



Northern
Ireland
Office

Replacement Arrangements for the Diplock Court System

A Consultation Paper

August 2006

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Foreword



Peter Hain MP
Secretary of State for
Northern Ireland



Lord Goldsmith QC
Attorney General



Bridget Prentice MP
Parliamentary Under-
Secretary of State

For more than thirty years the Diplock Court system has helped to counter the risk of perverse verdicts in trials for offences connected with the Troubles in Northern Ireland. It has protected jurors from the risk of intimidation; ensured that those charged with such offences receive fair trials; and ensured that justice is seen to be carried out fairly and effectively. The system has become emblematic of the special arrangements that have been necessary to deal with the threat of terrorism in Northern Ireland.

Under the programme of security normalisation announced on 1 August 2005, the legislation underpinning the Diplock system is due to be repealed on 31 July 2007. The repeal of the Diplock system will be a significant step on the road to a normalised Northern Ireland and the fact that we are able to move to that point is a testament to the profound changes in the Northern Ireland security situation that have occurred, not least those in the last year.

Although Northern Ireland is on the road to normalisation, we do not think the time is right for Northern Ireland to operate without the fall-back of some special arrangements for exceptional cases. Paramilitaries and former members of paramilitaries still have a significant hold over the communities they live in and many are heavily involved in criminality. This means that jurors could still be put at risk of intimidation in some cases.

Government must protect the safety of all those who participate in the justice system. The role of juror is an extremely important one and we must do all we can to protect them from intimidation and ensure that the justice system can deliver fair and effective trials.

We think the reforms proposed in this consultation paper represent progress towards normalisation and strike the right balance of reducing the risks of intimidation of jurors while ensuring that non-jury trials are available to deal with the remaining number of exceptional cases that cannot be addressed any other way.

Introduction

1.1 This consultation paper proposes some reforms to the current jury system that are designed to reduce the risk of intimidation of jurors and the fear of intimidation. They will also reduce the risk of partisan juries by enhancing the random selection of jurors.

1.2 The paper also proposes a new approach whereby in future the presumption will be that there will be trial by jury, but with scope for non-jury trial. This will be available where it is considered necessary to ensure that fair trials can be provided where there are paramilitary or community-based pressures on a jury.

Consultation

1.3 This document is being circulated to political parties, relevant local authority organisations, and a wide variety of other organisations with an interest in the criminal justice system in Northern Ireland. It is also available on the Northern Ireland Office website (www.nio.gov.uk). A limited number of hard copies are available from the address below.

1.4 The Government welcomes responses from organisations and individuals. A number of questions are posed throughout the consultation paper (at paragraphs 3.27, 4.11 and 4.22) and we would be particularly grateful for views on these. The consultation paper also includes the results of the Equality Screening of these proposals (at Annex B) and, in line with the Equality Schemes of the Northern Ireland Office and the Northern Ireland Court Service, we would be grateful for comments on the screening exercises.

1.5 Please respond by **6 October 2006** to:

By post: Diplock Replacement Arrangements Consultation
Room 8
Stormont House Annexe
Stormont Estate
Belfast
BT4 3SH

E-mail: spob@nics.gov.uk

Fax: 028 9052 7807

Background

2.1 The Diplock Court system dates back to 1973 when a Commission found that the jury system as a means of trying terrorist crime was under strain and in danger of breaking down. It highlighted the danger of perverse acquittals because of partisan jurors and intimidation of jurors. These dangers were assessed as still continuing when the system was reviewed by Government in 2000.

2.2 The provisions underpinning the system are now contained in Part VII of the Terrorism Act 2000. The system operates on a defined list of offences contained in Schedule 9 to that Act (known as 'scheduled offences'). In broad terms, if a person is charged with a scheduled offence, they will automatically be tried before a Diplock Court unless the Attorney General directs that the case be tried before a jury (known as 'descheduling'). In making his decisions whether or not to deschedule a case, the Attorney applies a non-statutory test: he will not deschedule a case unless he is satisfied that it is not connected with the emergency in Northern Ireland. In certain circumstances, scheduled offences can be tried summarily (before a magistrate). In these cases the DPP issues a certificate of suitability for summary trial.

2.3 The Diplock Court consists of a judge sitting on his own. He hears all the evidence and reaches the verdict as well as running the trial and pronouncing sentence if the defendant is found guilty. In order to ensure confidence in the process, the judge must give a reasoned verdict if he convicts a person (and often provides a reasoned verdict for an acquittal too). There are unfettered rights of appeal from convictions in Diplock courts.

2.4 Special bail arrangements also apply to persons charged with scheduled offences. Subject to limited exceptions, magistrates are unable to consider the issue of bail and instead the defendant must apply to the High Court for bail. This was introduced to protect Resident Magistrates from the risk of intimidation: they were considered to be more vulnerable than other judicial tiers and the smaller pool of High Court judges was considered easier to protect.

2.5 The use of Diplock Courts has declined substantially. This reflects the improvements in the security situation. The Attorney General deschedules around 85-90% of the cases put before him. This means that the number of cases actually returned for trial without a jury is around 60 each year (twenty years ago Diplock courts dealt with 329 cases). These cases cover terrorist offences as well as other offences arising from public order situations and serious sectarianism.

Drivers for change

2.6 In response to the Provisional IRA statement of July 2005 (which announced an end to the armed campaign) and significant improvements in the security situation, the Secretary of State for Northern Ireland announced a programme of security normalisation on 1 August 2005. This includes a commitment to repeal all counter-terrorist legislation particular to Northern Ireland by 31 July 2007, subject to an enabling environment.

2.7 There is a continuing legacy of terrorism that Government must take account of when considering future arrangements. There is a residual risk from dissident republican and loyalist paramilitaries who are still engaged in planning acts of terrorism and continue to raise funds for their organisations.

2.8 People in Northern Ireland also live in close-knit communities and in some cases these are dominated by members of paramilitary organisations. This increases the risk of intimidation. It also creates a fear of intimidation that can be just as damaging.

2.9 Government's primary duty is to ensure the safety and security of the people of Northern Ireland. Any new structures put in place must be capable of operating fairly and effectively within that context and provide the maximum amount of protection to the public.

The Proposals

2.10 In light of this Ministers have decided that there is a continuing risk of perverse verdicts in some cases because of paramilitary and community-based pressures on a jury. They have considered a number of reforms to the jury system which will help to reduce the risks of jury intimidation and partisan juries (and these are discussed in detail below). These are not, however, likely to completely eliminate the identified risks. Ministers have concluded, therefore, that some form of non-jury trial will be necessary for Northern Ireland for exceptional cases; and proposals are discussed in detail below.

