

**REPORT OF THE INDEPENDENT REVIEWER**

**JUSTICE AND SECURITY (NORTHERN IRELAND)  
ACT 2007**

**THIRD REPORT: 2009-2010**

**Robert Whalley CB**

**November 2010**

The Rt Hon Owen Paterson MP  
Secretary of State for Northern Ireland

### **Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007**

By his letter to me of 22 May 2008, your predecessor, the Rt Hon Shaun Woodward MP, appointed me as Independent Reviewer under section 40 of the Justice and Security (Northern Ireland) Act 2007.

Mr Woodward set out my Terms of Reference thus:

*“The overall aim of the Independent Reviewer will be, in accordance with the Act:*

- *to review the operation of sections 21 to 32 of the Act and those who use or are affected by those sections;*
- *to review the procedures adopted by the GOC NI for receiving, investigating and responding to complaints;*
- *and to report annually to the Secretary of State*

*The Reviewer will act in accordance with any request by the Secretary of State to include in a review specified matters over above those outlined in Sections 21 to 32 of the Act and the GOC remit outlined above.*

- *The Reviewer may make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act”.*

I submitted my first report to Mr Woodward on 31 October 2008 and my second on 7 November 2009. Both are available on the Parliamentary website:

[Link to First Report](#)

[Link to Second Report](#)

I now have pleasure in submitting to you my third report, which covers the period from 1 August 2009 to 31 July 2010.

**My conclusions are set out in Part 7, with recommendations in paragraph 306.**

Robert Whalley

**ROBERT WHALLEY CB**

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## Part 1: The Role of the Reviewer

### *The scope of this review*

1. This is my third report, which covers the period from 1 August 2009 to 31 July 2010. For consistency and ease of reference, the third report follows a similar sequence to its predecessors.
2. Parts 1 and 2 are background material to the review process.
3. Parts 3 and 4 discuss the political and security background over the past year against which the main part of this report is written.
4. Part 5 reviews police and military activity this year under the powers in question.
5. Part 6 examines complaints against the armed forces.
6. My conclusions are set out in Part 7, with recommendations in paragraph 306.

### *What this review is about*

7. Under section 40 (Review) of the Justice and Security (Northern Ireland) Act 2007, the Secretary of State is required to appoint a “reviewer” to examine the operation of sections 21 to 32 and Schedules 3 and 4. I was appointed to this role on 22 May 2008.
8. For convenience, I summarise below the main provisions of section 40 (the review section) and sections 21 to 32 (the operative sections). As in previous years, more detail about the powers themselves is available in **Appendix A**.
9. The interplay between these powers and other powers, especially the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE”) and the Terrorism Act 2000, has once again been an issue of importance and will feature significantly in the narrative in this report.

### *Functions of the reviewer*

10. In brief, the functions of the reviewer appointed under section 40 are threefold:

- The operation of sections 21 to 32 of the Act, whose purpose was described by the previous Government in 2007 in these terms:

*“This Act provides additional powers for the police and the military. These include powers of entry, search and seizure that go over and above common law and existing statutory powers available to the police, for example those granted by the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE”). Since the armed*

*forces have no statutory powers above those of ordinary members of the public, they require specific legislative provision in order to stop, search and arrest persons, to enter premises and to seize items. A compensation scheme is provided for in respect of damage or loss caused by the exercise of powers in the Act”.*

- The procedures adopted by the General Officer Commanding Northern Ireland (“GOC”) for receiving, investigating and responding to complaints. The GOC is the head of the armed forces in Northern Ireland and the reviewer’s remit therefore extends to the procedures adopted by the GOC for dealing with complaints.
  - Since January 2009 the post of GOC Northern Ireland has ceased to exist and has been subsumed under that of Brigadier 38 (Irish) Brigade. I have assumed that in practical terms the relationship between the senior military commander in Northern Ireland and the reviewer should continue essentially unchanged. That has also been the position which successive Brigadiers have helpfully taken and in consequence the practical arrangements have continued as before.
  - The reviewer’s role is set out more fully in section 40(6) so that he:
    - shall receive and investigate any representations about these procedures
    - may investigate the operation of these procedures in relation to a particular complaint or class of complaints
    - may require GOC to review a particular case or class of cases in which the reviewer considers that any of those procedures have operated inadequately
    - may make recommendations to GOC about inadequacies in those procedures, including inadequacies in the way in which they operate in relation to a particular complaint or class of complaints.
  - Any request of the Secretary of State to include in a review specified matters which need not necessarily relate to the operation of the additional police and military powers or the procedures for investigating military complaints. There have so far been no such requests.
11. The reviewer is placed under an obligation to conduct a review under the first two headings as soon as reasonably practicable after 31 July 2008 (that is, to cover the first year’s operation of the Act) and each subsequent 31 July thereafter. He must send the Secretary of State a report of each review, and the Secretary of State must lay a copy of each report before Parliament.
12. The powers in the Justice and Security Act are not subject to annual renewal. An annual report from an Independent Reviewer offers an opportunity to examine the detail of police powers and operations for the year in question and to look ahead. As before, I have considered carefully the invitation in my terms of reference to offer views on whether any of the powers should be repealed.

### **Powers: Sections 21 to 32 of the 2007 Act**

13. The powers under review are listed below and more fully in Appendix A, with a brief description of each. Also in Appendix A is the reference to any earlier legislation from which each power is drawn, for context and continuity.
14. The powers under review are:
  - **Section 21: Stop and question**
  - **Section 22: Arrest**
  - **Section 23: Entry**
  - **Section 24: Search for munitions and transmitters**
  - **Section 25: Search for unlawfully detained persons**
  - **Section 26: Premises: vehicles, &c.**
  - **Section 27: Examination of documents**
  - **Section 28: Examination of documents: procedure**
  - **Section 29: Taking possession of land, &c.**
  - **Section 30: Road closure: immediate**
  - **Section 31: Sections 29 and 30: supplementary**
  - **Section 32: Road closure by order**

### **Supplementary powers**

15. My terms of reference require me to review the operation of those sections of the 2007 Act set out above. Other supplementary powers are relevant to the main powers. They are not formally part of my remit but I refer to them when necessary. Some of them this year require substantive comment:
  - **Section 33: Exercise of powers**
  - **Section 34: Code of practice**
  - **Section 35: Code: effect**
  - **Section 36: Code: procedure for order**
  - **Section 37: Records** (*which places a duty on the Chief Constable of the Police Service of Northern Ireland to make arrangements for the keeping of records where police exercise powers under sections 21 to 26*).
  - **Section 38: Compensation**
  - **Schedule 3: Munitions and Transmitters: Search and Seizure** (*which is given effect by section 24*).
  - **Schedule 4: Compensation** (*which is given effect by section 38, but which relates to any exercise of powers under sections 21 to 32*).
  - **Section 41: Duration** (*which provides power for the Secretary of State to repeal sections 21 to 40 of the Act so that powers may be taken out of force as they become unnecessary*). *It is for the potential exercise of this power that my terms of reference invite me to make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act.*
  - **Section 42: Interpretation** (*which defines some of the terms used in sections 21 to 38 and Schedules 3 and 4*).

### ***Investigation of military complaints***

16. The investigative powers in relation to military complaints are set out above. My procedure this year has been similar to the first two reports. Detailed analysis and conclusions are in Part 6.

## **Part 2: The Review Process**

### ***Reviews of legislation against terrorism***

17. A review process to accompany legislation on terrorism has been followed since shortly after the enactment of measures in respect of Northern Ireland in 1973 and in Great Britain following the Birmingham pub bombings in 1974.
18. Since 2001 the main legislation on terrorism in the United Kingdom has been formally reviewed by The Rt Hon Lord Carlile of Berriew QC. In his most recent report in July 2010, Lord Carlile noted that he also acts in a non-statutory role as the independent reviewer of the new national security arrangements for Northern Ireland. He is also chair of the Northern Ireland Committee on Protection (NICOP), which has been established to determine the policy in relation to the provision of close armed protection to individuals living in Northern Ireland.
19. Lord Carlile's remit in relation to legislation relates to the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. Since these powers cover the United Kingdom as a whole, they apply in Northern Ireland in the same way as they do in Great Britain. They exist to deal with terrorism from whatever source and in whatever manifestation, and they apply in Northern Ireland both to international terrorism and to terrorism associated with Northern Ireland itself.
20. Part VII of the Terrorism Act 2000 applied solely in Northern Ireland. With its repeal, powers in relation to the police and the armed forces have effectively been continued in the Justice and Security Act, which applies in Northern Ireland alone. These are the powers which fall to me to review.
21. They apply to a broad range of threats to stability in Northern Ireland as a whole, as the then Secretary of State made clear when moving the Second Reading of the Bill in December 2006, and for that reason I have, as in previous years, examined their operation in relation to each of the threats which Mr Hain identified then. The Government's opening speech on Second Reading of a Bill is invariably the best way to establish the strategic intention of new legislation, and it should be a constant point of reference in successive years to assess whether the original intentions and requirements continue to hold good in the light of events and experience.

## ***The review process in the Justice and Security Act and its linkage with the Terrorism Act***

22. Police powers in Northern Ireland can be found in at least three places – the Terrorism Act 2000, the Justice and Security Act 2007 and the PACE Order. Each of these three powers has a different oversight mechanism. The Public Order (Northern Ireland) Order 1987 may also be relevant. There is thus the need, if Parliament and the public are to be fully informed, for some linkage between the three. That has been obvious to me from the start and keeping close linkage between the various oversight processes remains a major commitment.
23. Lord Carlile and I have continued to work together closely to ensure that our two review processes are aligned in their approach and objectives. This has included holding joint meetings in Northern Ireland. We have both also benefited from shared working with the Northern Ireland Policing Board. This close working has been more than ever necessary this year because of significant developments in relation to police powers of stop and search.
24. Lord Carlile has referred to the overlap of his review with mine in paragraphs 7, 237 and 242 of his most recent report in July 2010. He has made clear that he has removed any separate consideration of Northern Ireland statutes and statistics from his report on the assumption that they will be covered in my review, which I have readily done.
25. As indicated above, police powers to stop and search in the Terrorism Act and related powers in the Justice and Security Act have been a focus of close attention this year. They are at the heart of a review of this kind in any case but have acquired additional complexity in recent months, as discussed more fully in Part 5.

### ***Timescales***

26. My first report covered the first year of the operation of the Justice and Security Act, to 31 July 2008. My second report covered the next calendar year – from 1 August 2008 to 31 July 2009. This third report therefore covers the calendar year from 1 August 2009 to 31 July 2010.

### ***Terminology***

27. The Government's national security strategy published in October 2010 says at paragraph 1.7: "*At home there remains a serious and persistent threat from residual terrorist groups linked to Northern Ireland*". I shall accordingly use the term "residual terrorist groups" where relevant in this report. The context in every case is Northern Ireland related terrorism.

### ***Review activity***

28. As in previous years, I have kept in constant touch with developments in Northern Ireland throughout the year. I have made thirteen visits, some of extended duration, to examine all aspects of the task and to make myself

available to a range of people at times of their convenience. I have also closely followed media reporting about events in Northern Ireland.

