



# Bill Essentials

## **The Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017**

*An Act to amend the Offences Against the Person Act, Chap. 11:08 and the Criminal Procedure Act, Chap. 12:02.*

11th Parliament

Introduced in the Senate on March 7, 2017

Introduced by Hon. Faris Al-Rawi, MP - Attorney General

## Background and Purpose of the Bill

1. **The Miscellaneous Provisions (Trial by Judge Alone) Bill, 2017** (“the Bill”) was first introduced by Hon. Faris Al Rawi, MP, Attorney General, in the Senate on the March 7, 2017.
2. The purpose of the Bill is to amend both the **Offences Against the Person Act, Chap. 11:08** and the **Criminal Procedure Act, Chap. 12:02**.

## Key Features of the Bill

### THE OFFENCES AGAINST THE PERSON ACT

3. The **Offences Against the Person Act, Chap. 11:08** is amended by **Clause 3** of the Bill to accommodate trial by judges without a jury:

Current Section of the Offences Against the Person Act	Amendments made by the Bill
<p>Section 4A (6): Where on a trial for murder...</p> <p>the Court shall require the jury to declare whether the accused was so convicted by them on the ground of such abnormality of mind and, if the jury declare that the conviction was on that ground, the Court may, instead of passing such sentence as is provided by law for that offence, direct the finding of the jury to be recorded, and thereupon the Court may order such person to be detained in safe custody, in such place and manner as the Court thinks fit until the President’s pleasure is known.</p>	<p><b>Section 4A (6):</b> Where on a trial for murder...</p> <p>the Court shall <b>require the jury or the Judge as the case may be, to declare whether the accused was so convicted by them or by him on the ground of such abnormality of the mind and, if the jury declare or the Judge declares that the conviction was on that ground, the Court may instead of passing such sentence as is provided by law for that offence, direct the finding of the jury or the Judge to be recorded,</b> and thereupon the Court may order such person to be detained in safe custody, in such place and manner as the Court thinks fit until the President’s pleasure is known.</p>
<p>Section 4A (7): The Court shall as soon as practicable, report the finding of the jury and the detention of the person to the President who shall order the person to be dealt with as a mentally ill person in accordance with the laws governing the care and treatment of such persons or in any other manner he may think necessary.</p>	<p><b>Section 4A (7):</b> The Court shall as soon as practicable, report the finding of the jury <b>or the Judge as the case may be,</b> and the detention of the person to the President who shall order the person to be dealt with as a mentally ill person in accordance with the laws governing the care and treatment of such persons or in any other manner he may think necessary.</p>

<p>Section 4B: Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury; and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.</p>	<p><b>Section 4B:</b> Where on a charge of murder there is evidence on which the jury <b>or the Judge as the case may be</b>, can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury <b>or the Judge as the case may be</b>,; and in determining that question the jury <b>or the Judge as the case may be</b>, shall take into account everything both done and said according to the effect which, in <b>their or his opinion</b>, it would have on a reasonable man.</p>
<p>Section 19: If, upon the trial of any person for an offence under section 17, the jury are not satisfied that such person is guilty of that offence but are satisfied that he is guilty of an offence under section 18, then and in every such case the jury may acquit the accused of the offence under section 17 and find him guilty of the offence under section 18 and thereupon he shall be liable to be punished in the same manner as if convicted upon an indictment for the offence under section 18.</p>	<p>This Section is <b>repealed entirely</b> with a new <b>Section 19</b> with reads:</p> <p><b>If, upon the trial of any person for an offence under section 17-</b></p> <p><b>(a) the jury are not satisfied that such person is guilty of that offence but are satisfied that such person is guilty of an offence under section 18; or</b></p> <p><b>(b) the Judge is not satisfied that such person is guilty of that offence but is satisfied that such person is guilty of an offence under section 18,</b></p> <p><b>then and in every such case the jury or the Judge may acquit the accused for the offence under section 17 and find him guilty of the offence under section 18 and thereupon he shall be liable to be punished in the same manner as if convicted upon an indictment for the offence under section 18.</b></p>
<p>Section 58: If any woman is delivered of a child, every person who,... the jury by whose verdict the person was acquitted may find, in case it so appears in evidence, ...</p>	<p><b>Section 58:</b> If any woman is delivered of a child, every person who... the jury <b>or the Judge as the case may be</b>, by whose verdict the person was acquitted may find, in case it so appears in evidence, ...</p>

## THE CRIMINAL PROCEDURE ACT

4. **Clause 4** of the Bill amends the **Criminal Procedure Act, Chap. 12:02**, the effect of which will give the accused the option of being tried by judge and jury or being tried by a judge alone.

