
Non-Jury Trial Provisions

The Bar of Northern Ireland Response

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Sent by email: NJTconsultation@nio.gov.uk

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Dear Sir/Madam,

Non-Jury Trial Provisions in Northern Ireland

Thank you for your correspondence inviting the Bar of Northern Ireland to provide our views in relation to the public consultation on the non-jury system considering the upcoming expiry of the present arrangements under provisions contained in the Justice and Security (Northern Ireland) Act 2007.

The Bar of Northern Ireland is a profession of over 600 self-employed barristers in independent practice. Our members specialise in the provision of expert independent legal advice and courtroom advocacy. This response also reflects the views of the Criminal Bar Association, who represents prosecuting and defence counsel with specialist criminal law expertise.

The right to a jury trial is regarded as a fundamental element of the adversarial process, and a well-established aspect of a defendant's right to a fair trial hearing. It is an important form of democratic participation in the criminal justice system and the trial of a serious criminal offence without a jury should remain the decision of last resort.¹ As noted in the consultation document, there is a strong presumption of jury trials in all trials in indictment in Northern Ireland today, and less than 1% of all Crown Cases in the last five years were conducted without a jury.

We note that the provisions were designed to be a 'temporary measure', and we welcome the Government's commitment to "seeing an end to non-jury trials in Northern Ireland" when it is safe to do so. It is important to highlight that this would be the ninth extension of these provisions since 2007.

¹ See Lord Chief Justice in *J, S, M v R* [2010]

Non-Jury Trial Provisions

The Bar of Northern Ireland Response

As depicted in Annex C, there were 20 certificates issued for Non-Jury Trials by the Director of Public Prosecutions in 2023. This is a decrease from the previous year, where 22 certificates were granted. This decrease comes after an uptake in issued certificates between 2018 and 2022, where the level of certificates issued doubled from 11 in 2018 to 22 in 2022. However, in 2023, 0.8% of all trials in the Crown Court were Non-Jury Trials, and this was an increase of 0.2% from the previous year. Therefore, whilst Non-Jury Trials represent a small proportion of overall trials, it is clear that they are still utilised.

There has also been a welcomed downward trend in the number of shooting and bombing incidents recorded by the PSNI. As depicted Figure A, in 2013/14, there was 54 shooting incidents recorded by the PSNI, in 2023/24, this fell to 19. Similarly, the PSNI recorded 69 bombing incidents in 2013/14, and in 2023/24 they recorded only five.²

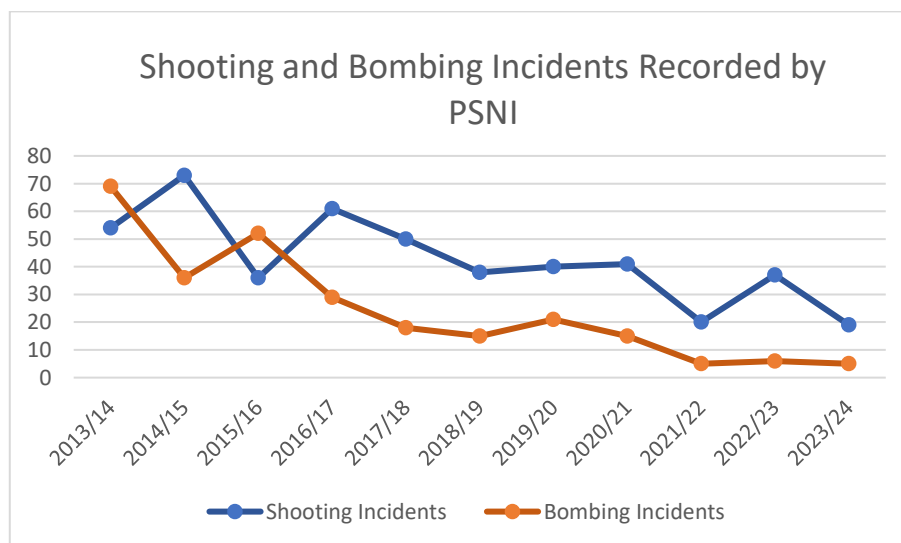


Figure A: Shooting and Bombing Incidents Recorded by PSNI. **Source:** PSNI & NISRA

In the period since our previous response, the Terrorist Threat Level was raised to SEVERE in March 2023 following the attempted murder of DCI John Caldwell, and then lowered again to SUBSTANTIAL in March 2024. This now brings Northern Ireland’s threat level in line with the rest of the United Kingdom. However, as the terrorist threat level is reviewed every six weeks, we are aware it is a fluid landscape.

² PSNI & NISRA, “Police Recorded Security Situation Statistics”

Non-Jury Trial Provisions

The Bar of Northern Ireland Response

Despite the downward trend in security related incidents, we are aware that paramilitary activity is still felt in Northern Ireland communities. In 2023, the Northern Ireland Life and Times Survey found that 18% of respondents felt that paramilitary groups “create fear and intimidation” in their area, and 15% agreed that these groups have a “controlling influence” in their area.³ Additionally, in 2022/23 the Northern Ireland Housing Executive recorded 212 homeless acceptances based on intimidation.⁴ The prevailing influence and control of paramilitaries was recognised in the sixth report of the Independent Reporting Commission which stated “...there continues to be a residual problem in respect of paramilitarism. Paramilitarism represents a continuing threat to individuals and society and must continue to be given sufficient attention and focus.”⁵

In this context, we understand that juries could still be at risk from tampering and any threat to the administration of justice, including the work of the legal profession in our jurisdiction, must be taken seriously.

We retain our position that if NI Office feels they should proceed with the stated preferred option of extending the current provisions for a further two years, we urge the Secretary of State to consider a future review of this policy and the potential for bringing it into line with the Section 44 of the Criminal Justice Act 2003 in England and Wales. This would allow for the prosecution to apply for a trial without a jury through a judicial order from the Crown Court.

Under this legislation, the judge must be satisfied that there is “evidence” of a real and present danger that jury tampering will occur and that, despite precautionary steps such as police protection, there remains a “substantial” likelihood of jury tampering making it necessary in the interests of justice for the trial to be conducted without a jury. This includes the safeguards of judicial oversight, high objective thresholds and consideration of alternative precautionary steps which are all built into the legislation.

³ Northern Ireland Statistics & Research Agency, “Perceptions of paramilitarism in Northern Ireland: Summary of findings from the Northern Ireland Life and Times survey 2017 to 2023” (Department of Justice, June 2024) < [Perceptions of Paramilitarism in Northern Ireland: Findings from the Northern Ireland Life and Times Survey 2017 to 2023 | Department of Justice](#) >

⁴ Housing Executive, “Freedom of Information request for Housing Intimidation Data” (July 2023) < [Housing Intimidation Data](#) >

⁵ Independent Reporting Commission, “Independent Reporting Commission, Sixth Report” (5 December 2023) < [IRC Sixth Report | Independent Reporting Commission](#) >

Non-Jury Trial Provisions

The Bar of Northern Ireland Response

We accept that it is a need for non-jury trials in a small percentage of Crown Court cases, but also contend that in the longer-term, Northern Ireland should move towards the regime employed in England and Wales when it is considered safe to do so and compatible with the interests of justice.

If I can be of any further assistance in this matter, please do not hesitate to get in contact.



David Mulholland
Chief Executive, Bar of Northern Ireland