29. Lord Carlile and I have jointly met the Police Service of Northern Ireland and the Security Service. We have also met the Lord Chief Justice of Northern Ireland and senior judges and the new Attorney General for Northern Ireland, John Larkin QC.
30. I have held regular meetings throughout the year with the police, the Security Service and the armed forces. In addition to these regular meetings I have invited each of these services to offer me formal presentations setting out their views on the utility of these powers and on any continuing need for them. The purpose of this process is to enable me to consider afresh each year the case for retaining these powers. These formal presentations took place in September and October this year, giving sufficient time to form a strategic view on the trends of the previous year under review, without lending undue emphasis to any particular incident or sequence of events. They have been attended by senior officers.
31. In the course of the year I have met the new Chief Constable, Mr Matt Baggott CBE QPM BA (Hons), the Deputy Chief Constable, Mrs Judith Gillespie OBE, and three of the Assistant Chief Constables, Mr Drew Harris OBE, Mr Alistair Finlay and Mr Duncan McCausland OBE. I have also met several of the District Commanders. I have met representatives of the Superintendents' Association of Northern Ireland and the Police Federation for Northern Ireland.
32. I have given particular attention this year to stop and search powers. In visits to the police stations at Antrim Road and Grosvenor Road in Belfast and Strand Road in Londonderry I have discussed the operation of stop and search powers with officers of various ranks, and have examined the records kept in those stations. I have observed the training in stop and search for PSNI officers provided at the Police Training College at Garnerville and have talked to those giving and receiving the training.
33. The powers which I am required to review also involve public order. A discussion at the Parades Commission with the Chairman, Rena Shepherd, and the Secretary, Ronnie Pedlow, gave me a helpful overview of the issues relevant to this year's parading season. The Northern Ireland Office told me about the Consultation Paper on Public Assemblies, Parades and Protests in Northern Ireland published by the Office of the First Minister and Deputy First Minister on 20 April 2010. In the event, the legislation was never introduced and the arrangements for the management of parading remain the responsibility of the NIO.
34. My first hand observation of police activity in relation to the marching season included observation of the Twelfth of July parades in Newry, Lurgan and Waringstown. Later on that day I spent several hours with staff in the Gold Command suite at Castlereagh. On 14 August I observed marches in Londonderry and spent some time with community leaders. Prior to these

visits I toured round West Belfast and Londonderry and was told about the plans for the parades in detail.

35. The powers to close roads under section 32 have been used this year. I have made enquiries about the circumstances and have discussed their local impact.
36. I have made frequent visits to HQ 38 (Irish) Bde. I met the new Brigade Commander, Brigadier Ed Smyth-Osbourne, shortly after he had taken up command. I have also, as in previous years, kept in close touch with his policy, operational and legal staff. These regular meetings cover the specialist support which the armed forces provide, principally these days consisting of a capability to defuse explosive devices, plus liaison on public order support and specialist technical support. The armed forces operate in support of the police under Operation Helvetic, the successor since 1 August 2007 to Operation Banner.
37. In relation to military complaints, I have read through in full detail every file at HQ 38 (Irish) Bde relating to formal complaints this year and have discussed them with the staff who handle them. I have also visited the Joint Helicopter Command Flying Station Aldergrove (JHC (FS) ALD) since the military complaints relate principally to military aviation. I report on this in Part 6.
38. I have met community groups in areas affected by the actions of the police and armed forces to hear first hand their impressions of the situation in their home areas.
39. As before, I invited written formal comments from those who might have views about the issues under review by writing in March to those groups and organisations listed in **Appendix C**. I asked for their views under five headings: the security profile in Northern Ireland in the year under review, police operations under the Justice and Security Act, military support to the police under Operation Helvetic, public order and military complaints.
40. I have worked closely with the Northern Ireland Policing Board and the Police Ombudsman for Northern Ireland. The Human Rights Advisor to the Policing Board has shared with me the developing work on stop and search powers which is being done in the Human Rights and Professional Standards Committee.
41. I met the Justice Minister, Mr David Ford MLA, shortly after he took up his appointment following the devolution of policing and justice on 12 April 2010. As before, I invited all the political parties in Northern Ireland to meet me and have met the DUP, Sinn Fein, the SDLP, the UUP, the Alliance Party and the PUP. I have also met the former Minister of State for Northern Ireland, the Rt Hon Paul Goggins, MP for Wythenshawe and Sale East. I record the comments of the political parties in Part 3.
42. I have met the Independent Monitoring Commission and have discussed their reports with them, specifically their Twenty Third and and Twenty Fifth

Reports (May and November 2010) which give assessments of the current activities and state of preparedness of paramilitary groups covering most of the review period. I have also met the International Independent Commission for Decommissioning to hear what was effectively their final assessment on the decommissioning process. I have also met staff from the Organised Crime Task force. I have drawn upon the assessments of all these bodies in my comments in Part 4 on the security background.

43. I have met the British Ambassador in Dublin, Mr Julian King, and discussed the issues under review with him. I have also met the President of the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO), Sir Hugh Orde OBE QPM.
44. I am once again very grateful to all of those who have given me their time and advice. While views on the way forward differ, there is much consistency in the opinions of those whom I have consulted and in the clarity of the diagnosis offered by a wide range of observers and participants.
45. Under my terms of reference, I may make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act. I shall deal with this in Part 7. My judgments are informed principally by my assessment of security operations, which I deal with in Part 5. But, as in the past, it is helpful to note briefly the political and security background in Northern Ireland, which I will next do in Parts 3 and 4.

### **Part 3: The Political Background**

#### ***Preliminary***

46. The close connection between political progress and the security profile in Northern Ireland, which I have noted in previous reports, has continued to underpin my review. I invited all the political parties in Northern Ireland to offer me comments on the security situation and to meet me for discussion during the summer of 2010. I am once again grateful to those who responded: the DUP, Sinn Fein, the SDLP, the UUP, the Alliance Party and the PUP.
47. I have also met others able to offer me a range of opinion, especially British Irish Rights Watch, the Committee for the Administration of Justice and the Northern Ireland Human Rights Commission. I am similarly grateful to these bodies for their comments. I also contacted three other organisations concerned in human rights issues (Amnesty International, Justice and Liberty) but none offered me any comments.
48. In accordance with my terms of reference, my focus has continued to be on the utility of the powers under review, their operational effectiveness and their impact on communities in Northern Ireland. Operational aspects are therefore the main focus, with political developments in Northern Ireland forming part of the background.

### ***Devolution of justice and policing***

49. The views which the political parties have offered to me on security issues now of course reflect the circumstances brought about by devolution of justice and policing on 12 April 2010. It is already bringing a closer engagement in police strategy and tactics, clearly reflected this year in the comments which I have received.
50. Devolution offers the prospect of further progress towards normalisation in terms of local responsibility for policing, as Lord Carlile has noted. The International Monitoring Commission (IMC) in their Twenty-Third Report in May 2010 note that the devolution of policing and justice means that the criminal justice system is accountable to the people of Northern Ireland and as such offers a potent response to paramilitaries by encouraging greater public support and confidence.
51. The recipient of the independent review of the Justice and Security Act powers will continue to be the Secretary of State. But the role of the Justice Minister under the devolved settlement will be crucial because of his responsibility for the Police Service of Northern Ireland. The oversight role of the Northern Ireland Policing Board will also continue.

### ***The continuation of these powers: views of those consulted***

52. My terms of reference invite me to make recommendations on whether to repeal powers in the Act. I make my judgments largely on whether there is likely to be a continuing operational need for them.
53. The political parties, and other groups whom I have consulted, have offered me detailed comments on the operation of the powers this year and what this shows about any continuing need for them. I will summarise the outcome of these conversations here for the benefit of those who have to make the relevant decisions. As in the past, I have not attributed views to particular groups, so as to preserve confidences and encourage frank speaking.

### ***Perceptions of the residual terrorist threat***

54. All of those to whom I spoke commented on the seriousness of the threat posed by the activities of the residual terrorist groups, which they believed had grown significantly this year. No-one took the view that these groups had any following in the community, or that they would be able to generate any degree of support on political issues or affect the trajectory of political progress. But all were acutely aware of the threat to the lives of the general public and to police officers in particular. The activities of the residual terrorist groups were having a growing and adverse impact on community confidence. Many saw the security position as fragile.

### *Comments on the police response*

55. The increase in police stop and search activity, mainly the use of powers in the Terrorism Act, but also in the Justice and Security Act, was widely noted. There was recognition that powers of this kind were bound to be seen by some as contentious and needed therefore to be used with great care and only when absolutely necessary. Some of those to whom I spoke commented on the differing practice in relation to the use of stop and search powers in various parts of Northern Ireland. Some expressed concern that police operations, where for example there was a need to delay an immediate response to an alert so as to ensure adequate protection for police officers, risked losing community support. This was frustrating for those who wanted to make District Policing Partnerships work effectively.

### *Comments on handling public order situations*

56. So far as public order was concerned, the police handling of parades was the subject of detailed comment. Some took the view that the police response, particularly in the Ardoyne on 12 July and successive nights, might have been more forceful, while others believed that such an approach would have been counter-productive, especially in the heightened atmosphere this year. Others believed that while the main disturbances in the Ardoyne had been well-handled, police tactics at some of the other disturbances, such as at Broadway, had not been so effective.
57. Those whom I consulted were clear in their understanding that PSNI are responsible for handling public order disturbances. No-one saw any problems in principle in invoking mutual aid assistance from police forces in Great Britain if needed, on the basis that mutual aid would be primarily in a support role, releasing PSNI officers for front-line response.

### *Comments on continuation of the powers*

58. It remains the case that views diverge among the political parties as to whether these powers should be continued.
59. In some quarters the heightened security threat makes it unthinkable to envisage any change at present, nor could they envisage removing even those powers which are little used whether by the police or by the armed forces. Nothing should be done, in their view, to reduce the capacity of the police to counter the residual terrorist threat as effectively as possible or to weaken public confidence in the police's ability to do so. The fragility of the current situation makes such a conclusion inevitable, they believe, and it would be as well to plan accordingly.
60. Others continue to see the powers as a major stumbling block on the path of normalisation which will become even more significant in a post-devolution environment. They believe that their impact is felt disproportionately in nationalist areas and that the continuation of intrusive police and military powers serves merely to recruit support for residual terrorist groups and

perpetuate an image which is at stark variance with what is now urgently needed to maintain community confidence. Their objections in principle to the powers remain.

61. I have reflected carefully on all these comments in coming to conclusions in Part 7.

## Part 4: The Security Background

### *Preliminary*

62. The meetings which I have had with the Security Service, the PSNI and the military authorities have examined security issues generally but have looked in particular at:
- The security threat
  - The public order situation
  - The activities of organised criminals

### *The security threat*

#### *Residual terrorist groups*

63. There has been a serious deterioration in the security situation in the past year.
64. My own visits to various parts of Northern Ireland in the past year have made clear to me the extent of this deterioration and the impact it has had on local communities. The extent of the change this year has also been reflected in every conversation I have had with the political parties and others. Everyone has commented with concern on the activities of the residual terrorist groups.
65. The formal reports I have had from the security authorities, in which I have asked them to set out the facts fully, have said the same. The formal assessment of the threat by the Security Service has remained at “Severe”, the second highest in the tiered level of threats, throughout the period under review. The Director General of the Security Service in a speech in September commented on the seriousness of the current threat from residual terrorist groups.

#### *The national security strategy*

66. I referred earlier on to the national security strategy published in October 2010. I note here the view set out by the Government that “there remains a serious and persistent threat from residual terrorist groups linked to Northern Ireland”.

#### *The Independent Monitoring Commission*

67. The reports by the Independent Monitoring Commission are directly relevant to my report, because they set out an independent overview of the activity of groups who are seeking to perpetuate armed conflict. The Twenty-Third Report (May 2010) and the Twenty-Fifth Report (November 2010) are relevant to the period under review. I have been able to discuss these reports with the Commission.

68. The Twenty-Third Report (May 2010) covered the period from 1 September 2009 to 28 February 2010 – that is, shortly after the start of the time covered by my report (1 August 2009 onwards). The IMC said in paragraph 2.3:

*“Our detailed analysis shows that in the six months under review dissident groups remained highly active and dangerous. They were responsible for one murder and for numerous incidents in which victims might have died, as the dissidents clearly intended that they should. They were involved in a wide range of non-terrorist crime and sought to increase the capability of their organisations.”*

69. The IMC report records in detail the activities of dissident republican groups, mainly the Continuity IRA (CIRA), the Real IRA (RIRA), the Irish National Liberation Army (INLA) and Oglagh na hEireann (ONH). In particular, the IMC say of the period September 2009 to February 2010 that the Real IRA undertook sixteen attacks on the PSNI, its premises and those associated with it. In particular, a PSNI officer was very seriously injured in January by an under-car explosion in County Antrim. CIRA undertook a number of shootings and other violent attacks and instigated public disorder and its members remained heavily engaged in a wide range of serious crime, some of it involving violence.