### *Mode of trial*

5. **Section 6** of the Act is repealed and substituted with a new Section which provides that persons committed to trial shall be tried on indictment by a Judge and jury but can be tried by a Judge in the absence of a jury if preferred by the accused and if the Court is satisfied that:
- i. **The accused person has sought and received advice from an Attorney-at-law in relation to a trial by a Judge alone;**
  - ii. **In the case of a joint trial, all other accused persons have elected to be tried by a Judge alone; and**
  - iii. **Where two or more charges are to be tried together, the accused person has elected to be tried by a Judge alone in respect of all of the charges.**

### *Jurisdiction*

6. A new **Section 6A** is inserted after **Section 6** of the **Criminal Procedure Act** which provides for the jurisdiction of the Judge in trials excluding the jury. In a trial by a Judge alone the Judge will have the same power, authority and jurisdiction which he would have in a trial by jury and he would also have the power to determine any question and to make any finding which would have been required to be determined by a jury.

### *Verdicts*

7. A new **Section 6B** is also inserted which provides that references to a jury and its verdicts and findings in other written laws shall be read with such adaptations to bring the references into conformity with a trial by a Judge alone, as the case may be.

### *Written Judgments*

8. A new **Section 42B** is inserted after **Section 42A** which makes determinations as to matters at the conclusion of the trial:
- i. **When the case on both sides is closed, the Judge shall give a written judgment stating the reasons for the conviction or acquittal of the accused person at the time of conviction or acquittal, or as soon as reasonably practicable thereafter.**
  - ii. **A judgment by a Judge in any such case shall include the principles of law applied by the Judge and the findings of fact on which the Judge relied.**
  - iii. **If any other law requires a warning to be given to a jury in any such case, the Judge must take the warning into account in dealing with the matter.**

### *Offence of Infanticide*

9. **Section 63 (2)** is repealed and substituted with a new **Subsection (2)** in which adaptations were made to accommodate trial and the subsequent verdict by a Judge alone in cases of infanticide.

### *Arraignment and Trial of Insane Persons*

10. **Section 64** is repealed and substituted by a new Section which empowers a judge to find whether a person is or is not insane and unfit to take his trial, upon the review of written or oral evidence of at least two medical practitioners.
11. **Section 65 (1)** is deleted and replaced by a new **Subsection (1)** which states that a jury directed by the Court or Judge, before whom an apparent insane accused is tried, must abstain from finding a verdict upon indictment and instead return a verdict of insanity.

### Comparative Legislation in Other Jurisdictions

#### Australia – The Criminal Procedure Act 1986

12. In 1990 **Section 132 of the Criminal Procedure Act, 1986** (“the Act”) was amended to allow for a trial by a Judge alone where an accused person or the prosecutor applies to the Court to make such an order.
13. There are certain considerations to be made by the Court when such an application is made:
  - i. Where both the accused person and the prosecutor agree to the accused person being tried by a Judge alone, the Court must make the order.
  - ii. If the accused person does not agree to being tried by a Judge alone, the court must not make a trial by judge order.
  - iii. If the prosecutor does not agree to the accused person being tried by a Judge alone, the court may still make such an order if it considers that it is in the interests of justice to do so.
  - iv. The court may refuse to make an order (without undermining the means by which an order may be made in the interests of justice) if it considers that the trial will involve a factual issue that requires the application of objective community standards, including (but not limited to) an issue of reasonableness, negligence, indecency, obscenity or dangerousness.
  - v. The court must not make a trial by judge alone order unless it is satisfied that the accused person has sought and received advice in relation to the effect of such an order from an Australian legal practitioner.
14. An application for trial by Judge alone must not be made in a joint trial unless all the other accused persons also made the application and each application is made in respect of all

offences with which the accused persons in the trial are charged that are being proceeded with in the trial.