2.11 In considering whether there should be any replacement arrangements for the Diplock Court system, Ministers took advice from a range of sources. This included Lord Carlile of Berriew QC, who is the Government's Independent Reviewer of Terrorism Legislation. His views proved invaluable in the formation of the proposals. The advice he provided is included in this consultation document as it may help to inform responses to the consultation.

Jury Reform

3.1 As stated earlier in this document, non-jury trial was originally introduced in Northern Ireland because the jury system as a means of trying terrorist crime was under strain and in danger of breaking down. In particular, Lord Diplock's report highlighted the danger of perverse verdicts because of juror intimidation and partisan jurors.

3.2 A number of reforms have been identified which it is considered will help to address the key issues of juror intimidation and partisan jurors. Although the impact of the proposed measures would not be sufficient to allow a return to jury trial in all cases, they may assist to reduce the number of cases that need to be tried without a jury.

3.3 The proposed reforms include:

- the introduction of **routine criminal record checks to identify disqualified jurors;**
- **restricting access to personal juror information and the introduction of guidelines on jury checks;**
- **abolition of peremptory challenge;**
- **restricting the exercise by the Crown of its right to stand-by;** and
- a range of **other jury protection measures.**

Routine criminal record checks to identify disqualified jurors

3.4 Article 3 of, and Schedule 1 to, the Juries (Northern Ireland) Order 1996 sets out those persons who are disqualified for jury service by virtue of their criminal record.

3.5 Currently, potential jurors are required to declare if they are disqualified or otherwise ineligible for jury service on receipt of a jury notice before they are called for jury service. Jurors who are then selected to sit on the hearing of a trial are asked by the judge at the outset of the proceedings to declare whether they are for any reason disqualified or otherwise ineligible to sit on that jury. It is an offence for a person knowingly to serve as a juror when he is disqualified. While the police investigating officer may carry out criminal record checks on the jury panel for disqualified persons, this is not done in all cases.

3.6 It is proposed to introduce a new system whereby jurors' criminal records will be checked as a matter of routine to prevent disqualified persons from serving as jurors. This function will be carried out by the Northern Ireland Court Service through a new Juror Service Centre, which will centralise many of the functions relating to juror administration.

Restricting access to personal juror information and the introduction of guidelines on jury checks

3.7 Under the present arrangements, a copy of the document containing the names, addresses and occupation of potential jurors is routinely provided to the defence and prosecution. It is considered that the fear of intimidation felt by jurors is exacerbated by the fact that the current system permits their personal details to be provided to the defence. Indeed, in his recent advice, Lord Carlile of Berriew QC indicated that it would provide considerable reassurance for jurors, and would diminish the risk of jury intimidation and perverse verdicts, if they could attend court knowing that their details were unknown to the defence and their connections. It is therefore proposed that such information will no longer be provided to the defence.

3.8 It is considered, however, that it would be necessary to balance the benefits which would accrue from total juror anonymity, against the risk that restricting access may inhibit the carrying out of additional juror checks, which are themselves designed to reduce the risks of perverse verdicts and juror intimidation.

3.9 While the Director of Public Prosecutions has issued guidance, at present, in Northern Ireland, a decision as to whether or not to carry out jury checks and the nature of such checks is a matter of discretion for the investigating officer. This is in contrast to England and Wales, where additional jury checks (beyond routine criminal record checks) may only be carried out in accordance with Attorney General guidelines in certain exceptional types of case of public importance.

3.10 Accordingly, to balance the proposal to withhold personal juror information from the defence, we are considering the development of guidelines to set out clearly the circumstances in which jury checks may be carried out by PSNI. These guidelines would be supplemented by a number of safeguards to ensure that checks could be initiated only by certain categories of person, and that the information would be handled by persons unconnected to the case.

Abolition of peremptory challenge

3.11 Currently, every defendant in a trial on indictment in Northern Ireland has the right to challenge not more than 12 jurors without showing cause – this is known as peremptory challenge.

3.12 While peremptory challenge was abolished in England and Wales by the Criminal Justice Act 1988, it was retained in Northern Ireland because of the lack of any sustained pressure to change the arrangements and because the Standing Advisory Committee on Human Rights had advocated its retention. More recently, however, there has been a shift in opinion, and many of the respondents to the Diplock Review (2000) were in favour of abolition.

3.13 Although it is difficult to obtain specific evidence in this regard, it is widely perceived that the polarised nature of society within Northern Ireland is such that some jurors may be unduly influenced by their political and religious backgrounds in reaching a verdict. In this context, it is considered that abolition of peremptory challenge should limit the defendant's ability to 'pack a jury' and thereby reduce the risk of perverse verdicts.

Restricting the exercise by the Crown of its right of stand-by

3.14 Currently the Court may, at the request of the Crown, order any juror to stand-by until the panel has been gone through. If 12 jurors have not been sworn before the panel is exhausted, any jurors who have been stood-by will be recalled. This rarely happens, however, and for practical purposes, the Crown's right of stand-by is broadly comparable to a defendant's right of peremptory challenge.

3.15 At the same time as peremptory challenge was abolished in England and Wales, the Attorney General issued guidelines to prosecutors making it clear that the Crown should assert its right of stand-by only on the basis of clearly defined and restrictive criteria.

3.16 In Northern Ireland, it is considered that there may remain circumstances in which it would be in the interests of justice for the Crown to be able to continue to exercise its right of stand-by, for example, where an additional jury check reveals information which casts doubt on the suitability of a person to be a juror in a particular case. To balance the abolition of peremptory challenge, it is proposed to use enhanced guidelines to restrict the circumstances in which the Crown may request that a juror be stood-by.

Other jury protection measures

3.17 A range of other jury protection measures have been identified which may assist to reduce intimidation and fear of intimidation.

3.18 Lord Carlisle recommended that there should be some courts where more serious cases could be tried with the jury entirely unseen from the public seating areas. Accordingly, it is proposed to take provision to allow the Court to direct that the jury sit out of sight of the public gallery in cases where intimidation is suspected.

3.19 It is also proposed that there should be separate waiting areas etc for jurors, although such accommodation is already available at most Crown Court venues.

3.20 In order to enhance juror anonymity and to complement to proposal to withhold personal juror information, it is proposed that provision should be taken to allow jurors to routinely be balloted by number only. In addition, a criminal offence of providing personal juror information without leave of the court will be created.

3.21 In relation to protection of jurors beyond court premises, it is intended to develop a policy setting out the criteria to be considered when assessing the need for police protection and identifying the range of measures which could be made available in such cases.