70. The Twenty-Fifth Report (November 2010) covers the remaining five months of the year covered by my report (to 31 July 2010) and August 2010. About that period, the IMC say in paragraph 2.3:

*“Our examination below of the activities of the various dissident groups shows that they continued to pose a substantial and potentially lethal threat, particularly against members of the security forces, and so far as Great Britain is concerned the Government raised the threat level from moderate to substantial. Dissident activities were a very serious matter by virtue of their range, their frequency and their nature. Dissidents were violent and on numerous occasions attacked members of the security forces in ways which could have led to the loss of life or very serious injury. Over the past two and a half years dissidents steadily increased the number of improvised explosive devices they deployed and the proportion of these which were detonated. During the period under review the number deployed was roughly double that of the previous six months and the number detonated went up nearly fourfold.....”*

71. The IMC have also commented in both these reports on the activities of loyalist paramilitary organisations – the Loyalist Volunteer Force (LVF), Ulster Defence Association (UDA), Ulster Volunteer Force (UVF) and Red Hand Commando (RHC). They report on the decommissioning of weapons, on which the International Independent Commission for Decommissioning have also commented.

72. The IMC say that they cannot rule out that some arms may have been retained by loyalists. In their Twenty-Fourth report in September 2010 into

the murder of Bobby Moffett on 28 May 2010 they returned to a comment in an earlier report that they could not rule out that some arms had been retained in some parts of the UVF. This is relevant to the possible need for powers of search. The IMC said in their Twenty-Fifth report (paragraphs 2.47 and 2.48) that the UVF now needs to demonstrate that it remains fully committed to becoming a civilian organisation in line with its statement in May 2007.

73. In discussing so-called “dissident loyalists”, the IMC also report on five viable pipe bomb attacks, four in Antrim and one in Bellaghy, County Derry, during the week 8 to 15 August 2010, which were sectarian in nature and associated with the parades season.

#### *Lord Carlile*

74. Lord Carlile, in his report in July 2010 on the operation in 2009 of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006, said:

*“2009 and early 2010 have demonstrated that there is a paramount need for continuous vigilance in Northern Ireland, despite the progress of recent years. The number of terrorism incidents in Northern Ireland has increased as has the evidence of the existence of determined and dangerous groups of dissident republicans with the ability to manufacture and deploy lethal explosive devices”.*

#### *The Chief Constable*

75. The Chief Constable of the PSNI, in his annual report for the financial year 2009-10, said:

*“In the past year the terrorist threat against our officers has remained severe. The security situation has become more difficult, and considerable operational effort has been expended in countering this threat”.*

76. The Chief Constable’s Annual Report gives statistics for 2009-10. The number of shooting incidents increased from 54 in 2008-09 to 79 in 2009-2010. There was also an increase in the number of bombing incidents (from 46 in 2008-09 to 50 in 2009-10). The number of casualties as a result of paramilitary-style attacks (both shootings and assaults) increased from 61 to 127. Seventy-seven firearms and 34,962 rounds of ammunition and 2.2 kg of explosives were found during 2009-10.

77. Speaking at a public meeting of the Policing Board on 3 June 2010, the Chief Constable advised the Board that *“the threat remains severe”*.

#### *Superintendents’ Association and Police Federation*

78. The Superintendents’ Association of Northern Ireland and the Police Federation for Northern Ireland have also given me information about attacks on police officers and the effect of these attacks on officers and their families. One officer suffered grave injuries in January, as noted above, and

others have been very seriously injured. I offer my sympathy to all those officers injured and to their families.

### *Conclusions on the security threat*

79. Residual terrorist attacks have included targets other than police officers and police stations. They include the headquarters of the Policing Board, Palace Barracks in Holywood, a Territorial Army base, the courthouse in Newry, the transport infrastructure, and the sports centre in which a count was being held for the UK General Election in May 2010, together with numerous incidents of roadside and pipe bombs and other dangerous articles. Hoax devices have been used to cause disruption. A full analysis of this activity is in Part 5.
80. The cumulative effect of all this evidence is to paint a very clear picture about the extent of the current threat. This has required a major response by the police, with technical support from the military authorities, drawing on a wide range of operational powers and techniques. Dealing with attempts to procure weapons and ammunition and to make and explode home-made bombs may require the powers of search in the Act. Attempts to explode home-made bombs may require the police to establish cordons, under other powers, to keep the public away from potential danger and to allow the deployment of Army bomb disposal staff and the subsequent retrieval of forensic material. This may entail moving onto private land.
81. The Justice and Security Act powers form part of that response, but are not the only powers in use. To gain a more precise perspective on this, I have, as in the past two years, asked the police and the military authorities to analyse their response to specific incidents, so that I could judge the precise utility of the Justice and Security Act powers. This analysis is included in Part 5 below.

### ***The public order situation***

82. The issue of parades and assemblies has moved on considerably this year, although this has not affected the powers in the Justice and Security Act. My understanding is that the Parades Commission will continue for the immediate future.
83. The Justice and Security Act provides the police with powers which may be needed to deal with public order disturbances. Examples would be the need to stop and question people moving around in the vicinity of a parade. If there is the possibility that firearms may be used in the course of disorder, whether associated with a parade or in some other context, the powers to search for weapons may be needed. These could apply to individuals, premises or vehicles. Under the Act, these powers may also be used in conjunction with military support, if the police consider that to be necessary.
84. Disorder may not be directly related to a parade, as the IMC make clear in paragraph 2.7 of their Twenty-Third report, where they record some cases where residual terrorist groups were involved in orchestrating disorder. The

significance of this in the current climate is shown by the recognised capacity and intent of these groups to foment and exploit such situations, for example by trying to use them as cover to mount firearms attacks on police officers.

85. I comment in Part 5 below on police tactics for handling these parades and the conclusions to be drawn. To put the matter into perspective, many thousands of marches and parades took place this year without any incidents at all, reflecting great credit on all those involved – the Parades Commission, the police, the organisers, and community groups. That should be borne when making judgments about public order this year.
86. There is no doubt however that the violence which started in the Ardoyne on the evening of 12 July was very serious indeed and on a level with the disorder of the previous year. Some take the view that it was worse this year. The damage is shown above all in its impact on the local community in the Ardoyne and adjacent areas. But it includes injuries to police officers, the costs of massive policing operations and the negative images of Northern Ireland beamed around the world. Lesser incidents, such as those which took place in the Broadway area of Belfast in July, added to the toll of damage associated with the marching season.

### ***The activities of organised criminals***

87. I include the activities of organised criminals within the scope of this review since the Justice and Security Act provides powers to search for weapons and munitions, which experience has shown may be used in the course of acts of organised crime. These are in addition to the powers under PACE. When the Secretary of State introduced the Justice and Security Bill in December 2006, he made clear that its powers might be needed in dealing with organised criminals who used or had access to firearms.
88. I have once again had the benefit of the Annual Report and Threat Assessment from the Organised Crime Task Force. Their report for 2010 gave an assessment of paramilitary involvement in organised crime in Northern Ireland in these terms:

*“During the year we have seen an increase in activity attributable to dissident republican groups. The term “dissident republican” refers to a small number of groups who are intent on disrupting the peace process in Northern Ireland...Dissident republicans have been responsible for a number of serious attacks against the security forces, and those concerned with policing and justice, in the past year and remain heavily involved in organised crime. In the past year dissident republicans are believed to have been involved in weapons procurement, assaults and intimidation, armed robbery, so-called tiger kidnaps, smuggling, extortion and fuel laundering.*

*“In terms of loyalist paramilitary groups, there remains some involvement in organised crime by some members of the UDA, in particular drug dealing, robbery, extortion and the supply of contraband cigarettes, although it is not always clear whether these actions have been sanctioned by leadership”.*

89. Against that assessment, the police are in my judgment justified in using the powers in the Justice and Security Act in the search for firearms and explosives whether or not there is a direct or indirect link with paramilitary organisations, so long as their use can be justified by the circumstances on every such occasion.
90. Some would question whether such an approach was consistent with the path towards full normalisation. That is a reasonable objective over the longer term. But the evidence I have seen this year shows that the need envisaged by the Secretary of State for the use of these powers to deal with organised crime has not yet fallen away. I make that judgment on the basis of the recorded use of firearms, the involvement in organised crime of those with present or past links to paramilitary organisations, and the extent of organised criminal activity, as shown in the 2010 Annual Report and Threat Assessment of the Organised Crime Task Force and the comments of the IMC in their Twenty-Third and Twenty Fifth reports.

## **Part 5: The Operation of Police and Military Powers**

### ***Introduction***

91. The security background sets the context for examination of the use made of the powers in sections 21 to 32 in the review period from 1 August 2009 to 31 July 2010 and what this shows about any continuing need for them.
92. I shall look at this in six respects:
- ***Police powers against the residual terrorist threat***
  - ***Linkages between the available powers***
  - ***Police operational assessments***
  - ***Statistics on the use of the powers***
  - ***Case studies: disruption 19 March 2010  
Keady 21-24 June 2010***
  - ***Planning for public order situations***

### ***Police powers against the residual terrorist threat***

93. As last year, I have asked the police and the military authorities to give me detailed presentations on several recent cases where they have acted in response to activities of residual terrorist groups. These presentations have covered preventative action to disrupt the planning and carrying out of threatened attacks as well as responses to actual attacks and hoax calls and packages.
94. In these presentations, I have examined the use of the various powers available to the police, which are principally the Police and Criminal Evidence Order (PACE), the Terrorism Act, the Justice and Security Act, and the Public Order (Northern Ireland) Order.

95. The extent of the current threat is not in doubt. For my purposes what matters is the extent to which the powers in the Justice and Security Act have been used to deal with it. This bears upon their utility and on whether there is a continuing need for them.
96. As before, I have considered police powers in the round and not just the Justice and Security Act powers in isolation. The police are increasingly developing tactical options in the way they use their powers and oversight mechanisms should reflect that. Other developments this year, discussed below, make that even more important. All this review activity has been carried out in close working with Lord Carlile and the Northern Ireland Policing Board.

### ***Linkages between the available powers***

#### *Section 44 of the Terrorism Act 2000*

97. The powers in Part V of the Terrorism Act 2000 are available to the police throughout the United Kingdom, without limit of time as to their duration. Section 44 of the 2000 Act has hitherto been the main power to stop and search vehicles and people on foot.
98. Under this power, an Assistant Chief Constable may make an authorisation under section 44 of the Terrorism Act 2000 where it is considered expedient for the prevention of acts of terrorism. Under such an authorisation, a police officer may stop and search a person or a vehicle to look for articles which could be used in terrorism, but needs no specific suspicion in relation to the person or vehicle concerned. However, by virtue of section 45(1), the power under section 44 may be used only for the purposes of searching: it confers no authority to question as to identity and movements. That power is found in Northern Ireland in section 21 of the Justice and Security Act.
99. The use of section 44 does not fall to me to review, since the Independent Reviewer of the Terrorism Act 2000 is Lord Carlile. However, to reflect the current legislative regime in Northern Ireland, Lord Carlile said in paragraph 242 of his latest report, published in July 2010: *"I have removed from this aspect of my reporting cycle any separate consideration of Northern Ireland statutes or statistics, which will be covered by the Northern Ireland Reviewer Mr Whalley and his successors"*.

#### *Judgment in the European Court of Human Rights*

100. Last year, both Lord Carlile and I drew attention to the judgment in *R (Gillan) v (1) Commissioner of Police for the Metropolis (2) Secretary of State for the Home Department*. In the course of the current year that case has given rise to litigation before the European Court of Human Rights at Strasbourg, which resulted in a Chamber Judgment on 12 January 2010 in the case of *Gillan and Quinton v. the United Kingdom (application no. 4158/05)* to the effect that sections 44 and 45 violated rights to privacy under Article 8 of the European Convention on Human Rights.

