EXPLANATORY MEMORANDUM TO

THE JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007 (EXTENSION OF DURATION OF NON-JURY TRIAL PROVISIONS) ORDER 2025

2025 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 Rt. Hon Hilary Benn MP, Secretary of State for Northern Ireland at the Northern Ireland Office confirms that this Explanatory Memorandum meets the required standard.

2.2 James Crawford, Deputy Director for the Security & Protection Group, at the Northern Ireland Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Victoria McMullan at the Northern Ireland Office (telephone: 07920361641 or email: nspt@nio.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument enables criminal trials to continue to be conducted without a jury in Northern Ireland where certain conditions are met, for a further two-year period until 31 July 2027. These provisions continue to be necessary in order to uphold the fair and effective administration of justice in Northern Ireland.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) within which the instrument forms part of the law) is limited to Northern Ireland, subject to one point. The provisions that continue in effect as a consequence of article 2 of this order include consequential amendments set out in Schedule 1 to the Justice and Security (Northern Ireland) Act 2007. To the extent that article 2 applies to those amendments, article 2 has the same extent as the consequential amendments.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Northern Ireland.

5. Policy Context

What is being done and why?

5.1 This Instrument extends the provisions under sections 1 to 8 of the Justice and Security (Northern Ireland) Act 2007 ("the 2007 Act") for a further two year period, until 31 July 2027.

5.2 The current non-jury trial regime was put in place in 2007 following the reform of the 'Diplock Courts' system. Under the Diplock system, which was in place from 1972 until 2007, persons charged with a scheduled offence were automatically tried before a single judge without a jury. This was to overcome the threat of terrorist intimidation of jurors when dealing with terrorism offences in Northern Ireland. In order to move towards normalisation in Northern Ireland, the 2007 Act replaced the Diplock system, moving from the presumption of a non-jury trial to a presumption of trial by jury in all cases. In 2023, only 0.8% (12 out of 1423) of all Crown Court cases in NI were conducted without a jury.

5.3 Section 1 of the 2007 Act allows the Director of Public Prosecutions ("DPP") to issue a certificate for any trial on indictment to be heard without a jury in certain circumstances. The DPP may issue a certificate if they suspect that any of the conditions set out in section 1(3) to (6) are met and is satisfied, in view of this, that there is a risk that the administration of justice might be impaired if there were to be a jury trial.

5.4 The decision for issuing a certificate involves a two-stage test set out in section 1(2) of the 2007 Act. The DPP may issue a certificate if the DPP suspects that any of four conditions is met and the DPP is satisfied that there is a risk that the administration of justice might be impaired if a jury trial were to be held. The four conditions contained in section 1(3) to (6) are outlined below:

- condition 1 is that the defendant is, or is an associate of, a person who is a member of a proscribed organisation, or has at any time been a member of an organisation that was, at that time, a proscribed organisation;
- condition 2 is that the offence or any of the offences was committed on behalf of a proscribed organisation, or a proscribed organisation was otherwise involved with, or assisted in, the carrying out of the offence or any of the offences;
- condition 3 is that an attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and the attempt was made on behalf of a proscribed organisation, or a proscribed organisation was otherwise involved with, or assisted in, the attempt;
- condition 4 is that the offence or any of the offences was committed to any extent (whether directly or indirectly) as a result of, in connection with or in response to religious or political hostility of one person or group of persons towards another person or group of persons.

5.5 Non-jury trials are the exception in Northern Ireland: there were 12 non-jury trials in the Crown Court in 2023 (out of a total of 1423). In comparison the average number of Diplock Court cases in the last five years that the system was in operation (up until 2007) was 64 per year.

5.6 The threat level in Northern Ireland from Northern Ireland related terrorism is 'SUBSTANTIAL' (meaning an attack is likely). Regrettably, violent dissident republican terrorist groups and paramilitary organisations continue to be both capable and influential. Paramilitary groups (both loyalist and republican) continue to carry

out brutal attacks against members of their own communities in an attempt to exert control.