3.22 Finally, it is proposed that there should be an updated DVD presentation for all jury panellists on their first attendance at court to give them reassurance about the level of protection provided by the criminal justice system.

Eligibility for jury service

3.23 The Juries (Northern Ireland) Order 1996 sets out those categories of person who are ineligible for jury service (for example lawyers, police, military, judges etc) or who are excusable as of right (for example clergy, teachers, medics etc). The law on eligibility for jury service in Northern Ireland is significantly more restrictive than in England and Wales.

3.24 Lord Carlile argued that widening the jury pool would dilute the risk of perverse verdicts and that normalisation includes a random jury selected from the community as a whole.

3.25 The arguments in relation to widening the jury pool are finely balanced. While widening the jury pool would represent another move towards normalisation, the impact of such a measure on jury intimidation and perverse verdicts is unclear. Conversely, amending the criteria to include previously exempted groups may raise perception issues, particularly if combined with the abolition of defence's right of peremptory challenge.

3.26 It is considered appropriate to defer work on widening the jury pool until after the current reforms have been implemented and have had time to bed down. Ministers are committed to looking at issues of jury participation and eligibility for jury service in due course.

Consultation Questions

3.27 We are particularly interested in answer to the following questions about the proposed reforms to the jury system:

- **Do you consider that the proposed reforms to the jury system will help to address the issues of juror intimidation/fear of intimidation and/or partisan juries?**
- **Do you agree that routine criminal record checks to identify disqualified jurors should be carried out by Northern Ireland Court Service? If not, by whom should these checks be made?**
- **Do you consider that the development of guidelines to set out clearly the circumstances in which jury checks may be carried out by PSNI (not connected to the prosecution) strikes the correct balance between achieving juror anonymity and the need to carry out additional checks where it is in the interests of justice to do so? In what circumstances should such additional checks be authorised?**
- **Should the defendant's right of peremptory challenge be abolished?**
- **Is it appropriate to retain the Crown's right of stand-by, but to restrict its use through the development of guidelines? In what circumstances would it be appropriate for the Crown to use its right of stand-by?**
- **Are there any other jury protection measures which should be considered?**

- **Do you agree that it is appropriate to defer work on widening the eligibility criteria for jury service until after the current reforms have been implemented and have had time to bed down?**

New System of Non-Jury Trial

4.1 Ministers have concluded that, notwithstanding the proposed jury reforms, some form of non-jury trial will be necessary for Northern Ireland for exceptional cases where there are likely to be paramilitary or community-based pressures on a jury.

4.2 The proposed new system has the following elements:

- the **presumption will be for jury trial** for all offences;
- the **DPP will be able to certify cases into non-jury trial** at any point up to arraignment, making his decision against a **defined statutory test**;
- as with other administrative decisions the **DPP's decision will be judicially reviewable**;
- **bail will be heard by magistrates** in all cases;
- trials will be heard by **one judge sitting without a jury** who will give **reasoned verdicts** when someone is convicted; and
- this system **will work in parallel with the jury-tampering provisions of the Criminal Justice Act 2003**.

Presumption for Jury Trial

4.3 The Diplock system is based on a presumption that certain specified offences (scheduled offences) will receive non-jury trial unless they are certified into jury trial in the Crown Court by the Attorney General (known as 'descheduling'). Ministers judge that the time is right for the presumption to shift to jury trial. This is consistent with security normalisation and Government's commitment to return to jury trial for all cases as soon as is possible.

4.4 This approach will also minimise the administrative impact on the police and prosecution service of retaining a form of non-jury trial. At the moment, 85-90% of cases are descheduled by the Attorney General and a detailed application has to be prepared for each case. Shifting the presumption to jury trial will mean that these arguments will only have to be prepared in those cases that may meet the statutory test, not in all cases where a person has been charged with one or more of a defined list of offences.

DPP as Decision-Maker

4.5 The Director of Public Prosecutions for Northern Ireland (DPP) seems best placed to make the decision for non-jury trial. He already makes decisions about mode of trial in Northern Ireland (for example, whether certain offences should be tried in the magistrates' court or the Crown Court) and this decision would be consistent with that.

4.6 In the longer term, after the devolution of policing and justice, the DPP will have strong operational independence in his decision-making. At the moment the

DPP is subject to the superintendence and direction of the Attorney General, but after the devolution of policing and justice that relationship will change to one of consultation.

Statutory Test

4.7 Under the proposed new system, the DPP will make a decision as to whether or not a case should be tried without a jury against a defined statutory test. The Attorney General's decision in Diplock is currently made against a non-statutory test, but putting the test on the face of legislation in the new system will make the process more transparent and give the DPP clear guidance about his decision-making.

4.8 Ministers want to move away from the current position where certain, specified offences are tried without a jury unless they are unconnected to the emergency in Northern Ireland. They would like a test that is a two part one and will be based on the circumstances of the offence or connections of the defendant, not the offence committed. This will build both flexibility and rigour into the system and enable it to ensure that non-jury trial can be provided where a risk of a perverse verdict or jury intimidation occurs, regardless of the offence that the person has been charged with. This is considered particularly important given the diversification of members and former members of paramilitaries into other forms of crime as well as offences that are traditionally seen as terrorist. Intimidation tactics can be used in any trial, not just trials for terrorist offences.

4.9 Ministers are also keen that the test should only enable a case to be certified for non-jury trial where the DPP is satisfied that there is a risk of interference with or perversion of the administration of justice. In Diplock, a case will receive non-jury trial if it cannot be demonstrated that it is not connected to the emergency in Northern Ireland. No formal assessment of the risks to the administration of justice is undertaken. The new test would require such an assessment to be made and non-jury trial would not be possible under this system unless the DPP were satisfied a risk existed, regardless of the other circumstances of the offence.

4.10 A second element of the test would then set out the circumstances in which a certificate can be made. In order to ensure that this system of non-jury trial is only available in exceptional cases Ministers think the list should be exhaustive, with no ability to alter or add to the test at a later date (for example, by adding extra circumstances) except by making further primary legislation.

4.11 Ministers have not, however, made a final decision about what the list of circumstances should be. They are clear that the list should include individuals or incidents connected with paramilitary organisations, as this is where the greatest risk of perverse verdicts or jury intimidation is likely to arise. They are also considering whether the list should go wider than that; for example, including offences arising out of serious public order incidents, or offences that have a sectarian motive. These types of incidents are currently capable of being tried without a jury under the Diplock system. Many such offences might not be caught in a statutory test limited to paramilitary organisations, even though both categories could give rise to the risk of jurors being intimidated or juries reaching perverse verdicts. Ministers are therefore keen to hear views on these matters.