## *The Government's response*

101. Following the confirmation by the Court that its judgment was final, the Home Secretary made a statement on 8 July on stop and search powers under section 44. Mrs May said:

*“On Wednesday last, the European Court of Human Rights ruled that its judgment in the case of Gillan and Quinton is final. This judgment found that the stop and search powers granted under section 44 of the Terrorism Act 2000 amount to the violation of the right to a private life. The Court found that the powers are drawn too broadly – at the time of their initial authorisation and when they are used. It also found that the powers contain insufficient safeguards to protect civil liberties.*

*The Government cannot appeal this judgment, although we would not have done so had we been able. We have always been clear in our concerns about these powers, and they will be included as part of our review of counter-terrorism legislation.*

*I can, therefore, tell the House that I will not allow the continued use of section 44 in contravention of the European Court's ruling and, more importantly, in contravention of our civil liberties. But neither will I leave the police without the powers they need to protect us.*

*I have sought urgent legal advice and consulted police forces. In order to comply with the judgment – but to avoid pre-empting the review of counter-terrorism legislation – I have decided to introduce interim guidelines for the police. The test for authorisation for the use of section 44 powers is, therefore, being changed from requiring a search to be “expedient” for the prevention of terrorism, to the stricter test of its being “necessary” for that purpose; and, most importantly, I am introducing a new suspicion threshold. Officers will no longer be able to search individuals using section 44 powers; instead, they will have to rely on section 43 powers, which require officers to reasonably suspect the person to be a terrorist. And officers will only be able to use section 44 in relation to searches of vehicles. I will only confirm these authorisations where they are considered to be necessary, and officers will only be able to use them when they have a “reasonable suspicion”.*

*These interim measures will bring section 44 stop-and-search powers fully into line with the European Court's judgment. They will provide operational clarity for the police. And they will last until we have completed our review of counter-terrorism laws and taken any relevant action arising from that review”.*

102. On 10 July, the Secretary of State for Northern Ireland wrote to the Chief Constable of the PSNI to confirm that the new changes would apply in Northern Ireland. Mr Paterson wrote:

*“I am concerned about the consequences this ruling will have for operational policing in Northern Ireland given the increasing threat from dissident*

*republicans. However, we must ensure that this ruling is complied with going forward.*

*To make the powers compliant with the ECtHR in the interim, the authorisation test must change from “expediency” to “necessity” and a degree of suspicion must be introduced. Following the Home Secretary’s lead, I intend from now onward to confirm authorisations made under section 44 where the police confirm that those authorisations are necessary – rather than expedient – for the prevention of acts of terrorism and where the authorisation is made under section 44(1) – namely in respect of stopping and searching vehicles.*

*In addition, in order to be compliant with the judgment you will need to provide clear and public guidance to your officers that searches may only be conducted where the officer has reasonable grounds to suspect that articles of a kind which could be used in connection with terrorism are present in the vehicle. Section 43 (which, of course, requires reasonable suspicion) can be used for the stopping and searching of individuals as normal. Routine searches of individuals under the section 44 powers will cease”.*

#### *PSNI response*

103. The PSNI made clear in public their operational response to these developments in these terms:

*“The current section 44 Terrorism Act 2000 authorisation for Northern Ireland expired on Wednesday 7 July 2010 and will not be renewed at this time. Stop and search, however, remains an essential tool in countering the terrorist threat on behalf of the public. We use stop and search powers in Northern Ireland differently to the rest of the UK both in terms of the proximity of the threat that we face and degree of targeted use that we make of them. We will continue to utilise available legislation in protection of the public and will do so in cooperation and consultation with the community we serve”.*

#### *Linkage with other powers*

104. I have set out these statements in some detail because they are all relevant to the operation of stop and search powers in Northern Ireland. As I have made clear throughout this report, the PSNI have told me that their practice is to draw on a range of powers, using the most appropriate for the circumstances. Often these circumstances will change very quickly, either in the course of an interaction with a member of the public or as a scenario develops, so that the powers may be used sequentially.
105. An example would be where the police stop someone of interest to them under section 43, based upon a reasonable suspicion, but find he is accompanied by someone whom they do not know. Their knowledge of the first person may, depending on the extent of his suspected involvement in residual terrorist activities, provide a basis for questioning the second person under section 21 so as to establish his identity and movements.

106. That is why these powers have to be looked at together and why a change to one has implications for how the police use other powers.

107. I have examined carefully the implications of the Strasbourg judgment in so far as it comments on the need for reasonable suspicion. The relevant paragraph in the Court's judgment reads:

*"Of still further concern was the breadth of the discretion conferred on the individual police officer. The officer's decision to stop and search an individual was one based exclusively on the "hunch" or "professional intuition". Not only was it unnecessary for him to demonstrate the existence of any reasonable suspicion; he was not required even subjectively to suspect anything about the person stopped and searched. The sole proviso was that the search had to be for the purpose of looking for articles which could be used in connection with terrorism, a very wide category which covering (sic) many articles commonly carried by people in the streets. Provided the person concerned was stopped for the purpose of searching for such articles, the police officer did not even have to have grounds for suspecting the presence of such articles."*

108. It is not altogether easy to apply the Court's reasoning as set out above to the current circumstances of a very serious security threat in Northern Ireland. I would expect that the police would use an element of judgment and common sense before concluding that "*many articles commonly carried by people in the streets*" might have a connection with terrorism. Furthermore, the current context of daily security threats and incidents in Northern Ireland is rather different from the circumstances obtaining in connection with a demonstration in East London on 9 September 2003, the date of the stop and search in question.

109. The Court's judgment may have implications for powers under the Justice and Security Act. I am aware that the Government is actively looking at this issue and I will report further in due course.

*Using other powers as "compensation" for reduced use of section 44*

110. An obvious question from all of this would be whether the changes in both the authorisation and usage of section 44 in Northern Ireland have affected the use of other powers. The greater use of other powers to compensate for the change concerning section 44 would be one obvious possible reaction. Such a change would have to be justified on its merits in every individual case. Using the powers in sequence in response to the circumstances in each case is acceptable: using them for circumstances for which they were not intended is not acceptable. I will examine in the statistical analysis below whether any such displacement has taken place.

111. An example of an inappropriate use of the powers would be where the police stop under section 21 someone already known to them and question him about his identity. I have received some reports that this has occurred. It cannot be justified and should not happen. In such cases the Police

Ombudsman provides an avenue for investigating a complaint. Where however the known person was stopped to question him about his movements the issue is not so straightforward. If the basis of the questioning related to recent incidents or known threats it would indeed be justified, but in a case where there was no such linkage the questioning would be very hard to justify. The information given on the copy of the PACE/1TA form is the starting point for anyone who believes that he has been unjustly stopped and can provide the basis for any complaint.

*Thematic Review by Policing Board for Northern Ireland*

112. I should also note here that, in my capacity as Independent Reviewer, I have had sight of a draft Thematic Review conducted by the Human Rights Adviser to the Policing Board into *Police Powers: Stop, Search and Question Under Terrorism Act 2000 and Justice and Security (Northern Ireland) Act 2007*. This comprehensive review addresses the comparative use of powers and how police best practice can be developed. It has not yet been completed and is therefore not yet in the public domain. But I anticipate that it will significantly complement and enhance work in this area. I am grateful to the Policing Board for sharing this work with me.

***Police operational activity***

*Nature and extent of residual terrorist activity*

113. The police have reported to me on the nature and extent of the residual terrorist activity assessed as “national security” attacks which they have dealt with this year. The number of such attacks in 2010 (up to the end of November) was 39. This compares with 22 in the whole of 2009 and 15 in 2008. A national security attack is one which, in the assessment of the Security Service, is designed to undermine the ability of the devolved administration, the judiciary and the security forces to maintain law and order and effective government in Northern Ireland. It does not include “civil administration” attacks, and other attacks which are sectarian in nature, whose effects damage communities and individuals.
114. These 39 attacks include six vehicle-borne improvised explosive devices (VBIED) on police stations, two improvised mortar attacks and six pipe bomb attacks on police stations, three shooting attacks on police stations, 11 VBIED and under-vehicle and shooting attacks on police officers and their close associates and an army officer, three pipe bomb attacks (one of which caused shock to three children), two command wire improvised explosive devices (CWIED) at Keady and Belleeks and several other incidents including VBIED attacks on Newry Court House, the offices of the Policing Board and Palace Barracks, Holywood. In addition there have been coffee jar bomb attacks and blast and petrol bombs thrown at police during disturbances. Additionally there have been hoax devices, notably on the “day of disruption” on 19 March in Belfast and Londonderry.
115. I comment below on the two CWIED devices and the “day of disruption”.

116. Two pipe bombs found on window sills of a house on successive days in August 2010 (outside the reporting period) were claimed by the Real UFF (Ulster Freedom Fighters).

#### *Police responses*

117. When responding to incidents the police have drawn on a range of powers. In nearly all of them they have had to use cordons. The purpose of cordons is to protect the lives of the public near the scene, to allow Ammunition Technical Officers (ATOs) uninhibited access to the scene, to locate component parts of devices (such as command wires extending across private property) and to preserve scenes for forensic evidence. The police have drawn upon other powers in addition to those in the Justice and Security Act. In this respect they are carrying out the sequential use of powers which the Acting Deputy Chief Constable described to me last year, and which I set out in paragraph 94 of my report last year.
118. I am satisfied from the cases which the police have presented to me that the use of powers in this way is planned with meticulous care in operations where time allows. An example would be the need to cross private property in pursuit of command wires or to employ police air support using either a police helicopter (there are now two owned by PSNI) or a civilian helicopter chartered by the police. Where time does not allow such operational freedom of manoeuvre, and life is at risk, the police draw on those powers in the Act where operational urgency gives them discretion to do so. Several such operations have been described to me this year.
119. A detailed breakdown of police use of powers in the Act is given below and in Appendix B.

#### *Arrests and charges*

120. A frequent criticism of police search powers against security threats is that a large number of searches results in few arrests and even fewer charges. These criticisms are not confined to Northern Ireland and are made about police operations in the United Kingdom as a whole. They are understandably a source of complaint and frustration. Part of the explanation lies in the nature of police operational activity, much of it preventative, acting on the basis of intelligence and other information.
121. Security threats can be different from other serious crime such as robbery or burglary. The actors are rarely, at least in the early stages, focused on a particular target such as a bank. They survey potential targets widely, looking for vulnerabilities and targets which match their methods of operation. They are also looking at ways in which they can maximise the impact which they are seeking to make at that particular time.
122. The police response has to be correspondingly flexible. There is little value in untargeted activity, which can be wasteful of precious resources and may cause resentment, unless it is judged necessary for deterrence against a specific threat. I have seen no evidence this year of inappropriate police

conduct, but have not seen individual complaints made to the Police Ombudsman. The small number of formal outcomes does not mean that the police activity was unnecessary, unjustified or wrong. An equal valid measure is the extent of harmful activity which has been disrupted, attacks prevented and lives saved. This is not easy to quantify, let alone report publicly. But from my own observation it is a near-miracle that a child wandering in a street or a police officer, either on or off duty, has not been killed this year.

123. For the record, the number of people arrested in relation to security threats for the period 1 January to 31 October 2010 is 152, with 48 charges. That compares with 89 arrests and 15 charges in the whole of 2009. The basis for these arrests draws on all the police powers available. Some powers lead to more arrests than do others. It would be easy, but in my judgment false, to conclude that some powers therefore have less utility than others. These are complex and individual police operations: each threat is unique in its planning and execution and the police response must be prepared with commensurate flexibility, imaginative thinking and meticulous planning, drawing on the appropriate power at each stage. That is what protection of the public requires.
124. In responding in this way, the police must at all times act in accordance with guidance set out for them in writing, instilled in training, and briefed before demanding and sensitive assignments. They must do only what is necessary and proportionate with least intrusion or impact on individuals or communities. That has always been an important principle. In Northern Ireland at the present time it is critically important.

#### *Police training and operational orders*

125. In my report last year I reported (paragraphs 93 to 99) on the work which the police had done to develop further their usage of the powers in the Justice and Security Act. I mentioned the account I had received in September 2009 from the Acting Deputy Chief Constable setting this out in full detail. I noted the work which had been done to carry out these strategic intentions into police training and operational orders. I said that the work on training should not be regarded as a one-off but should be actively pursued and refreshed in the light of experience.
126. The police have reported to me their responses to my recommendations last year in this respect. They have given me a detailed breakdown of the training delivered at the Police College and at District level from January 2008 to June 2010. This training includes briefings on security threats, including the methods used by residual terrorist groups, the powers available to the police to deal with these threats, the military assistance which is available if needed, criminal investigations and training for the first responders to scenes.
127. The Police College have delivered training to Student Officers from May 2009 and approximately 450 officers have been trained. At District level over 200 supervisors have been trained. The training which I watched focused

especially on stop and search and stop and question powers. It was thorough and challenging and delivered professionally.