15. A Judge who tries criminal proceedings without a jury may make any finding that could have been made by a jury on the question of the guilt of the accused person and any such finding has the same effect as a verdict of a jury.
16. A judgment by a Judge in any such case must include the principles of law applied by the Judge and the findings of fact on which the Judge relied.

### United Kingdom - Criminal Justice Act 2003

17. **Section 44-50** of the **Criminal Justice Act** provides for trials on indictment to be conducted without a jury where an application is made by the prosecution for serious/complex fraud cases and in cases where there is danger of jury tampering.
18. Two conditions must be satisfied before an order may be made for a trial without a jury in cases where there is danger of jury tampering:
  - i. The judge must be satisfied that there is evidence of a real and present danger that jury tampering would take place; and
  - ii. The judge must be satisfied that, notwithstanding any steps (including the provision of police protection) 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 the trial to be conducted without a jury.
19. The Act also can apply to discharge a jury without an application where there has in fact been jury tampering. In order to discharge a jury the judge must be satisfied that that jury tampering has taken place and that to continue the trial without a jury would be fair to the defendant or defendants.
20. Where a trial is conducted or continued without a jury, the court is to have all the powers, authorities and jurisdiction which the court would have had if the trial had been conducted or continued with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).
21. Where the court convicts a defendant in a trial that was conducted or continued without a jury, the court must give a judgment which states the reasons for the conviction at the time of the conviction, or as soon as reasonably practicable after the judgment.

22. The first judge alone trial in the United Kingdom took place in the case of ***R v Twomey, Blake, Hibberd and Cameron***<sup>1</sup>. Prior to this trial there were numerous attempts to bring the men to justice<sup>2</sup> and the decision to have a judge alone trial was taken in this case to nullify the risk of jury tampering. The case went all the way the **European Court of Human Rights**<sup>3</sup> which rejected the submission that there were any breaches to the defendant's right to a fair trial under **Article 6** of the **European Convention of Human Rights**<sup>4</sup>.

### New Zealand - Criminal Procedure Act 2011

**23. Section 102** of this Act allows for a trial to be done by a judge without a jury made by order, where an application has been made by the prosecutor or on the judge's own motion, in cases that are likely to be long and complex. However, the section does not apply if the defendant is charged with an offence for which the maximum penalty is imprisonment for life or imprisonment for 14 years or more. **Section 103** of the Act applies to Judge alone trials in cases involving intimidation of a juror or jurors where an application is made by the prosecutor.

24. The court must not make an order for trial by Judge alone in long and complex cases unless the prosecutor and the defendant have been given an opportunity to be heard in relation to the application and, following such hearing, the court is satisfied that all reasonable procedural orders (if any), and all other reasonable arrangements (if any), to facilitate the shortening of the trial have been made, but the duration of the trial still seems likely to exceed 20 sitting days that, in the circumstances of the case, the defendant's right to trial by jury is outweighed by the likelihood that potential jurors will not be able to perform their duties effectively.

25. In long and complex cases, if the defendant is one of 2 or more co-defendants to be tried together, all of them must be tried before a Judge with a jury unless an order for all of them to be tried by a Judge without a jury is applied for and made.

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<sup>1</sup> (No 2) [2011] EWCA Crim 8

<sup>2</sup> Jennie Vinnac (Assessed by Dr Penny Darbyshire, Kingston University), "***The Use Of Judge-Along Trials In Cases Of Jury Tampering, Case Comment Of R V T And Others [2010]***," 2011. Accessed March 8, 2017 <http://elsareview.org/the-use-of-judge-alone-trials-in-cases-of-jury-tampering-case-comment-of-r-v-t-and-others-2010/>

<sup>3</sup> **Twomey, Cameron and Guthrie v. The United Kingdom** [2013] ECHR 577, <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-121271&filename=001-121271.pdf>

<sup>4</sup> [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

26. To order a trial by Judge alone on cases involving intimidation jurors the Court must be satisfied that intimidation of any person or persons who may be selected as a juror or jurors has occurred, is occurring, or may occur and that the effects of that intimidation can be avoided effectively only by making an order.