- **Do you think it would be necessary to include offences arising out of public order incidents?**
- **Should offences motivated or aggravated by sectarianism be included in the test?**
- **Should the test include a reference to serious organised crime, or would that be adequately covered by a broad condition about paramilitary activity?**
- **Should the test include all terrorist organisations, or just those connected to Northern Ireland?**

Challenges to Certificates

4.12 As is the case with all administrative decisions, the DPP's decision will be challengeable by means of judicial review. This will enable defendants to be sure that the decision has been taken properly. The decision is merely one of mode of trial (with non-jury trial capable of providing the same quality of justice as a jury trial) so there does not seem to be a need for a separate appeal mechanism. Some of the information that the decision may be based on could be sensitive intelligence material and national security interests must be taken into account.

Bail

4.13 Under the Diplock system special arrangements were put in place for bail. Under these, magistrates are unable to consider bail where a person is charged with a scheduled offence and the defendant must apply to the High Court for bail instead. No special bail arrangements are proposed for the new system. This means that magistrates will be able to hear and grant bail in all cases.

4.14 Ministers think that the reduction in the security threat means that it will be possible in future for magistrates to hear bail applications in all cases without being put at a significantly increased risk to their own safety.

The Trial

4.15 It is proposed that one judge sitting without a jury will hear cases where the DPP has made a certificate. As well as running the trial and pronouncing sentence if the person is convicted, the judge will also hear all the evidence and decide guilt or innocence.

4.16 To ensure transparency and public confidence in the system, the judge will be required to give reasons for his verdict when a person is convicted. In practice, the judge will probably also give reasons for an acquittal, but we do not intend to require this. There may be circumstances where giving reasons for an acquittal is not appropriate, for example, if it would breach the human rights of the defendant or a witness in the case. There will also be an unfettered right of appeal from non-jury trials – a convicted person will be able to directly appeal conviction or sentence without the need to apply for leave first.

Lord Carlile's Views

4.17 Lord Carlile of Berriew QC (Government's Independent Reviewer of Terrorism Legislation) was asked for his opinion on whether the time was right for a return to jury trial for all cases, based on his extensive knowledge of how the current Diplock system operates. His views are attached at Annex A.

4.18 The system described above follows the essence of the system Lord Carlile proposes in his letter, in that the decision is an administrative one taken by the DPP and reviewable by the courts. Ministers considered that it was not necessary to involve special advocates in the decision making process itself – if the DPP felt that he needed advice from counsel before making a decision in any case there would be nothing to stop him seeking it.

4.19 Lord Carlile also raises the issue of the handling of disclosure in non-jury cases. The current system of a separate disclosure judge in Diplock cases has come about in response to a case that went to the European Court of Human Rights (Edwards and Lewis). This held that in some cases it would not be ECHR-compliant for a judge deciding the verdict in a case to also decide what evidence should be admissible.

Criminal Justice Act 2003

4.20 There are provisions in the Criminal Justice Act 2003 that create a system of non-jury trial that will extend to Northern Ireland. Section 44 of that Act enables the prosecution to apply for non-jury trial where there is a clear and present danger of jury tampering in any case. Although these provisions extend to Northern Ireland (and it is intended to bring them into force here later in the year) they were never intended to replace the Diplock system. Section 50 of the 2003 Act provides that these non-jury arrangements do not apply in relation to trials for scheduled offences.

4.21 In the future, it is intended that the arrangements in the 2003 Act and the system of non-jury trial that this consultation paper proposes will work in parallel. However, the system proposed in this paper will take precedence over the 2003 Act.

Consultation Questions

4.22 We are particularly interested in answers to the following questions about the proposed system of non-jury trial:

- **Do you think the time is right for the presumption to shift to jury trial?**
- **Do you have any general comments about the proposed system?**
- **Do you think it would be necessary to include offences arising out of public order incidents?**
- **Should offences motivated or aggravated by sectarianism be included in the test?**
- **Should the test include a reference to serious organised crime, or would that be adequately covered by a broad condition about paramilitary activity?**

- **Should the test include all terrorist organisations, or just those connected to Northern Ireland?**
- **Should any special arrangements for bail be made, and if so how?**
- **Is it right that this system should take precedence over the Criminal Justice Act 2003?**

How to respond

5.1 The last date for responses to this consultation is **5 October 2006**.

5.2 Consultation responses should be sent to:

By post: Diplock Replacement Arrangements Consultation
Room 8
Stormont House Annexe
Stormont Estate
Belfast
BT4 3SH

E-mail: spob@nics.gov.uk

Fax: 028 9052 7807

5.3 When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

5.4 An electronic version of the consultation document is also available at <http://www.nio.gov.uk/index/public-consultation/documents.htm>.

Confidentiality

5.5 In line with the Northern Ireland Office's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available. The information they contain may also be published in a summary of responses. If such a summary is published it will be made available on the Northern Ireland Office website. If you do not want all or part of your response or name made public, please state this clearly in your response. Any confidentiality disclaimer that may be generated by your/your organisation's IT system or included as a general statement in your fax cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

5.6 We will handle any personal data you provide appropriately in accordance with the Data Protection Act 1988.

5.7 You should also be aware that there may be circumstances in which the Northern Ireland Office will be required to communicate information to third parties, on request, in order to comply with its obligations under the Freedom of Information Act 2000.

5.8 Please contact the relevant Consultation Coordinator at the address above to request copies of consultation responses. An administrative charge may be made to cover photocopying of the responses and postage costs.

Complaints

5.9 If you have any comments about the way this consultation has been conducted, these should be sent to:

Head of Central Management Unit
Northern Ireland Office
Stormont House Annexe
Stormont Estate
Belfast
BT4 3SH

Additional copies

5.10 You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from the Consultation Coordinator at the above address.

5.11 Other versions of the document in large print, Braille, Irish, Ulster-Scots or on audio cassette may be obtained on request. A text phone facility is also available by phoning 028 9052 7668 (9.00am – 5.00pm Monday – Friday).

What happens next?

5.12 We will aim to publish a summary of the views expressed by consultees and the Department's response on the Northern Ireland Office website within 3 months of the end of the consultation period.

Plans for making the results public

5.13 In accordance with criterion 6 of the Cabinet Office Code of Practice on written consultation, decisions taken in the light of the consultation shall be made public promptly with a summary of the views expressed (subject to respondents' requests for confidentiality) and reasons for the decisions finally taken.