*Police records: current practice*

128. Last year I commented in paragraphs 111, 119 and 123 on the need for further development of systems to make a record of every time the police use powers under section 23 and schedule 3 paragraph 6. On my visits to PSNI stations in Antrim Road and Grosvenor Road in Belfast and Strand Road in Londonderry I inspected the manual records currently being kept. On two of those visits I was accompanied by the Human Rights Adviser to the Northern Ireland Policing Board.
129. When the PSNI stop and search a person or a vehicle, they make a record in a form known as a PACE 1/TA. This form is used for actions under the Police and Criminal Evidence (Northern Ireland) Order, the Justice and Security Act, the Terrorism Act, and the Public Order (Northern Ireland) Order 1987. An ethnic appearance identifier for one of 12 categories, for completion by the officer, is also included on the form. A copy of the completed form must be made available to the subject of the action on request within 12 months.
130. The instructions to the police on the use of the form make clear that “*all search activities and use of police powers should be examined for compatibility against ECHR principles*”. The police officer must ask himself whether he has a lawful power, whether what he is doing proportionate, what his objective is, whether there is a less intrusive alternative, whether he needs to act at that moment, and whether there is a record of his reasoning. In addition, the police have been provided with detailed operational guidance setting out in detail how searches are to be conducted and recorded, which I have read in detail.
131. In the case of searches under section 24 of the Justice and Security Act, the form captures in summary detail the record keeping requirements in paragraph 6 of schedule 3 to the Act. There is no requirement to keep such records under section 21 of the Act but the instructions on the form enable the police officer to do so.

*Police records: assessment of quality*

132. An internal police briefing note which I saw drew attention to problems caused when forms were completed incorrectly, incompletely or illegibly, with detail lacking. The briefing note made clear to officers that these records are official, original records and as such are subject to official scrutiny. The briefing note is itself a positive recognition of the need to maintain the quality of these records.
133. My own sample scrutiny of these forms showed that the basis for the action was not always clear from the record. Nor was it always shown separately from the legislative power in cases where grounds are required. In such cases there are two separate entries to complete – the power and the

grounds. In some cases the same wording was made for both entries, for example "TA section 43". Entries in that format give no information about why the action was taken. In other cases no reasoning was provided at all – a point also picked up in the internal police briefing note.

134. Powers of this kind are coming under increasing scrutiny. Even when the officer is under no requirement to have reasonable suspicion (for example in a case of a stop under section 21 or a search for munitions in a public place under section 24 and schedule 3) he must have a basis for his action in respect of the person or location in question. Guidance produced by the Criminal Legislation and Procedures Branch of the PSNI in November 2009 said: *"It is important that officers can show that a decision to exercise powers under section 21 was taken in good faith, and not for any improper purpose. It is not necessary to be able to show reasonable grounds for the exercise of the power. However, if such grounds did exist, a record should be made."*
135. In my judgment it is important that the basis for the action is shown as clearly and fully as possible even when there is no requirement on the form to show reasonable suspicion. Indeed, the police recognise that by listing the need for *"a record of my reasoning"* in respect of *"all search activities and use of police powers"* in the human rights guidance on the back of the cover to sets of the PACE 1/TA forms.
136. The security threat as set out in Part 3 of this report provides the context against which individual police actions can be set and will go some way towards shaping individual decisions. But it does not remove the element of discretion which the officer must exercise. Faced with specific threats and actions by residual terrorist groups, the basis for the action will usually be quite clear and should be shown on the record.
137. The police have responded in the course of the year to my comments in this respect. Recording practice has improved. This progress will need to be sustained. It will also need to be monitored by senior officers.

#### *Police records: future development*

138. The police have plans to record every use of stop and search and stop and question powers electronically by use of a hand-held device developed from a blackberry. I have been given a demonstration of the current planning work. It offers many advantages, especially in terms of the linkages offered with other police records so as to verify information offered, which should make the interaction with the member of the public much quicker and more effective.
139. Careful design of the menu should make it possible to record the basis for the search in more detail, which will be important in view of the current position on stop and search and stop and question powers. Keeping central records up to date will be made quicker. The production of a Stop and Search Information Card, in the format of a business card with a reference

number on it, will facilitate obtaining a full written record of the search within 12 months.

140. The police plan to extend the use of this system through until 2012. Until then the existing paper based system will run in parallel. I endorse this plan. Specifically for the Justice and Security Act powers the new scheme will enhance the capacity to keep the kinds of records which are required. It also carries advantages of speed and effectiveness which will be of general benefit.

#### *Police views on the Justice and Security Act powers*

141. Senior officers in the PSNI have told me that they see a continuing need for the powers in the Justice and Security Act throughout the current year. That is also the view of the President of the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO), Sir Hugh Orde OBE QPM.

#### ***Specific use of the 2007 Act powers***

142. **Table 1** in **Appendix B** summarises the use made of powers in sections 21 to 26 of the Justice and Security Act in the period 1 August 2009 to 31 July 2010. The usage made of each power is shown in **Table 2**, divided into specific tables about each of the powers (**Tables 2A to 2E**). There is a requirement on the Chief Constable of the PSNI under section 37 to keep records of the use which police make of their powers under sections 21 to 26.
143. The statistics set out below have been provided by the Central Statistics Unit of the PSNI. They are aggregate figures which match as closely as possible the reporting year (1 August 2009 to 31 July 2010) bearing in mind that other indices (relating to the PACE and Terrorism Act powers) are collected and reported on the basis of calendar quarters. The PSNI provide reports to the Northern Ireland Policing Board on a quarterly basis which analyse the use of the powers according to geographic area, gender, ethnicity, power used and subsequent arrest. I am grateful to the Central Statistics Unit for providing me with these statistics and to the Policing Board for permission to use them.
144. For the avoidance of doubt I should record here that I make no comment on individual cases or actions on the part of police officers. I have no remit to do so whereas others do – chiefly the Policing Board and the Police Ombudsman.

#### *Section 21*

145. **Table 2A**, together with **Table 1**, shows the numbers of people stopped and questioned by the police under section 21(1), month by month. There has been a substantial increase compared with the previous year. Much of this is accounted for by an increasing police practice of combining a section 44 stop with one under section 21 – perfectly reasonable, and indeed the

correct and proportionate use of the power. I reported last year (paragraph 103) on this development in police practice.

146. At the start of the reporting year (August 2010) the numbers continued the trend in the last month of the reporting year (July 2009). They sharply increased in September 2009 and there were other surges in January, February, April and May. The police say that individual increases in specific months are accounted for by police preventative or reactive activity in relation to specific threats or incidents.
147. The average for each month of the reporting year (August 2009 to July 2010) was 560, with a total of 6,722. This compares with an average of 69 for the period August 2008 to July 2009 with a total of 829.
148. There was no usage by the armed forces of the stop and question power under section 21(2).

### Section 22

149. Section 22 confers powers of arrest on members of the armed forces. It was not used in the year under review.

### Section 23

150. Section 23 allows a member of the armed forces or a constable on duty to enter premises if considered necessary for the preservation of peace or the maintenance of order. Its purpose is to enable an immediate response to be made to events as they arise. The power has been used on 91 occasions compared with 57 last year. **Table 2B** sets out the usage of section 23 by the police this year. This may have on occasion engaged the armed forces in support of the police.

### Section 24

151. Section 24 gives effect to the powers in schedule 3 in relation to search for seizure of munitions and transmitters. **Table 2C** shows the numbers of persons stopped and searched (in separate categories of public and private place) and **Table 2D** the details in relation to the search of premises and articles seized.
152. So far as searches of people are concerned (**Table 2C**, schedule 3 paragraph 4), there has been a substantial increase this year in searches in public and a slight increase in searches in private. A total of 1,159 people were stopped and searched, 1,045 in public places and 114 on private property. This compares with figures of 356 (266 + 90) last year. Much of the increase came in July 2010, when 518 of the 1,045 searches were made. Where searches of people are carried out on private property, a reasonable suspicion is required, probably linked to a specific basis or

reasoning about the possession or movement of explosives, firearms or ammunition.

153. The power to enter and search premises for munitions is found in paragraph 2 of Schedule 3 (set out in **Table 2D**). There has been a slight decrease in the use of this power, which was used on 251 occasions this year, compared with 223 last year. Most of these searches were in private houses – 220 of the total of 251.
154. There is a power to seize items found in these searches (paragraph 5 of Schedule 3). This has been used on a larger number of occasions this year: 84 compared with 43 last year.
155. The police may be accompanied by other people in cases where they search premises other than private houses (schedule 3, paragraph 2(3)). The need for this may arise in the course of operations where civilian support such as forensic scientists may be required. This power has been used more this year – 60 occasions, compared with 20 last year and continuing an upward trend from the previous year.
156. The powers in schedule 3 which are provided under section 24 may also be used by the armed forces in support of police operations.

#### Section 25

157. Section 25 provides the armed forces with the power to enter and search premises where there is a critical danger to someone who is being held, for example as part of a hostage or kidnap. It has not been used this year, but the current activities of residual terrorists, especially when targeted on individual police officers and their families, create an anxiety that the use of these powers cannot yet be ruled out.

#### Section 26

158. The powers of search in schedule 3 may also, by virtue of sections 26 and 42, be used to search vehicles and seize articles found in them. **Table 2E** records the use made of this power in the year under review. This shows a considerable increase: 1,387 vehicles stopped and searched compared with 239 last year. As with the searches of persons, much of this (650 cases) came in July.
159. There is also a power to remove a vehicle for search. This was used four times this year, the first time it has been used. It is needed when a more thorough search of a vehicle is needed, by taking it to a police compound.
160. As with the powers to search people and premises, the schedule 3 powers to search vehicles may also be used by the armed forces.

### Sections 27 and 28

161. These sections cover the use of the armed forces in searches under the Act. As mentioned above in relation to each specific power, they have not been needed, because operations of this kind have been carried out solely by the police since 1 August 2007.

### *Conclusions on Justice and Security Act stop and search powers*

162. There have been significant increases this year in the use of the stop and question power and in the searches of people and vehicles under the Justice and Security Act. Where this is used in conjunction with other powers, for example in the Terrorism Act, it may reflect enhanced planning and precision by the police in responding to events. I comment below on the comparative use of powers.
163. The police know that the numbers of residual terrorists are growing, that they are moving around quite widely across Northern Ireland, and that they show an increasing intent and capacity to use firearms and explosives. Movements of vehicles in areas near police stations and the homes of police officers are particularly likely to attract attention. Most of these are entirely innocent: some are potentially deadly.
164. It remains the case that these powers are inevitably intrusive and have the potential to cause resentment to some individuals and to some communities where there is long-standing alienation from the police. It is wise therefore to consider using them only when alternatives are not available or are likely to prove insufficient. The guidance to the police reminds them to consider on each occasion whether there is a less intrusive alternative.

### *Comparative use of powers*

165. In matching the operational presentations by the police alongside evidence from the records, I draw an emerging conclusion that police planning has sought to integrate available powers, sometimes in sequence, starting with the most appropriate. These powers are principally the PACE Order, the Terrorism Act and the Justice and Security Act. I have again this year examined the current statistics for all three instruments, which are provided on a quarterly basis to the Policing Board. Their inclusion also meets Lord Carlile's expectation that reporting on statistics in Northern Ireland will henceforth be found in this report rather than in his.
166. These statistics provide both an actual comparison of the powers used and an indication of trends. For convenience, I have set out this information in **Table 3**.
167. The quarterly returns are based on calendar quarters, so do not correspond entirely with the JSA reporting period (which is always one month adrift because of the different timescales), but they give sufficient indication both of comparative usage and of trends. I have this year included the statistics

for the latest available quarter so as to cover the changed use of section 44 from 8 July.

