ealing North) (Lab): Welcome to the Chair, Ms Vaz. It seems like many years since you and I served together as councillors in the London borough of Ealing. One of us has worn rather better than the other, and you have achieved far more than I have in the interim, but you are very welcome; it is a pleasure to serve under you.

I reiterate the Minister's welcome for new Members to what is by far the most exciting aspect of our parliamentary life. I particularly welcome the hon. Member for Telford, the hon. Member for Kensington, whom it is a great pleasure to see again, my hon. Friends the Members for Leeds East and for Coventry North East, the hon. Member for Thornbury and Yate—how we miss his predecessor—and the hon. Member for Faversham and Mid Kent. I am not sure whether I should welcome my hon. Friend the Member for Brent Central, who is a retreat, but she is a very freshly minted retreat.

Many people looking at this order will say, "Why must we still have non-jury trials?" The Minister rightly referred to the incidents in north Armagh over the weekend. I am sure that I speak for the whole Committee when I say that we should place on the record our appreciation for the work of the PSNI at the present time and particularly for George Hamilton and all the senior staff who were, after all, going to be drawn into a bomb explosion in Lurgan. This was one of the most cold-blooded, appalling and terrifying proposals imaginable. A bomb warning was phoned through to the Samaritans. The PSNI was then drawn to the site and another bomb was exploded. We have seen that before, in Omagh and in many other places. It is a terrifying, bloodthirsty and cold-blooded way of operating.

We should place on the record our appreciation for George Hamilton and the members of the PSNI, not just for what they did over the weekend, but for 12 July this year. Those of us who have been involved in Northern Ireland business over the years have come to dread 12 July. There was a deputation there from the Select Committee on Northern Ireland Affairs on the weekend of 12 July. I think everyone will accept that although it was not entirely peaceful from start to finish and there was one rather unpleasant incident that we all know about, overall this was a very different 12 July—a calmer and quieter 12 July than we have known for many years. Credit must be given to the politicians in Northern Ireland and to the PSNI.

However, the fact remains that the situation is not normal. Everything that we do in this Committee has to be a move towards normalcy—towards restoring the same standards as apply in the rest of the United Kingdom. That is why Her Majesty's Opposition do not object to the order. I am very grateful and would like to place it on the record that the Secretary of State gave a confidential briefing on this subject to the shadow Secretary of State, my hon. Friend the Member for Bury South (Mr Lewis), towards the end of the last

Parliament. We are now at the stage where I profoundly hope that we are in the last months or years of non-jury trials.

I do want to make a couple of points. When this matter went out to consultation—the Northern Ireland Office rightly conducted an extensive consultation and contacted, I think, more than 35 interested groups; people who had expressed concern—there were, rather disappointingly, only 19 responses. On the one hand, that is disappointing; on the other hand, it is rather cheering to know that it is no longer the definitive issue that it was for so many years. Of the 19 responses received by the Northern Ireland Office, 11 expressed no clear preference, five were in favour and three were opposed. On whether anything of great value can come from that, overall, the most serious comment made during the consultation process was that rather than just renewing the orders over and over again every two years, there should be proper discussion at some stage about how far forward we should go with them.

No one is denying for a minute that the intimidation of jurors is a perversion of the course of justice. I repeat what I said earlier today during debate on another statutory instrument: the Opposition will always work with the Government in a bipartisan way to improve the lot, the life and the existence of people in Northern Ireland. We will always work together. This is a matter that has unquestionably been controversial in the past, but we recognise that it is necessary.

During the consultation, the issue of the process of certification by the Director of Public Prosecutions was raised. There is still some concern about the issuing of certificates. I think that the Minister answered that by quoting the numbers, but I note that in 2013, non-jury trials accounted for 1.6% of all Crown court trials in Northern Ireland, and the provisional figure for 2014 is 2.5%. I am inclined to suspect that if the number is so minuscule, those statistics are pretty meaningless. However, I would be grateful for his assurance that he does not foresee an increase or spike in non-jury trials, because that would be worrying.

I am also reassured by the Minister's comments about the NIO's links with the DPP and how the certificates are being issued. That is an important way forward. I would be interested to know whether he feels that a debate on the Floor of the House, or maybe some action by the Select Committee on Northern Ireland Affairs, would be appropriate.

I think that I speak for every single person in the room when I say that I want to see the end of non-jury trials. We saw the end of Diplock trials, and we remember when Diplock was brought in. We remember the extraordinary reaction and the incredible, almost universally negative response. That had to happen for reasons that we all know—, as do non-jury trials for reasons that we understand, but that is not a reason for us to accept them in perpetuity. Ultimately, it cannot be right that we in this United Kingdom cannot rely on a jury to remain free of intimidation and what is colloquially known as jury nobbling. We must have a better system than that.

The Opposition will always support the Government in all ways possible to achieve that. I would be grateful for the Minister's response to those minor points, but above all, we have no objection to the Order and we thank him for bringing it to the Committee.

6.13 pm

Mr David Anderson (Blaydon) (Lab): Thank you, Ms Vaz, for chairing the Committee. I welcome new Members to the House.

I was in Northern Ireland last week, along with the Minister—we had breakfast together, but please do not let it get out. We met the police before, during and after some of the day's business, and it is good to record for the House the excellent work that the police in Northern Ireland have done and how prepared they were. I send out a message to the people who were injured that we hope they get well soon. It is sad that we must have this discussion, but as the Minister spelled out, the reality is that things are still going on that should not be going on, so many years after we have moved forward in Northern Ireland as we have. This weekend's situation epitomises that; hopefully the police will get to the bottom of it as quickly as possible and lock up those who need to be locked up.