5.14 The information you send us may need to be passed to colleagues within the Northern Ireland Office and/or published in a summary of responses to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system unless you specifically include a request to the contrary in the main text of your submission to us.

Lord Carlile of Berriew Q.C.
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April 2006
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Parliamentary Under Secretary of State for Northern Ireland
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Non-jury trial in Northern Ireland

By your letter of the 23rd February 2006 you asked me to provide an independent view from outside the Northern Ireland Criminal Justice System as to whether there is a continuing need for non-jury trial in Northern Ireland. This letter contains my response to that request and my views on the issues.

1. In order to provide my views I reviewed material collected by me during visits to Northern Ireland over the 4 years I have been independent reviewer of terrorism legislation. In addition, very recently I visited Northern Ireland and (in the order set out) met:-

The Chief Executive, Northern Ireland Human Rights Commission
The Director of Public Prosecutions for Northern Ireland
The Northern Ireland Courts Service
Democratic Unionist Party
Social Democratic and Labour Party
Ulster Unionist Party
Alliance Party
Law Society of Northern Ireland
Bar Council of Northern Ireland
Police Service of Northern Ireland
Lord Chief Justice of Northern Ireland
Sinn Fein
The Director, Committee on the Administration of Justice
NIO Working Group on non-jury courts

2. Given my long-term knowledge of the issues and my many contacts and discussions over the years, I believe that I have been able to garner enough information to fulfil your request.
3. I have very much in mind that the so-called Diplock system was set up as an emergency process on the basis that delivery of justice could be impeded by the risk of juries reaching perverse verdicts on sectarian grounds. A review was carried out in May 2000. It concluded that the time was not then right for the universal return to jury trial. However, the Diplock system is due to be repealed in July 2007 as part of the security normalisation programme.
4. There are two general points to be made at the outset. The first is that there is general and justified agreement that the quality of judgment in the Diplock courts is very high. Statistics show at least as high an acquittal rate in the single judge courts as in jury trial. The judgments have the advantage of being fully reasoned and subject to a rigorous appeals procedure. All this is testament to the skill and adaptability of the judges involved. Some lawyers told me anecdotally that there is inconsistency between judges – that some almost always convict and others are more objective. It is impossible to test this statistically: however, the same kinds of comments are made about judges even where there is a jury, though of course juries sometimes ignore what they perceive to be the views of judges.
5. The second general comment is that I have yet to discover any high level of interest in the Diplock courts issue outside the community of politicians, lawyers, academics, interest groups and lobbyists. As one Belfast academic put it to me some 3 years ago, the issue does not register highly on the Richter scale of public concerns. However, it is one of understandably high political interest, and commands no consensus across the political spectrum.
6. The two extremities of the representations made to me can be summarised simply. Some say that there is no longer an emergency at all, or of the kind that gave rise to the Diplock courts. They argue that unless Northern Ireland is given a chance to show that juries can operate fairly, there can never be a return to normality. There should be what some call 'an act of faith' by return to universal jury trial, even if there is the occasional perverse verdict in the short term. Others argue to the contrary - that there is clear evidence of continuing paramilitary activity, of both a terrorism kind and in relation to very serious organised crime. Inevitably there will be jury and witness intimidation. Even if there is not, jurors will feel intimidated by their exposure in the jury box. Perverse verdicts are likely to be frequent and sectarian-based.
7. Since the inception of the Diplock courts there have been several very important changes in Northern Ireland. The most obvious is the cessation of major terrorism activity aimed at the police, the military public officials and the public at large. Life in Northern Ireland is now free for most citizens of the actuality of everyday terrorism violence,

and entirely normal, despite paramilitary activity remaining a cause for real concern (see paragraph 9 below). There is hope of devolved government working in the near future – I assume this will be the case by July 2007. Another change has been the widening of the pool from which jurors are chosen: there was still a property qualification when the Diplock courts were introduced. Today jurors are liable to be called for service if their names are on the electoral register. A third and very important change has been the expectation of members of the public that their lives will not be damaged any more than elsewhere in the UK by sectarian violence. A further development has been the gradual acceptance of changed policing arrangements following the creation of the PSNI.

8. A material legislative reform has been provided for in England and Wales as well as Northern Ireland. That is the enactment of Part 7 of the Criminal Justice Act 2003. In particular, sections 44-46 provide on the application of the prosecution discretionary power for a judge to order a trial to commence or continue by judge alone where there is evidence of a real and present danger of jury tampering, and the likelihood of it taking place is so substantial as to make it necessary in the interests of justice. However, those provisions have not yet been brought into force. That they are enacted and thereby envisaged may be regarded as significant in that they demonstrate that *normalisation* is not necessarily a straightforward concept: the norm may change in the light of legislation and developing practice.
9. There is ample material to support the view that organised crime has been and probably still is carried out by paramilitary organisations. The PSNI, the other control authorities, the Independent Monitoring Commission and the media have asserted that this is the case. I have seen material prepared by the PSNI supporting the view that there remains a significant level of violence connected to paramilitaries – including 83 terrorism related bombings, 166 shootings and 6 deaths in 2005. However, the trends are downwards.
10. In terms of jury tampering in non-Diplock courts, police intelligence has identified 4 cases in the past 7 years – a low level by any standards, though one might assume that there would have been more cases affected in the absence of non-jury courts.
11. There is much material to justify the assertion that witness intimidation occurs in serious cases. This is not a phenomenon peculiar to Northern Ireland, but is a bigger issue there.
12. I am aware of concern in the courts about intimidatory tactics used in the presence of juries by the connections of defendants, and of the not uncommon failure of prosecution witnesses to turn up at court to give evidence. Intimidation can be subtle but disturbing, for example the repeated presence in the public gallery of persons looking closely at the faces of jurors.
13. The Diplock review of 2000 identified 3 factors as material to whether jury trial was possible