168. Over the period 1 October 2009 to 30 September 2010, the number of persons stopped and searched in total, for all reasons, was 55,995 compared with 45,748 the previous year. The number of those dealt with under PACE was 23,600, compared with 21,606 the previous year. Under the Terrorism Act the number was 23,423 compared with 21,337 the previous year. For the Justice and Security Act the figures were 8,972 compared with 2,805 last year.
169. The relative proportions in the use of powers have also changed. The proportion dealt with under PACE was 42% compared with 47% last year. For the Terrorism Act the proportion was 42% compared with 47% last year. For the Justice and Security Act the proportion was 16% compared with 6% last year. There has thus been a small shift (5% decrease in each case) from PACE and the Terrorism Act towards the Justice and Security Act.
170. The footnote to the table is also important: the statistics do not correspond to the total numbers of persons stopped and searched or questioned since a police activity can be carried out under more than one power. The statistics for last year are not precisely the same as those which I reported previously: they have been subject to further revision by the PSNI as final data have been captured.
171. A more valid comparison so far as terrorism is concerned (but again subject to the qualification that the boundaries of terrorism and other serious crime in the initial stages of an investigation are not clearcut) is the relative usage of Terrorism Act and Justice and Security Act powers (that is, omitting the PACE statistics). On this basis, the number of those dealt with was 32,395, of whom the 23,423 under the Terrorism Act represent 72% and the 8,972 under the Justice and Security Act amount to 28%. Last year, the relative proportions were 82% and 18%.
172. Precise conclusions may be misleading, particularly in percentage terms where numbers may have risen from a small base figure. Surges of activity associated with specific threats or incidents can also distort the picture in terms of a normal daily average use. But these statistics undoubtedly show a substantial increase in the volume of police stop and search and stop and question activity – up by 22% this year.
173. These trend statistics can also lead to false conclusions. In particular, they cannot bring out the full operational impact of the change involving section 44 from 8 July this year. To appreciate that, we have to look at the comparisons between the third and fourth quarters. The results are significant:
  - In the third quarter (1 April 2010 to 30 June 2010) the Terrorism Act was used on **8,866** occasions (34 for section 43 and 8,832 for section 44) whereas

- The Justice and Security Act was used on **2,129** occasions (1,957 for section 21 and 172 for section 24).
- In the final quarter (1 July 2010 to 30 September 2010, which includes the date when practice changed) the Terrorism Act was used on **446** occasions (132 for section 43 and 315 for section 44) whereas
- The Justice and Security Act was used on **3,580** occasions (848 for section 21 and 2,732 for section 24).

174. In summary, this shows a substantial shift from section 44 to section 24 in the police strategies for stop and search. In other words, there has been some displacement effect from the change in relation to section 44. But it is not as great as might have been expected. There has not been a full-scale shift from one power to the other. The overall use of stop and search and stop and question under all three powers fell from **16,965** to **9,324** between the third and fourth quarters. In my judgment, that fall reflects rigour on the part of the police in using only those powers which could be justified by the circumstances, furthermore at a time of disturbances associated with the parades and a spate of under-car bomb devices.

175. Some will find a 22% increase in stop and search and stop and question a welcome reassurance that the police are responding effectively to the challenges posed by residual terrorist groups. Others will see in it alarming confirmation of all their worst fears about an increase in the use of intrusive powers, out of all proportion to need. Such views are inevitably subjective: I make no judgment on them. But I shall attempt to draw some conclusions in Part 7.

### Sections 29 to 32

176. These are public order powers to deal with disorder or community tensions associated with the marching season and to restrict access to particular sites.
177. In particular, **section 29** provides the Secretary of State with power to authorise a person to take possession of land or other property if he considers it necessary for the preservation of peace or the maintenance of order.

### *Invest Northern Ireland site, Springfield Road, Belfast*

178. The Secretary of State exercised this power on 22 June 2010 to enable the police, the armed forces or a member of staff of the Northern Ireland Office acting in the course of their employment to take possession of the land and buildings known as the Invest Northern Ireland site (formerly Mackies), Springfield Road, Belfast. The duration of the order was limited for the period from 24 June to 13 July. The order was made on the application of the police.

179. The reasoning, as in past years, was to give the police the flexibility in handling the parades on the Springfield Road, especially on 12 July, and to keep to an agreed minimum the numbers parading through a predominantly

nationalist area. This was significant so as to avoid a repeat of the Whiterock disturbances of 2005. I have inspected the area myself, and indeed observed the parade in that area in 2008. I consider that this closure brought no disruption to the public and that it was justified as part of the measures to avoid a repeat of the Whiterock disturbances and to avoid disturbance to local residents in the nationalist community.

180. **Section 32** provides the Secretary of State with powers to order the closure of a road where he considers it necessary for the preservation of peace or maintenance of order. The power has been used on two occasions this year.

#### *Chichester Street*

181. On 29 April 2010, the Secretary of State made an order directing the closure to vehicle traffic of Chichester Street, Belfast, from the bottom of the junction of Oxford Street and Chichester Street to the junction of Victoria Street and Chichester Street. The closure was to take effect from 30 April and to last until 5 September and was capable of renewal, which was done. The effect of the order was to restrict vehicular access to the Laganside Court House and the Royal Courts of Justice. It was made, at short notice, soon after the attack on Newry Court House.
182. I understand that the initiative for the closure came from the courts service on official advice about the protection of public assets. Consultation about the proposal involved the Minister for Justice. The closure was effected by the installation of retractable bollards in the road. This has caused inconvenience to those regularly needing access, especially to the Bar Council Library car park, and has required the re-routing of private cars. I have walked round the site and the adjacent roads to see the effect for myself.
183. I asked the General Secretary of the Bar Council for Northern Ireland for his comments on the closure and met him in his chambers to discuss the closure. I am grateful to him for setting out how the closure has affected members of the Bar. The purpose of the closure is recognised, as also is the need to act speedily in the face of actual attacks on public buildings. Some mitigation has been provided, but at a financial cost to members of the Bar.
184. The effect of the order is to provide stand-off security to the court complex. The area of the closure involves several major public institutions in Northern Ireland and enhanced protection is justified in the light of the attack on the Newry Court House on 22 February. But it has had an impact not only on public buildings but also on the Bar Council who believe that the effect on them has been disproportionate. A mixture of public and private assets is involved. The Bar Council like everyone else are benefitting from the extra security provided, but their case does suggest that the consultation procedures to be followed when closures of this kind are made could with advantage be reviewed. This may not be possible when action is taken urgently but should be done as soon as can be thereafter.

## *Ballykinler*

185. On 21 July the Secretary of State made an order under section 32 directing the closure to the public of Shore Road, Ballykinler, to all vehicle traffic. The making of the order was preceded by external consultation, the results of which I have seen. The application was made on behalf of the police in order to give greater protection to a facility at Ballykinler camp being used by the police. The obvious risk was of a bomb left in an abandoned car, bearing in mind the telephoned claim when a bomb was left at Castlewellan on 27 January 2009 that the bomb was intended for the Ballykinler base. I visited the site and asked the police to explain the risks as they saw them. I also arranged to meet local residents, and am grateful to them for their time in discussing the effect of the order.
186. The need for the closure was apparent to me and was not disputed locally. But it has clearly had an impact on the local community and raised more general concerns about access in the area of the camp. The landowner and farmer adjacent to Ballykinler camp have been specifically affected.
187. If this closure is to continue, as seems likely, it would be desirable to investigate alternatives to the current large concrete blocks which might make it easier for the farmer to gain access to his land. Suggested possibilities were a moveable barrier whose operation could be authorised by the security guard force at Ballykinler or a new gate elsewhere in the hedge, although I was told that drainage was likely to be a problem. Options such as this have cost implications, but that should not inhibit proper consideration of them.
188. The order is intended to prevent vehicle access. It is not the intention to prevent access for pedestrians, bicycles, horses or children's pushchairs. It would therefore be helpful if signs were put up to make this clear, and if space between the blocks were wide enough to facilitate the permitted use.
189. The consultations carried out before the order was made were reassuring to some local residents but may not have reached all of those likely to be affected. Decisions of this kind may have to be made very quickly, which limits the scope for consultation. While it is not possible to meet every objection in a case like this, it would be sensible if consultation procedures were to be reviewed, explaining what is proposed and looking at options for mitigating their effects, as part of a community impact assessment. It is quite possible that further orders may have to be made elsewhere to deal with similar threats. Since the Secretary of State makes the orders, the Northern Ireland Office should own the procedure for consultation about them. It is very similar to the closure in Chichester Street in that respect.
190. I am satisfied that the use of the powers in all these cases has been proportionate in the light of the threat from residual Northern Ireland terrorist activities and the risk to life. It fully accords with the Government's obligations to protect life under Article 2 of the European Convention on Human Rights.

191. I also note the removal on 3 May 2010 of a security barrier in Armagh as part of the introduction of a new one-way traffic scheme.

*Military operations in support of the police*

192. The military authorities have provided me with detailed schedules showing the extent of their response to call outs from the police for military support. The armed forces mount searches in response to the reporting of suspicious objects and deal with suspicious objects found by members of the public.
193. **Table 4 in Appendix B shows the pattern of military activity carried out by 321 Explosive Ordnance Disposal (EOD) Regiment for each month in the year from 1 August 2009 to 31 July 2010.**
194. The top line of Table 4 (in bold) shows the total number of call outs each month. The following five lines show the numbers of cases where a live device was dealt with, where there was a find of explosive material, where the call out was a hoax call or a false alarm, or where the armed forces were called to assist the police in a search. The number of call outs this year was 460, compared with 458 the previous year. There are variations from month to month. These do not always correspond to peaks and troughs in the police statistics. That is not surprising: the police are dealing with a wide and diffuse range of threats and activity, in contrast to the more specific focus of the armed forces.
195. As well as providing summary statistics, these schedules describe for each call out its date and location, the type of task the armed forces were asked to perform, details of any items discovered and the method of disposal and its result, and descriptive information and analysis, which is relevant to dealing with similar threats in the future.
196. As before, the schedules reveal the large amounts of dangerous materials which are now being found across Northern Ireland. Rarely a day goes by without another find with potentially lethal consequences to anyone unfortunate enough to get in the way.
197. The case studies described below are examples of the response being made by the Ammunition Technical Officers (ATOs). There has been a heavy demand for their services this year. These are specialist military personnel whose skills are required both in Northern Ireland and in Afghanistan. The speed of their response cannot be faulted, and is crucial in resolving an actual or potential threat, reducing disruption to the public and restoring normality. It thus has a direct impact on community confidence in the overall response to the threat and for that reason the speed and coverage of the response will continue to need careful monitoring.
198. The police do not have these resources and are reliant on the armed forces for these essential tasks. The need for powers of entry and search requiring the armed forces to act in support of the police has therefore continued

throughout the year. The detailed reports which I have studied in the schedules of activity show a well-tuned and effective liaison between the two services. The public in Northern Ireland can take great comfort from that.

***Case study: disruption 19 March 2010***

199. The police have described to me the extensive attempts which were made on 19 March to disrupt the public in Belfast and Londonderry. In particular, they have explained in some detail the sequence of events in Londonderry on that day. This involved four incidents: an abandoned van outside Strand Road PSNI station, the report of a van outside the courthouse, reports of a partially exploded landmine at Ballyarnett on the main road north-west from the Foyle Bridge and a bomb on the gas line on the Craigavon Bridge.
200. These reports required an immediate and comprehensive police response to protect public safety. This included cordons and the specific use of powers of stop and question (section 21), entry (section 23) and the search for munitions, including vehicle searches (sections 24 and 26 and schedule 3). The tactical needs were complex: to preserve life (the public in general and police officers at Strand Road police station and people using the court premises in particular), to minimise disruption to the public, to preserve forensic evidence and to maintain a 999 emergency response in case of further threats.
201. A tactical response of this kind will draw on the police training and operational planning which I have described above, especially the need to use the most appropriate power to deal with the rapidly changing demands presented by four simultaneous but differing incidents.