5.7 In this context, where prosecutions are brought in relation to current violent dissident republican and paramilitary criminal activity, there remains a risk that members of the jury would be subject to threat or intimidation. Cases relating to violent dissident republican and paramilitary criminal activity are high profile and continue to provoke public opinion throughout the community in Northern Ireland. In addition to the risk of juror intimidation, there is also the potential for jury bias as a result of a defendant's alleged association with a proscribed organisation or if the offence being tried is in connection with religious or political hostility.

5.8 The legacy of The Troubles remains an unresolved, divisive and emotive issue in Northern Ireland. Legal cases related to the Troubles continue to proceed through the criminal justice system and attract significant public and media attention. There is therefore also the potential for jury bias or intimidation in this context.

5.9 The Independent Reviewer of the 2007 Act has included the non-jury trial system in their review since 2018, reports of which are published annually. These reports have been generally supportive of the operation of the non-jury trial system and the process for issuing a non-jury trial certificate. In the 12th report, published in April 2020, the Independent Reviewer recommended that the Northern Ireland Office should set up a working group consisting of representatives from the Public Prosecution Service, the Police Service of Northern Ireland, the Court Service, and other independent organisations. He recommended the group look at practical measures that could be taken to reduce the number of non-jury trials taking place. This group developed two papers. One examines practical measures to reduce the number of non-jury trials and the second recommends a set of indicators that the Secretary of State could consider in order to be satisfied that the non-jury trial provisions were no longer necessary. These indicators formed a crucial part of the Secretary of State's decision to seek renewal for these provisions for a further two years alongside the responses to the public consultation.

5.10 Consideration has been given to whether the provisions in Part 7 of the Criminal Justice 2003 Act ("the 2003 Act"), could be relied on instead of the provisions of the 2007 Act. The 2003 Act provides that a judge of the Crown Court must order a non-jury trial if satisfied that two conditions are met. The first is that there is evidence of a real and present danger that jury tampering would take place. The second is that, notwithstanding any steps which might reasonably be taken to prevent jury tampering, the likelihood that it would take place would be so substantial as to make it necessary in the interests of justice for there to be a non-jury trial. The threshold for ordering a trial without a jury is therefore considerably higher than that in the 2007 Act.

5.11 The 2003 Act is only concerned with jury tampering and witness intimidation whereas the 2007 Act also contemplates that, in Northern Ireland, the risk of impairment to the administration of justice can arise from a fearful or hostile jury. Given the nature of continued violent dissident republican and paramilitary activity and the tight-knit communities in which these organisations operate, as well as the fact the legacy cases continue to proceed through the criminal justice system, reliance on the provisions in the 2003 Act would be inadequate to fully mitigate the risks to the administration of justice in Northern Ireland at this time. In addition to the real possibilities of jury tampering and/or jury bias, it is sometimes the jurors' perceptions as to the risks posed to them and their families in a small jurisdiction which is relevant, rather than the risk itself.

5.12 In light of all the current circumstances and having carefully considered the consultation responses, the Secretary of State has concluded that the non-jury trial provisions under the 2007 Act should be extended for a further two years.

What was the previous policy, how is this different?

5.13 This Instrument is not a new policy. It extends the duration of the effective period of the existing provisions. The policy outlining the usage of the non-jury trial provisions remains unchanged.

6. Legislative and Legal Context

How has the law changed?

6.1 Under section 1 of the 2007 Act, the DPP may issue a certificate for any trial on indictment to be heard without a jury in certain circumstances. Sections 2 to 8 of the 2007 Act make related and supplementary provision. Section 9 of the 2007 Act provides that sections 1to– 8 ("the non-jury trial provisions") shall expire two years after coming into force unless the Secretary State extends them by order, such order having the effect of extending the provisions for a further two years. These provisions were extended by order prior to their expiry on 31 July 2009 and have since been extended a further seven times. They are currently due to expire on 31 July 2025. This instrument extends the non-jury trial provisions for a further two-year period until 31 July 2027.