- Risk of juror intimidation
 - Risk of perverse verdicts; and
 - Assessment of the level of threat
14. My assessment is that all three risk factors have reduced significantly since 2000, but that they exist still and are enhanced in Northern Ireland as compared with other parts of the UK.
 15. The Northern Ireland Court Service has devised a coherent policy for countering intimidation on court premises. Of course, the service has no responsibility for what happens away from court buildings.
 16. Most scheduled cases are now released for jury trial. I have covered this point in all my reports concerning the operation of Part VII of the Terrorism Act 2000.
 17. Taking all factors into account my independent view is that there can be a substantial further return to jury trial for currently scheduled cases in Northern Ireland. There should now be a presumption that every indictable case will be tried by jury. If the presumption is to be rebuttable, the circumstances should be very limited.
 18. Given the shift in the political climate and especially the reduction in sectarian terrorism affecting the population at large, it seems to me that the current scheduling arrangements could be scrapped without disadvantage. The effect would be that, even if some non-jury trials were to continue, there would be no separate category of offences specifically linked to terrorism and the emergency that gave rise to the Diplock courts.
 19. I suggest that the provisions of part 7 of the Criminal Justice Act 2003 provide the starting point for appropriate provisions for any limited class of non-jury cases.
 20. The history and sectarian background in Northern Ireland leave distinctive and particular concerns. These lead me to the conclusion that non-jury trial should occur –
 - (a) on certification by the prosecution authority, giving reasons to the extent that they can be given without endangering sensitive sources or national security, and
 - (b) after that authority has obtained the opinion of an independent advocate to be drawn from a security cleared panel (a special advocate), who may be an advocate in any UK jurisdiction, and
 - (c) subject to a right of review without the need to obtain permission of the court.
 21. I emphasise that there should be no separate category for such cases. The procedure should be applicable to any indictable offence. I would expect it to be used very sparingly. The current level of non-jury trials is about 60 per year: I would expect that to decrease, at least to begin with. If jury trial proved to remain subject to illegitimate extraneous interference, the numbers of such trial would increase and the blame would attach firmly to those responsible for the interference.

22. I can see no reason why non-jury trial should not occur in any case, by agreement between the prosecution and defence and subject to the approval of the judge. This might be desired in trials in connection with largely technical or administrative issues.
23. I suggest that such certification should be subject to review on the application of any defendant in the case. The review should be before a judge of the High Court of Northern Ireland, who should not be the trial judge. The special advocate should be available for the hearing, and rules of procedure should be made similar to those used by the Special Immigration Appeals Commission. These would ensure that in such cases in the public interest the most sensitive material was protected from disclosure to the defendant and his own legal representatives, and that his/her interests and the broader interests of justice were properly protected. No concealment of information should occur if there would be prejudice to the defendant in presenting the defence case. I believe that, subject to appropriate rules of court, a system of law along these lines would be compatible with the ECHR and the Human Rights Act, as with SIAC.
24. In cases where a non-jury trial was ordered, I can see good reasons why disclosure issues, including PII, should be dealt with by the trial judge. Judges are well able to direct themselves to take into account only facts that are admissible and relevant, and to ignore extraneous matter. The Diplock court system of a separate disclosure judge means that it is difficult for disclosure situations to be reviewed constantly in the context of the evidence: on balance, in my view the proposed revision to the system would provide greater protection to the defence.
25. Many Diplock court trials are heard by County Court judges. This would be appropriate under the new system proposed.
26. It would be perfectly possible to have 3 judges in the proposed new judge only courts. Plainly there would be extensive resource implications if this were to occur. In my judgment the creation of a 3 judge court could only be justified by the conclusion that it would produce a higher standard of justice for trials. I have received no convincing arguments on the merits in favour of a 3 judge court. Some have suggested that it might be perceived as fairer. I do not believe that is a sufficient reason given the existing experience and expertise of single judge courts in Northern Ireland. I have looked at the Special Criminal Court in Ireland, and have taken that into account in reaching this conclusion. Some lawyers told me they would regard one judge as a more reliable tribunal of fact than three.
27. The bar for rebutting the presumption of jury trial and entry into a new non-jury system should be set moderately high. I consider that within the overall consideration of the interests of justice an appropriate set of requirements to be established on the balance of probabilities by the prosecution would include –
 - (a) reasonable grounds to believe that the jury would be the subject of intimidation or interference;

- (b) reasonable grounds to believe that the jury would fear intimidation or interference so as potentially to affect the outcome of the trial;
- (c) reasonable grounds to believe that there would be disruption of the proceedings or of access to or from the court with the intention of affecting the outcome of the trial.

28. I consider that there is a particular need in Northern Ireland to protect juries. In England and Wales there remains a right for the defence to request from the court details of the names, addresses and occupations of the jury panel for a Crown Court sitting. Enquiry has revealed that this right is exercised extremely rarely (I know of no instance in recent years). All the defence know of jurors is their names when called to the jury box. There are no peremptory challenges available to the defence. The prosecution retains the right of stand by, subject to restrictive guidelines maintained by the Attorney General since 1988.
29. In Northern Ireland defence solicitors routinely inspect jury panel lists, and are able to obtain the names, addresses and occupations of those summoned for jury service. Each defendant has a right to 12 peremptory challenges, and the prosecution has the right to stand jurors by without giving reasons.
30. I am strongly of the view that a principle of anonymity for jurors in Northern Ireland would give considerable reassurance, and would be proportionate to risk. In addition, there should be some courts where more serious cases could be tried with the jury entirely unseen from the public seating areas. If jurors could attend court, knowing that their names, addresses and occupations were unknown to the defence and their connections, and that in serious cases their faces were not observable from the public seating, that would provide considerable reassurance. I see no difficulty about this. Each juror could simply be referred to by number when they came to take their jury oath.
31. I believe that the anonymisation of jurors and associated steps for their protection would diminish the risk of perverse verdicts.
32. The pool of jurors should be as wide as possible, representative of the community as a whole. Even judges now serve on juries in England and Wales, including in at least one instance a member of the Court of Appeal. The same principles should be applied in Northern Ireland: it should become difficult to be excused from service.
33. In order to ensure that disqualified persons do not sit on juries, I suggest that the Court Service be given the authority and responsibility to obtain checks on the criminal records of all selected for jury service. If anything of concern were to appear, it should be given to the judge and presented to the parties as anonymised information for discussion in court. In addition, judges and advocates in each case, as is common already, would be able to prepare short case specific questionnaires for jurors when appropriate. Peremptory challenges,

prosecution stand by, and access by the parties to the details of persons on the jury panel would no longer be necessary and should be removed. The ending of defence peremptory challenges in the courts of England and Wales has not diminished the integrity of the jury system.

34. The above would require a new Juries Order.
35. In addition, I suggest the preparation of a new and periodically updated DVD presentation for all jury panellists on their first attendance at court. This should give reassurance about the level of protection provided by the criminal justice system. The greatest concern for juries in Northern Ireland is the fear of intimidation, rather than actual intimidation.
36. It should be a criminal offence in Northern Ireland to be in possession of a camera of any kind in a court room, without the leave of the judge (for example, for witnesses producing camera mobile telephones as part of the evidence in a case). It should also be an offence for any person to give personal information about any serving juror, without the permission of the court.

I hope that the above meets the request made of me. If I can be of further assistance in this matter please do not hesitate to contact me.