I wanted to raise one particular concern of mine. It might not be related, but hopefully the Minister can give us clarity. It concerns the news today from the Equality and Human Rights Commission that the Home Secretary is using the legislation to have a secret court hearing in Northern Ireland so that she can defend damages claims being made against our Government by an IRA mole, Martin McGartland. They are being classed as closed material proceedings, which will mean effectively that Mr McGartland and his lawyers will not be able to hear part of the case against them or to hear or see sensitive material that might help them make their case.

There might be justification for that, but my concern is whether the regulations are being used to allow that to happen. I have listened carefully to what the Minister said about conditions 1, 2, 3 and 4, and none of those conditions seem to apply to a situation in which the Home Secretary wants to defend herself in secret against possible problems. This is about ensuring that people who are accused of committing terrorist attacks are protected.

The Chair: Order. Mr Anderson, there may be an issue about sub judice.

Mr Anderson: I am just asking the Minister for clarity, not the detail. The truth is—I will say no more on that case—that we have come a long way. My hon. Friend the Member for Ealing North—I do not know whether he is right honourable; he should be—used the term “normal”, and we know the situation is not normal yet, but this case is clearly not normal. I am asking whether it is related in any way to what we are doing in this Committee this evening, because if it is, I think it is an abuse of process.

6.15 pm

Mr Wallace: With regard to sub judice, and taking full respect of that, I do not have the full details of the Home Secretary's action today, if that is what it is; all I can say is that, with respect to the secret courts, in general, these are civil court proceedings. This is where individuals come to the Government to seek damages, whether that is for Guantanamo Bay or whatever. That is why the coalition Government brought in the secret

courts hearing to allow elements of damages—these are civil cases, not criminal cases. The issue of people effectively pushing Governments to produce intelligence in open courts meant that these proceedings have to be in secret, but that does not relate to the measures in this order. These measures only apply to criminal court proceedings and relate to when the DPP and the Crown prosecute people for offences, rather than when people try to claim damages in the civil courts. The legislation is entirely different. To inform both him and me better, I am happy to write to the hon. Member for Blaydon with whatever I can about the generality of what is going on, if what he says is the case.

The order relates to the criminal courts system and cases where the DPP views there to be a risk of jury intimidation and therefore decides that it is best to hold—it is only in a very few cases—trial without jury. The best way of informing that is with recent figures, which show that in 2013-14 there were 167 offences of intimidation and threat to harm witnesses and jurors, and 37 offences that were then detected by police. That rose in 2014-15 to 171 offences of intimidation and threat to harm witnesses and 44 offences that were then detected by police. That shows the threat to be real and ongoing in certain situations, and we have a duty to ensure that in the short term we do what we can to protect the administration of justice.

I join the shadow Minister in paying tribute to the PSNI. Last month, there was an attack on the PSNI that constituted a double attempted murder at Eglinton. The most recent attack was on Saturday. The PSNI does an amazing job, often facing the highest levels of provocation. Those of us who were there on Monday of last week witnessed some of the riots. When I used to be in riots in the '90s in Northern Ireland, we did not have to restrain ourselves in the way that police officers do today. They stand and hold the line while being pelted with some of the most horrendous missiles—acid bombs and petrol bombs—and abuse. They stand and take that hour after hour. We should not miss the opportunity to pay tribute to the PSNI, which tries to maintain a difficult balance between two communities while at the same time going out there and doing its job when there is still a small minority of dedicated dissident republicans—and loyalists, to some extent—who are threatening their lives. The PSNI does that job to the best of its ability.

Stephen Pound: I seek to assist the Minister: for the avoidance of doubt or confusion, will he remind the Committee that his involvement in rioting in the '70s was not from the perspective of a participant, but as someone wearing the uniform of the Crown?

Mr Wallace: I may be follicly challenged, but in the early '70s I was about three years old. I was part of the security forces in Northern Ireland, in north and west Belfast, in the early '90s, when I was a little older. The job they do today is amazing, and they do their best to keep policing normal and proportionate.

Unfortunately, we must renew trials without jury because of the small minority of people who use intimidation of their own communities and sectarian bigotry to make their case, and who continue to refuse to follow the peace process, to which 99.99% of the people of Northern Ireland have signed up. That is why the order is regretful but necessary.

When the hon. Member for Ealing North asked about the increase in the figures, I think he answered his own question to some extent, in that we are talking about such small numbers. The successful detection of one terrorist attack could mean five or six more people on trial this year, and if any of the four conditions I listed earlier is met, we would see an increase. This year, there has been a decline—the figure is much lower than the previous one. The difficulty is that the figures relate to very small numbers. Should there be an increase in terrorist activity, that will no doubt be linked to any future increase; should terrorist activity decrease but the PSNI and security services increase detection, we will also see an increase. The figures show either the success of PSNI detection or, unfortunately, the continuing threat because of increased activity.

I am grateful that Her Majesty's Opposition support our proposals. The measure is short-term and not intended to be open-ended. It is different from the Diplock court system. It is about the DPP—there is no interference from politicians—satisfying themselves that the conditions have been met. The judges do not have to agree and, if people do not want it to happen, there is also a right of appeal through judicial review. If colleagues have any other questions, they should not hesitate to write to me and I shall reply. With that, I thank the Opposition for their support and commend the order to the Committee.

Question put and agreed to.

6.22 pm

Committee rose.