***Case study: Keady 21-24 June 2010***

202. At 22.00 on 21 June a coded warning was received on a private number in Keady of an abandoned Improvised Explosive Device (IED). This followed a suspicious fire the previous day which police believe was intended to lure them to the scene. On 22 June a farmer discovered a beer keg with protruding wire on the Castleblayney Road in Keady. The police set up a large cordon covering five miles. A number of families were evacuated from their homes.
203. The armed forces were called into investigate the object, requiring the deployment of substantial military search and explosives ordnance disposal resources. The beer keg was found to contain over 50 kgs of home main explosives and associated detonation materials. A command wire (a length of wire from the device to a remote location) was found. Its purpose was to enable the device to be detonated remotely, for example when a target (such as a police officer) was seen to have come close to the device.
204. A police operation of this kind requires the use of powers to stop and question, search vehicles and enter private land. The police map of the incident shows that an extensive area of private land had to be searched. The bomb was right by a road and not far from houses. It was a typical

example of a large and viable bomb which would have instantly killed anyone near it at the moment of detonation. Nearby families were forced to leave their homes for several days. The operation called for detailed police planning and substantial military support.

205. A similar incident took place near Belleeks on 10 July. On that occasion the bomb was detonated, blowing a huge crater in the road.

### ***Planning for public order situations***

#### *The profile of public order incidents in 2010*

206. I have set out in Part 4 the circumstances in which the police may need to draw upon powers in the Justice and Security Act so as to deal with public order situations. They have available other powers under statute and common law to deal with public order. These are mainly to be found in the Public Order (Northern Ireland) Order 1987, principally the powers of arrest in Article 24. The use of the Justice and Security Act powers would become relevant if the development of a disturbance required urgent use of powers of stop and question and stop and search in circumstances not covered by the 1987 Order. And if immediate road closures became necessary, or if the police felt it necessary to call upon the support of the armed forces, the 1987 Order would not be sufficient.
207. This is the basis on which I have reviewed the profile of public order incidents this year. The question is whether any use of the powers in the Justice and Security Act has been necessary to deal with them.

#### *Ardoyne 12-15 July*

208. The violence which started in the Ardoyne on the evening of 12 July was very serious indeed and on a level with the disorder of the previous year: some take the view that it was worse. Damage and disruption to the community were substantial. More than 80 police officers were injured by petrol bombs, a blast bomb and missiles, and 143 AEPs (Attenuated Energy Projectiles) were fired.
209. After the disturbances last year, there was bound to be close attention to the activity at the Ardoyne shop fronts. The period from the removal of a road protest through to the return passage of the parade heading up the Crumlin Road was understandably difficult, as was the rioting which followed. Disturbances continued for three more nights. As before, it was clear that few of those involved lived in the Ardoyne and that some people had been brought in from outside to cause trouble. The threats posed to the police officers in a police landrover which became detached from support were very serious. Equally concerning was the evident danger to very small children who were very close to the disorder.

### *Other public order incidents*

210. Elsewhere in Belfast, three police officers were shot during rioting in North Queen Street on 11 July. Twenty-seven police officers were injured in the New Lodge and Broadway areas that evening. On the third night of the violence six shots were fired at police. In Londonderry, five shots were fired at police officers in the Bogside area. There were also disturbances in Ballymena and Lurgan. The use of firearms against the police demonstrates that the need for powers to search for weapons is more than theoretical.

### *Conclusions from this year about police strategies*

211. The police strategy at the Ardoyne shopfronts was designed to enable the parade to follow through as permitted, to contain damage and disruption to the local community and to keep protesters from attacking the parade and the police. In all of this they showed a clear regard for their obligations under human rights legislation. That was very obvious to me, both in the Gold Command operations room at Castlereagh and in observation of the results from CCTV cameras.
212. The police have been criticised in some quarters for not attempting to resolve the disorder more explicitly. I do not agree with that criticism. To have sent in "snatch" squads would have contributed nothing to the planned strategy. On the contrary, it would have put at risk the lives of members of the public, not least the very young children who had been allowed to get right to the front of the disorder, as well as police officers. It would quickly have inflamed tensions, which would have been instantly exploited by the residual terrorist elements fomenting the disorder. It was much better to resolve the parade safely and then to use the opportunities provided by CCTV footage to identify and subsequently charge those suspected of disorder.
213. That carries a deterrent message for the future and keeps the issue within the criminal justice framework which is the only long-term basis for dealing with such manifestations. My comments are about CCTV footage generally: I make no comment on publication of CCTV images in public media, which is currently the subject of legal proceedings.
214. A similar strategy was followed in Londonderry on 14 August. The scale of the police operation in a closely confined area, almost every part of which is replete with historical resonance, was enormous, not least dealing with over 100 bands and feeder parades coming into the city. I met some of those who had been involved from the community in the planning for the impact of the parades on the city, especially its commercial and retail activity. I was also aware, in the Silver command operations room, of the need at certain points for the police to take rapid operational decisions, and the extent to which they had planned in advance to keep in constant touch by mobile phone with many of the key players on the day, a strategy which required fast reaction, especially when the parades were returning.

215. At the ground level, I observed police officers deal firmly but courteously with a young man whose dress and behaviour were likely to cause trouble as the parade went through the Diamond. The instant gathering of a group of young men watching what was happening showed the need for the utmost calm and restraint on the part of the police.

*Future planning*

216. As last year, the PSNI planned to handle all public order situations during the parading season within their own resources, apart from contingent specialist technical support. Their own capability gave them the means to clear roads and obstacles if necessary. A senior police officer made clear at the end of April that police planning for public order did not include calling for military support.
217. The possibility of reinforcements for PSNI, by mutual aid from other police forces in the United Kingdom, in the face of the risk of serious public disorder, is still available to the police. Joint training with police forces in Great Britain has taken place. The element of mutuality was shown by the deployment of PSNI assets after the murder in Rothbury in Northumberland in July.
218. There would be substantial issues involved in the deployment of police officers from Great Britain, not least command and control, training about the particular circumstances in Northern Ireland, and staffing matters such as personal protection and insurance. But these matters are not insuperable. There would be no need to put officers from Great Britain in the front line: they could be deployed into other duties so as to free up PSNI officers who had received the requisite training. PSNI would have the option of extra police assistance if needed, putting further into the background any question of military support in public order situations.

## **Part 6: Military Complaints Procedures**

### ***Introduction***

219. The role of the Independent Reviewer extends to review of complaints against the armed forces in Northern Ireland. I have set out the formal position in Part 1 of this report. The process covers procedures adopted by the General Officer Commanding Northern Ireland (“GOC”) for receiving, investigating and responding to complaints. The role of the GOC is now taken by the Brigade Commander. I shall use the shorthand “military complaints procedures” to refer to this part of the review task.
220. I shall follow the system which I developed for previous reports, namely to:
- Set out the procedures currently operated by the armed forces for the investigation of complaints
  - Describe and analyse the pattern of complaints in the year under review
  - Comment on the conclusions which can be drawn from the analysis.

### ***The procedures currently operated by the armed forces for the investigation of complaints***

#### *The complaints process*

221. The role of the armed forces in Northern Ireland now is very different from what it was before 2007 and has changed further over the past year with the drawing down of the Royal Air Force from Aldergrove on 20 September 2009.
222. The procedures for the investigation of complaints are locally based, which is important in ensuring that complainants do not feel that they have to grapple with a remote bureaucracy. The oversight of the complaints process is provided by me as Independent Reviewer.
223. Some people this year have commented to me on what they see as the lack of accountability of the armed forces in Northern Ireland compared with the police. I understand why such comments are made. Parliament clearly did not intend to create a role in relation to the armed forces comparable in scale with that of the Police Ombudsman in respect of the police. But my role is available as an oversight mechanism.
224. All complaints against the armed forces in Northern Ireland fall to be investigated by the military authorities in Northern Ireland. This activity is co-ordinated by the G9 Policy Staff at HQ 38 (Irish) Bde which administer the military complaints procedure for Northern Ireland, acting as a focal point for the receipt of complaints. These staff support the Brigade Commander in all aspects of enquiries and are the central point for complaints records management.

225. All the complaints this year have been about aircraft and helicopter flying. The latter has continued as a contentious issue. Complaints involve noise, overflights, apparent landings, or endangering livestock. (Since the end of Operation Banner actual landings are carried out only on land for which prior authority to land has been given).

*The Joint Helicopter Command Flying Station Aldergrove (JHC( FS) ALD)*

226. Military units in Northern Ireland have a role in the investigation of complaints. Because nearly all complaints nowadays relate to flying of helicopters and aircraft, the Joint Helicopter Command Flying Station Aldergrove (known as JHC (FS) ALD) is at the centre of the process. JHC (FS) ALD came into being when RAF Aldergrove closed on 20 September 2009. It took over the functions previously exercised by the Joint Helicopter Force (Northern Ireland) which was known as JHF(NI). For ease of reading I shall subsequently in this report refer to JHS (FS) ALD as the Flying Station at Aldergrove.
227. The Flying Station at Aldergrove is responsible for all military flights in Northern Ireland and the administration of military airspace in Northern Ireland. It works in close and continuous liaison with Air Traffic Control (ATC) at Belfast International Airport (BIAL) because of the dual use of the airstrip at Aldergrove. The Flying Station at Aldergrove is therefore responsible for the investigation of all complaints involving military flights in Northern Ireland.
228. The Flying Station at Aldergrove has marked its arrival with the provision of a new website. Among its webpages is a section about how to make a complaint. This includes a 24 hour day telephone number and an email address. The website also includes information about details needed when making a complaint in these terms:

*“In order to fully investigate any low flying complaint there are a number of details that are required: your name, the address/postcode of the incident location, a contact telephone number, the time of the incident, and the nature of the complaint. If you are familiar with military aircraft then the type of aircraft would also be of assistance but this is not essential, although if you can advise if it was a helicopter or fixed wing aircraft that will obviously assist greatly in investigations”.*

229. A leaflet about noise issued in May 2010 by the Department of the Environment in Northern Ireland includes on page 28 information and contact points for those who wish to complain about military aircraft. It summarises the basic information which is needed in order to identify the source of the noise so that the complaint can be investigated.

*Compensation claims*

230. If a claim is made, the complaints procedure stops. The case then passes to the Directorate of Safety and Claims (DS&C) in the Ministry of Defence in

London, who administer the claims process, dealing with all claims and continuing to use loss adjusters. DS&C provide a central focus and provide linkage into the reporting of the incident. A full investigation of this kind will involve HQ 38 Brigade staff, the Unit concerned, possibly the Civil Representative, Chief of the Air Staff (CAS) and DS&C, leading to the complaint being resolved. When this happens, the staff concerned in DS&C now copy their reply to HQ 38 Brigade for audit purposes. I have been provided with information about the numbers of claims, the number on which payments have been made, and the amounts paid, over the past three financial years and the current year, but I have no formal role in the process.

### *Statistics*

231. The statistics in summary show that the overall number of complaints in the year under review was 56 compared with 124 in 2008-9. Five of these properly belong to the previous year: four occurred in July 2009 and one was a late request (in December 2009) to investigate helicopter activity in May and June 2009, but for the sake of consistency of the statistical run I have included them in the current year. The total of 56 represents a decrease of 55% on the previous year. Of these 56, 52 were formal complaints, compared with 115 the previous year, a decrease of 55%. There were 4 informal complaints, compared with 9 the previous year, a decrease of 55%.
232. There is no absolute rule determining whether a complaint is investigated formally or informally. Much depends on the circumstances and the wishes of the complainant. I do not regard the distinction as significant – in my judgment they all require proper and effective investigation and resolution. All the complaints I saw this year were legitimate and were rightly registered as complaints by the ERU. They all thus fell within my area of scrutiny.
233. **Table 5** shows the total of formal aircraft and helicopter complaints from 1 January 2007 to 31 July 2010. **Table 6** shows informal aircraft and helicopter complaints for the same period. From these tables the trend in complaints is clear, in particular the rapid fall off in complaints following the departure from Aldergrove of the Puma helicopters of 230 Squadron RAF on 17 November 2009. The fall is quite marked. In the first six months of 2009 there were 60 complaints overall; in the similar period in 2010 there were 11. A new feature is complaints about fast jets and light aircraft (3 out of the total of 56).