Alex Carlile

Further clarification was sought from Lord Carlile on some of the points he made about juries. The following reply was received:

From Lord Carlile of Berriew Q.C.

My reply to your specific points is as follows:

Widening the jury pool is essential to dilute the risk of perverse verdicts. Normalisation includes a random jury selected from the community as a whole. I would regard it as discriminatory to exclude people of good character who happen to have been members of the armed forces. Why should members of Sinn Fein be eligible but not former service personnel? It is even possible that there could be a challenge on Human Rights Convention grounds if otherwise eligible people were excluded. In my view now is exactly the right time for widening the jury pool, and I have heard no opposition to that view.

Your understanding of my views in paragraph 33 is correct, so far as checks on criminal records are concerned.

"Anything of concern" may arise from the records check revealing non-disqualifying convictions, for example spent benefit fraud fines in the context of a trial for fraud on the public service. This is an example of a consideration which, if known, might in certain circumstances give rise to discussion in GB courts.

Pre-trial questionnaires for jury panels are extremely common in longer cases in England and Wales. I have not appeared in a case in which some questions have not been asked for at least 10 years. I have taken the views of some bar colleagues on this point and they all agree. It is regarded by judges as good practice, as it makes it less likely that jurors will be lost during the trial. Typically, a list of the names of witnesses is read to them; and they are asked if any of them work in places connected with the trial or issues.

Challenge for cause would be exactly as in England and Wales now. They can arise where a juror is seen to behave badly, or to be wearing an inappropriate badge or other sigil, or where a juror expresses to the judge some concern about the trial or their own position. Anonymity would deprive the defence of nothing that names provide in England and Wales. The challenge position would be the same as here at present. Names add nothing significant.

In my view personal juror information should be withheld from all parties, save on the initiative of the judge.

Please do not hesitate to ask if I can advise further.

Yours sincerely

Alex Carlile

ANNEX B - Equality Screening Assessment

The requirements of **section 75 of the Northern Ireland Act 1998** require public authorities to have due regard to the need to promote equality of opportunity and the desirability of promoting good relations between the nine categories listed below:

- Religious belief
- Political opinion
- Race or ethnic group
- Age
- Marital status
- Sexual orientation
- Gender
- Disability
- Dependency

The Northern Ireland Office is fully committed to promoting equality of opportunity and good community relations in all its policies. As part of this process, and in line with the Department's Equality Scheme, the Northern Ireland Office has conducted an Equality Screening Assessment of the proposed reforms to the jury system and new system of non-jury trial. No significant adverse impact was detected in relation to any of the nine categories listed above in the screening.

In line with the Department's Equality Scheme, this screening exercise is published for consultation. The consultation closes on **6 October 2006**.

NORTHERN IRELAND OFFICE

EQUALITY SCHEME SCREENING FORM

Function I.D : Future system of non-jury trial for Northern Ireland

Screened By Security Policy and Operations Division

Date July 2006

Questionnaire

1A Does the function referred to above involve any action which is likely to have an adverse differential impact on a person on the basis of their:

	YES	DON'T KNOW	NO
Gender	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sexual Orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Religion	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Political opinion	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Disability (physical, mental, learning)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Race or ethnic origin (includes Travellers)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dependant Responsibilities / dependency	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Marital status	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

1B If the answer to any of the above is YES please briefly describe the impact and the affected group

The test for non-jury trial will specify those circumstances in which a person will receive non-jury trial. However this will be focused on need (in order to protect jurors from intimidation) and the quality of justice in non-jury trials will be at least as good as that in jury trials.

2A Does the function referred to omit any action, the addition of which would promote the equality of opportunity, social inclusion or welfare of any person on the basis of:

	YES	DON'T KNOW	NO
Gender	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Sexual orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Religion	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Political opinion	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Disability (physical, mental, learning)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Race or ethnic origin (includes Travellers)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Dependant Responsibilities / dependency	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Marital status	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other (please specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

2B If the answer to any of the above is YES please identify briefly the suggested amendment and beneficial impact:

n/a

3A Is there any conflict between the rights of any one person and those of any other person contained within the effects of this function?

YES	DON'T KNOW	NO
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

3B If YES please specify

Under Article 6 of the ECHR, everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. It is important to note that Article 6 does not create a right to jury trial. Government has assessed that there is a risk that in certain types of cases a defendant may not receive a fair trial before a jury because there could be paramilitary and community-based pressures on the jury. This new system will help to ensure that all defendants can receive a fair trial and that members of the public are protected from intimidation (Article 2 and Article 5 of the ECHR). The proposed system is compliant with Article 6.

4 If an adverse impact has been identified how would you categorise it:

Significant Impact – Must be addressed	<input type="checkbox"/>	}	Priority 1
Moderate / Low Impact – Readily addressed	<input type="checkbox"/>)	
Significant Impact – Difficult to address in current circumstances	<input type="checkbox"/>	}	Priority 2
Moderate Impact – Not readily addressed	<input type="checkbox"/>)	
Low Impact – Not readily addressed	<input type="checkbox"/>		Priority 3

5. SCREENING ANALYSIS

Screening aims to identify those policies, functions or duties which are likely to have the greatest impact on equality of opportunity and community relations.

5.1

Is there any evidence of higher or lower participation or uptake by different groups within any of the nine categories?
Please tick? **YES** [] **DON'T KNOW** [] **NO** []

If yes, give details:

Historically, the Diplock Court system has dealt with members of paramilitary organisations, who are strongly identified with particular political opinions and religious beliefs. However, the Diplock system has also included trials of persons for offences arising out of serious sectarianism and public order incidents. It may be that this pattern will continue, but it is not clear.

The statutory test will require an assessment of risk in every case and each case will be treated individually and judged on its merits. The system will not be weighted in favour of any one group or another. If non-jury trial is decided upon in any case it will be because it is considered necessary to counter the risk of a perverse verdict. Government considers it necessary to protect the safety of jurors who may be at risk from intimidation. Protections will be put in place to ensure that the system operates transparently and any decision for non-jury trial is challengeable.

5.2

Is there any evidence that particular groups have different needs, experiences, issues and priorities in relation to the particular main policy area?
(please tick) **YES** [] **DON'T KNOW** [] **NO** []

If yes, give details:

5.3

Is there an opportunity to promote equality of opportunity or good relations by altering Policy?
(please tick) **YES** [] **DON'T KNOW** [] **NO** []

If yes, give details:

5.4

Have consultations in the past with relevant representative organisations or individuals within groups indicated that particular functions, policies or duties create problems that are specific to them?
(please tick) **YES** [] **DON'T KNOW** [] **NO** []

If yes, give details:

6. If the answer to any of the questions in this section is YES or DON'T KNOW, proceed to consideration as to whether to submit the function, policy or duty to a full impact assessment.

