These notes refer to the Fraud (Trials without a Jury) Bill as brought from the House of Commons on 26th January 2007 [HL Bill 31]

FRAUD (TRIALS WITHOUT A JURY) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Fraud (Trials without a Jury) Bill as brought from the House of Commons on 26th January 2007. 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 The requirement for an affirmative resolution is repealed by this Bill, with the result that section 43 could be implemented by means of a commencement order made by the Secretary of State without further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 or by a Crown Court judge nominated for that purpose.
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) or a Crown Court judge nominated for the purposes of that section by the Head of Criminal Justice.

Clause 3: Applications under section 43 of the Criminal Justice Act 2003: notice of transfer

7. Clause 3 adds a new subsection (8) to section 43 of the 2003 Act to make transitional provision in relation to Schedule 3 to the 2003 Act. Paragraph 18 of that Schedule replaces section 4 of the Criminal Justice Act 1987 (notices of transfer in cases of serious and complex fraud) with a new section 51B of the Crime and Disorder Act 1998. The purpose of this clause is to cater for the possibility that section 43 of the 2003 Act as amended by this Bill may come into force before the new section 51B.

Clause 4: Section 43 of the Criminal Justice Act 2003: Northern Ireland

8. Clause 4 amends section 50 of the 2003 Act, which makes modifications to Part 7 for Northern Ireland. Section 43 applies only to serious and complex fraud cases, and this limitation is secured in relation to Northern Ireland by reference to Article 3 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988. The clause also modifies the references in sections 43 and 48 to the Lord Chief Justice and the Head of Criminal Justice so that the functions conferred by those sections are conferred in Northern Ireland on the Lord Chief Justice of Northern Ireland.

Clause 5: Commencement, extent and short title

9. The Bill extends to England and Wales and Northern Ireland. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if amendments were
introduced that related to such matters the consent of the Scottish Parliament would be sought for them.

FINANCIAL EFFECTS OF THE BILL

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

PUBLIC SERVICE MANPOWER EFFECTS OF THE BILL

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

REGULATORY IMPACT

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

EUROPEAN CONVENTION ON HUMAN RIGHTS

13. 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). Her Majesty’s Attorney General, the Right Hon. Lord Goldsmith QC has made the following statement:

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

14. 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

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