Why was this approach taken to change the law?

6.2 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Northern Ireland Office held a public consultation on whether to extend the non-jury trial provisions under the 2007 Act for a further two years. As well as publishing on GOV.UK, links to the consultation were sent directly to a selection of 37 relevant stakeholders including those from the legal profession, law enforcement, Northern Ireland political parties, and academia in order to encourage responses. A link to the consultation was also shared on the Northern Ireland Office's X account.

7.2 The consultation was open for 12 weeks (from 9 December 2024 to 3 March 2025) and received 17 responses. Of the responses received, 9 were in favour of extending the provisions, 3 were not in favour, and 5 stated no clear position.

7.3 Respondents who were in favour of extending the non-jury trial provisions for a further two years typically cited the continued presence of paramilitary control and coercion in Northern Ireland communities meaning that victims and witnesses fear participating in the criminal justice system. The current SUBSTANTIAL threat from Northern Ireland related terrorism in Northern Ireland was also cited. The threat level has reduced from SEVERE since the last renewal of these provisions but statistics on the security situation show that groupings retain the resources, capability and intent to identify and attack targets.

7.4 Respondents that opposed the extension of the provisions felt that Northern Ireland should move towards normalisation of the criminal justice system by relying on alternative non-jury trial provisions in the Criminal Justice Act 2003. Some stated that non jury trials are now treated as normal with insufficient consideration given to

challenging established narratives, and noted that there is a lack of evidence of jury intimidation due to long-term existence of NJT powers.

7.5 Of those who indicated no clear position on whether the provisions should be extended, some expressed the view that should the provisions not be renewed, it could impact detrimentally on the potential to obtain sufficient jurors to sit in high profile terrorist cases. Others suggested that allowing the NJT provisions to lapse would reduce some of the delay in the criminal justice system.

7.6 An official consultation response document was published by the Northern Ireland Office on 6 May 2025 and is available to the public at: https://www.gov.uk/government/organisations/northern-ireland-office

8. Applicable Guidance

8.1 As this Order extends the period of validity of existing provisions it is not considered necessary to provide guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the SI relates to the maintenance of existing provisions and has no impact on business.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this Instrument does not introduce a new policy, it extends the validity of existing provisions. These provisions do not impact business, charity or the voluntary sector. They only impact the justice system in Northern Ireland for a small proportion of crown court cases (0.8% of Crown Court cases in 2023).

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because only a small proportion of Crown Court cases are impacted by continued operation of the non-jury trial provisions. In Northern Ireland today, there is a presumption of jury trial in all trials on indictment. In the last five years, less than 1% of all Crown Court cases in Northern Ireland were conducted without a jury.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Northern Ireland Office will continue to monitor and review these provisions prior to the expiry of the non-jury trial provisions in July 2027, including considering any further findings of the Independent Reviewer, giving consideration to whether a further extension by order is necessary and appropriate.

10.2 The instrument does not include a statutory review clause but the Secretary of State has requested, under section 40(3) of the 2007 Act, that the Independent Reviewer include the non-jury trial provisions in the Independent Reviewer's annual report. There is therefore an independent, annual review of these provisions.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The Order comes into force the day after the day on which it is made. The effect of the Order is that provisions which would otherwise cease to have effect on 31 July 2025 would continue to have effect, and so the instrument only has any substantive effect from that date. Additionally, as the purpose of the Order is to continue in effect existing arrangements that have been in place for some time, it will not impose duties on people that are significantly more onerous than before, or require them to adopt different patterns of behaviour. For both reasons, commencement so soon after making would not give rise to the usual concern about whether those affected have a reasonable chance to adapt.

12. European Convention on Human Rights

12.1 The Secretary of State for Northern Ireland has made the following statement regarding Human Rights:

"In my view the provisions of the Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2025 is compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").