If the answer to all the above question is NO a full impact assessment is not required.

IMPACT ASSESSMENT REQUIRED:

YES []; NO [X]; DON'T KNOW []

NORTHERN IRELAND OFFICE

NORTHERN IRELAND COURT SERVICE

Screening of Policies

Reform Of Jury System

Date Policy Screened: Thursday 3rd August 2006

Policy Screened by: Brian Sinnamon, Naomi Callaghan, Angela Bell

Facilitated by: Iris Wilson

CONTENTS

- 1 GENERAL GUIDANCE ON SCREENING OF POLICIES**

- 2 SUMMARY OF POLICY**

- 3 SUMMARY OF AVAILABLE INFORMATION**

- 4 GUIDANCE ON COMPLETING QUESTIONNAIRE**

5 SCREENING FORM

1. General guidance on screening of policies

Section 75 of the Northern Ireland Act places new duties on Public Authorities to promote equality of opportunity and good relations. The statutory duty makes equality central to the whole range of public policy decision making and should:

- Contribute to better decisions being made by public authorities
- Encourage greater openness in government
- Greater transparency in decision making
- Assist public authorities to effectively and efficiently address issues of equality
- Assist in complying with the law.

The Northern Ireland Court Service arrangements for complying with this requirement are set out in our Equality Scheme. Section 3.3 of the Scheme outlines our commitment in line with the Commissions guidance to Screen all our policies to identify those with equal opportunity implications.

It is important that when considering the impact of policies on the promotion of equality of opportunity, due regard is given to the need to promote **equality of opportunity** for all categories of persons specified in Section 75. (The Nine Categories)

These are:

- Persons of different religious belief
- Persons of different political opinion
- Persons of different racial group
- Persons of different age
- Persons of different marital status
- Persons of different sexual orientation
- Men and women generally
- Persons with a disability and persons without
- Persons with dependants and persons without

The relevant categories of persons between whom **good relations** are to be promoted are

- Persons of different religious belief
- Persons of different political opinion
- Persons of different racial group

Each Policy will be considered against the following criteria:

- Is there evidence of higher or lower participation or uptake by different groups?
- Is there evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy?
- Is there an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with others in government or in the larger community
- Have consultations with relevant groups, organisations or individuals indicated that particular policies create problems, which are specific, to them.

Section 5 is a Screening Form that should facilitate your considerations.

2. Summary of Policy

Proposals for Reform of Jury System in Northern Ireland.

3. Summary of available information

Replacement Arrangements for the Diplock Court System – an NIO consultation paper.

4. Guidance on completing questionnaire

Before completing the questionnaire you should ensure that you have a clear understanding of the aim of the policy in question.

Questions 1-4 deal specifically with the criteria set out at section 2. Before answering these questions you should have considered fully any information available which may have impacted on the development of the policy.

Having considered the available information you should again think through the policy and its purpose to identify whether there is anything expressed within it which is likely to have an adverse differential impact on anyone belonging to any group within the nine categories, **(Question 5)**, or alternatively, any action omitted, the addition of which would promote equality of opportunity, **(Question 6)**.

If the answer to one or more of these questions is **Yes** you are asked to make a determination as to whether or not the policy should be subject to a full equality impact assessment **(Question 7)**

It should be borne in mind that a **Yes** answer does not automatically trigger an equality impact assessment. Unfortunately there is no guidance available on what constitutes adverse differential impact, although it should be noted that differential impact could exist between groups but not necessarily be adverse.

If the answer to all the questions is **No** there is then clearly no requirement to subject the policy to a full equality impact assessment.

If however the answer to **Question 7** is **Yes**, a full equality impact assessment is required, a view must then be reached on the priority issues for equality impact assessment, **(Question 8)**.

Priorities will be based on the following factors:

- Relevance to Social Need
- Effect on peoples daily lives
- Effect on economic, social and human rights
- Scale of expenditure incurred by the policy
- Cultural or political impact on people

Finally, remember that the purpose of this screening is to identify any equality implications within the policy; it is not to carry out a full impact assessment. Use your knowledge of the policy together with the additional available information to help you

provide an informed indication of whether a full equality impact assessment is or is not necessary.

SCREENING FORM

Question 1

Is there any evidence of higher or lower participation or uptake by different groups within any of the nine categories? Please tick relevant box

NO	<input checked="" type="checkbox"/>
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Please go to next question

YES	<input type="checkbox"/>
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Please complete the box below

If Yes please give details:

Question 2

Is there any evidence that different groups have different needs, experiences, issues and priorities in relation to the particular policy? Please tick relevant box

NO	<input checked="" type="checkbox"/>
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Please go to next question

YES	<input type="checkbox"/>
-----	--------------------------

Please complete the box below

If Yes please give details:

Question 3

Is there an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with others in government or in the larger community Please tick relevant box

NO	<input checked="" type="checkbox"/>
----	-------------------------------------

Please go to next question

YES	<input type="checkbox"/>
-----	--------------------------

Please complete the box below

If Yes please give details:

Question 4

Have consultations with relevant groups, organisations or individuals indicated that particular policies create problems which are specific to them **Please tick relevant box**

NO	<input checked="" type="checkbox"/>
----	-------------------------------------

Please go to next question

YES	<input type="checkbox"/>
-----	--------------------------

Please complete the box below

If Yes please give details:

Question 5

Is there anything expressed within the policy that is likely to have an adverse differential impact on anyone belonging to any group within the nine categories? **Please tick relevant box**

NO	<input checked="" type="checkbox"/>
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Please go to next question

YES	<input type="checkbox"/>
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Please complete the box below

If Yes please give details of the impact and the affected group:

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Question 6

Is there any action omitted from the policy, the addition of which would promote equality of opportunity for anyone belonging to any group within the nine categories? Please tick relevant box

NO	<input checked="" type="checkbox"/>
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Please go to next question

YES	<input type="checkbox"/>
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Please complete the box below

If Yes please give details of the amendment and the beneficial impact:

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Question 7

If the answer to any of the preceding questions is Yes, please indicate whether the policy should be submitted to a full equality impact assessment Please tick relevant box

NO	<input checked="" type="checkbox"/>
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YES	
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Question 8

If the answer to Question 7 is Yes please consider the priority for equality impact assessment

Please tick relevant box

Significant Impact – Must be addressed

Moderate Impact – Readily addressed

Low Impact – Not readily addressed