### Canada – The Criminal Code Act 1985

27. An accused has certain options when he is before a justice charged with an indictable offence (other than an offence listed in **Section 469** of the Act), and the offence is not one over which a provincial court judge has absolute jurisdiction:

- i. He can elect to be tried by a provincial court judge without a jury and without having had a preliminary inquiry;
- ii. He may elect to be tried by a judge without a jury; or
- iii. He may elect to be tried by a court composed of a judge and jury.

28. If the accused does not prefer one of the options afforded to him he is deemed to have elected to be tried by a court composed of a judge and jury.

29. In the Canadian case of *R. v. Turpin*<sup>5</sup> the question arose as to whether the Criminal Code, which gives an accused person the right to elect to be tried before a judge alone, violates the requirement for a murder trial to be conducted in front of a judge and jury under **s. 11(f)** of the **Canadian Charter of Rights and Freedoms**<sup>6</sup>. It was held that there was no violation by the Supreme Court of Canada.

## References

### Legislation Mentioned

- Offences against the Person Act, Chap. 11:08  
[http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/11.08.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.08.pdf)
- Criminal Procedure Act, Chap. 12:02  
[http://rgd.legalaffairs.gov.tt/laws2/alphabetical\\_list/lawspdfs/12.02.pdf](http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/12.02.pdf)
- Australia - Criminal Procedure Act, 1986  
<http://legislation.nsw.gov.au/inforce/1a6c82a4-3f87-42e5-d426-ece14acf1cca/1986-209.pdf>

<sup>5</sup> [1989] 1 S.C.R. 1296

<sup>6</sup> Decision of *R. v. Turpin*: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/458/index.do>



- **United Kingdom - Criminal Justice Act 2003**  
[http://www.legislation.gov.uk/ukpga/2003/44/pdfs/ukpga\\_20030044\\_en.pdf](http://www.legislation.gov.uk/ukpga/2003/44/pdfs/ukpga_20030044_en.pdf)
- **(UK) Protection of Freedoms Act 2012**  
[http://www.legislation.gov.uk/ukpga/2012/9/pdfs/ukpga\\_20120009\\_en.pdf](http://www.legislation.gov.uk/ukpga/2012/9/pdfs/ukpga_20120009_en.pdf)
- **New Zealand - Criminal Procedure Act 2011**  
<http://legislation.govt.nz/act/public/2011/0081/latest/DLM3360141.html>
- **Canada – The Criminal Code Act 1985**  
<http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec482>

#### Other Useful Sources

- **(Australia) Judicial Commission of New South Wales: Trial by Judge Alone Procedure**  
[https://www.judcom.nsw.gov.au/publications/benchbks/sexual\\_assault/trial\\_procedure.html#p1-110](https://www.judcom.nsw.gov.au/publications/benchbks/sexual_assault/trial_procedure.html#p1-110)
- **(UK) Crown Prosecution Service: Legal Guidance on Non- Jury Trials**  
[http://www.cps.gov.uk/legal/l\\_to\\_o/non\\_jury\\_trials/](http://www.cps.gov.uk/legal/l_to_o/non_jury_trials/)

#### Useful Articles

- **A Law Faculty Publication entitled "Twelve angry peers or one angry judge: An analysis of judge alone trials in Australia" by Jodie O'Leary**  
[http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1406&context=law\\_pubs](http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1406&context=law_pubs)
- **A House of Commons Library Research Paper on "The Criminal Justice Bill: Juries and Mode of Trial"**  
[https://www.google.tt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&cad=rja&uact=8&ved=0ahUKEwi82bGojMrSAhWCOSYKHSG6BRoQFghbMAk&url=http%3A%2F%2Fresearchbriefings.files.parliament.uk%2Fdocuments%2FRP02-73%2FRP02-73.pdf&usg=AFQjCNGn707QyHtDkx9epMBO0\\_iV0Sd5FQ](https://www.google.tt/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&cad=rja&uact=8&ved=0ahUKEwi82bGojMrSAhWCOSYKHSG6BRoQFghbMAk&url=http%3A%2F%2Fresearchbriefings.files.parliament.uk%2Fdocuments%2FRP02-73%2FRP02-73.pdf&usg=AFQjCNGn707QyHtDkx9epMBO0_iV0Sd5FQ)



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