### *Analysis of the case files*

234. HQ 38 (Irish) Brigade provided me with the folders of all 56 aircraft and helicopter complaints from 1 August 2009 to 31 July 2010. In March I reviewed the files from August to February and in September I reviewed the files from March to July. I have also kept in periodic touch with the military authorities throughout the year to assess the pattern of complaints.
235. As in the past, the source of these complaints, and the route which they can take to come to notice, has been quite varied. They may come direct to

HQ38 Brigade HQ staff or to the Flying Station at Aldergrove, usually by telephone. Sometimes they come via the Civil Representative or the police. Complaints are sometimes made direct to the Ministry of Defence Duty Officer or the Ministry of Defence Claims Officer.

236. The Civil Representative may receive complaints directly or indirectly, which are passed on to the HQ38 Brigade HQ staff, with a request for an investigation. The Civil Representative can become involved in informal negotiation and resolution where that seems appropriate. A judgment can be made as to whether an invitation to visit Aldergrove, or a liaison visit from the station, is likely to be productive. The new website for the Flying Station at Aldergrove says *"We now endeavour to personally visit any complainants across the Province to discuss their concerns"*. The Civil Representative has continued to play an important role in the handling and resolution of aircraft and helicopter complaints.

#### *Case recording*

237. When a complaint is received by the HQ38 Brigade HQ staff it is formally opened in a file (MoD Form 953, entitled "Military Aircraft Public Complaints Form") and sent off to the Flying Station at Aldergrove for investigation. The HQ staff compile a checklist, kept at the front of the file, which gives the main factual information about the progress of the complaint, with a date for each event.
238. This checklist includes whether or not it is a formal or an informal complaint, the date of the incident, whether a telephone message has been received and returned, whether the Civil Representative is involved, when the complaint was forwarded to the Flying Station at Aldergrove for investigation, when the Chief of the Air Staff were informed, whether the Ministry of Defence claims organisation has been notified, the date a written acknowledgment was sent and whether the leaflet about low flying has sent with it, when a formal reply was sent, whether a visit has been arranged and when all this information was entered on the databases. The complainant is told at the outset of the target to reply within three working weeks, which gives some assurance that the case will be properly pursued.
239. The replies which are received are then used by the HQ38 Brigade HQ staff in the preparation of a reply to the complainant. These staff are dependent on the Flying Station at Aldergrove for information on which to base their reply. This is the central link in the process. The staff make efforts to ensure that cases are not delayed, by chasing for replies as the due date for reply approaches if this is necessary.

#### *Case handling*

240. The target period of three weeks from the date of receipt for the despatch of a reply was met in 49 of the 52 cases to which it applied (these being the formal cases: the target rule does not apply in the case of an informal complaint where resolution of the case does not depend on a formal reply).

The remaining cases acquired a complexity which meant that it was not possible to keep to the 15 day rule:

- In one case, a reply was delayed because of difficulties in contacting the complainant, which led to the complaint having to be re-sent. The final reply was out of time for the original complaint, but it was within 15 days of the re-sent letter
- In another case, it was decided to treat the case as a compensation claim, so that a final reply was not sent until the claim had been settled, some three months later, following (among other things) dispute over the timing of the helicopter flight
- In another case, the original information from the Flying Station at Aldergrove was replaced by new information 14 days later, which led to the final letter issuing two days overdue.

241. The 15 day rule is not mandatory but it is regarded as best practice by the HQ38 Brigade HQ staff and I commend them for that. The public expect promptness and judge efficiency accordingly. But more important than the speed of reply, of course, is the accuracy and validity of the information supplied. One case had to be done again when it was realised that the date of the alleged helicopter flight had been mistakenly noted, because it was a night flight where the correct date was not immediately clear. This can occur from time to time: complainants may understandably not be sure what time a flight occurred, especially at night, or where several days elapse before they decide to complain (perhaps because they are waiting to see if any injuries to livestock come to light).

242. The staff at HQ38 Brigade HQ are not afraid to take a robust approach where this is required to establish the facts and the efforts which they and the Flying Station at Aldergrove go to, as shown by the email trails and telephone records on the files, are painstaking. The staff are proactive in seeking clarification from the Flying Station at Aldergrove where it is needed. Equally the staff in the Flying Station at Aldergrove at the other end of the process are well aware of the need for a quick and accurate response. I have talked to all the staff concerned before reaching this conclusion.

### *Files*

243. File handling is generally very good, with occasional mistakes such as the misrecording of the date of the alleged incident, and the sequence of events is clearly shown and easily deduced. In every case the staff at HQ38 Brigade HQ accurately noted when the complaint was made. In one case which had started in the Flying Station at Aldergrove the Form 953 was not used until the staff issued a reminder - this is important as a document of record and to show when the clock starts. Details of previous complaints continue to be important and in some cases repeat complainants show understandable frustration that they are being annoyed yet again. Two people complained five times this year, one person three times and two people twice. The staff at HQ and the Flying Station at Aldergrove are very familiar with repeat complainants and their circumstances.

244. Last year I noted that in a few cases it was not totally clear that all the follow-up work had been done, for example arranging a visit from the Civil Representative or sending of close-off letters. This has improved and in only one or two cases was the outcome unclear, usually where the case had involved a compensation claim. In one case the final reply referred to a further letter which was to issue from the Northern Ireland Office and an MLA but the file ended at that point so the outcome remains unknown.
245. The case noted above where the complainant asked in December 2009 for investigation of helicopter activity in May and June 2009 was carefully investigated. Accurate records were readily available and a reply was sent within the 15 day period.

#### *Replies to complainants*

246. So much for the process, which by and large is efficient and responsive. I have, as last year, looked in every case at the reply which was sent. The formal replies which are sent after enquiries have been made give a brief summary of the findings. They include offers of apology for distress or inconvenience and express sympathy where this is appropriate. They make sure that the complainant is told of the route for compensation claims to the Ministry of Defence claims organisation.
247. Where advice is offered on the telephone it is clear and direct and indeed the email trails show appreciation of the efforts of the staff, even when the complainant may not be feeling well disposed to the authorities. Where it is apparent that a non-military helicopter has been involved, contact points for the Civil Aviation Authority and the PSNI are given.
248. In some cases this year more information has been given to people living near to Aldergrove about the landing procedures which military aircraft have to follow. This is helpful, even if it does not always deal with the complainant's frustration.

#### *Disagreements*

249. There remain disputes about the height at which helicopters are flying. From the files the facts are not always clear. Helicopter pilots have to follow strict rules about height and are forbidden to land on private land without permission. For their part some complainants remain adamant about their understanding of what happened. I doubt that these cases can be fully resolved to the satisfaction of the complainant. So it is sensible that the final letters should offer apologies for distress and inconvenience, even when the facts are not totally clear. Nothing is lost by such an approach.

#### *Section 40(6) review*

250. On the basis of my reading of all the case files and discussion with staff, both at the HQ38 Brigade HQ and at the Flying Station at Aldergrove, I have not felt it necessary this year to invoke my power under section 40(6) to

require the Brigade Commander to review a particular case or class of cases.

#### *Nature of the complaints this year*

251. The basis for the complaints falls into several clear categories, in broadly equal proportions, affecting either people in a house or animals and birds kept in the open or in outbuildings. This was the pattern I noted last year and it has not changed much. Most of the complaints affecting people relate to nuisance disturbance from noise, mainly affecting those trying to sleep, children or chronically sick family members. In one instance it was described as “a persistent, unbearable noise nuisance”.
252. The complaints affecting livestock reflect Northern Ireland’s predominantly rural nature, and where for example they involve upset to horses in stud farms or riding stables, or rearing of game birds, the costs can potentially be quite significant and damaging to the owner. Where there is the potential for financial damage the route to a claim for compensation from the Ministry of Defence is clear. I myself have no *locus* in such cases and I offer no comment on them.
253. The timings of complaints have been different this year. The four months before the Pumas of 230 Squadron departed on 17 November show substantial activity. This included a period not only of training flights but also of preparation for the Pumas’ departure. Complaints have diminished considerably since then.
254. The geographical breakdown reflects both the training pattern out of Aldergrove and activity in support of the civil authorities. The main areas affected have been Ballymena, Coalisland, Kilrea and Rasharkin, although in some cases the statistics reflect repeat claimants from a single person. Only one complaint was made this year in the Downpatrick area in relation to Ballykinler camp.

#### ***Some conclusions on helicopter flying***

255. Last year I made comments in relation to two aspects of aircraft and helicopter flying: operational issues and links with the community.

#### *Patterns of military flying*

256. So far as operational issues are concerned, the departure of the Pumas of 230 Squadron RAF has significantly altered the pattern of military flying in Northern Ireland. The Flying Station at Aldergrove website says that Aldergrove will remain as Main Operating Base for 5 Regiment Army Air Corps (AAC). Units based in Aldergrove will have a deployable role to support operations in the rest of the world. This may include plans to open up Northern Irish airspace to limited fast jet or multi-engine low flying training aircraft. So far as night flying (which has its own webpage) is concerned, the Flying Station at Aldergrove say that they will seek to limit its use.

257. It follows from all of this that military aircraft and helicopter flying of various kinds will continue in Northern Ireland, both for training purposes and in support of the civil authorities. The impact should be less than that of the Pumas and less geographically concentrated. But it will nevertheless continue.

*Keeping the complaints system responsive*

258. There are two clear implications of this. The first is that the complaints system, which is efficient and responsive, must continue to function as effectively as it does now. The need will remain, albeit on a smaller scale. This is well understood by the staff at HQ38 Brigade HQ. They have considerable expertise, knowledge and contacts which contribute significantly to their overall effectiveness.

259. It is important that their efforts continue to be matched equally effectively by the operational staff in the Flying Station at Aldergrove. When new staff are posted there, which the website makes clear will happen quite frequently, it is imperative that they should continue to be made aware of the sensitivities attached to military air activity in Northern Ireland. The legacy of the past means that the issues are quite different from those in Great Britain.

*Reassuring people who are affected by helicopter flying*

260. The second implication is the continued need to maintain and develop contacts both with individual complainants and with the wider community. One case from last year, involving a repeated complainant, was finally resolved when the complainant accepted an invitation to visit Aldergrove, met aircrews and was taken on a short helicopter flight. The context became clear and that person has made no complaints this year. Every effort should be made to engage complainants, and it should be standard practice to offer a visit to Aldergrove (if not a flight in a helicopter) when a repeat complaint is made.

261. Not every one will be responsive to such invitations. It was put to me several times that some people are not interested in talking to the military: they just want the military to go away. That feeling will be stronger among those communities whose experiences have left them with negative or hostile feelings towards military activities and no wish to have any involvement of any kind. That is understandable and those feelings should be respected. But the changed pattern of military activity offers the opportunity, as I said last year, for looking afresh at patterns of community engagement.

*Notice about flying*

262. A frequent complaint is that more notice could be given of planned operations, especially in areas subject to vulnerability, such as game bird rearing establishments during the breeding season, so that some measures of mitigation can be set up in advance. The Flying Station at Aldergrove website says *"We are not allowed to pre-release details of aircraft*

*movements into or out of JHC FS Aldergrove due to security reasons. This applies equally to visiting aircraft on an ad hoc basis or those who may be here for a little longer. We can, however, provide a guide to the times during which aircraft will be flying in and out of our airfield. This is specially useful to people that live within the local community who may be affected by night flying training sorties”.*

263. The website then goes on to give flying times for the forthcoming week. Unfortunately the website entry for a day in mid-September when I looked at it gave flying times planned for the week commencing 16 August. This is not helpful. Much goodwill can be lost by failing to keep websites up to date. The information needs to be timely if it is to be of any benefit to busy people running farming and stock rearing enterprises who are under enough pressure these days anyway without having to cope with out of date information. The HQ staff themselves picked this up on one case where the information on the website was out of date. The Flying Station at Aldergrove should take it as a high priority task to keep the website on planned flying times up to date.

#### *Interest groups*

264. Much effort has been made to reach out to particular interest groups, especially farmers and horse-riding groups, with impressive results. Not every group with an interest has however yet been identified. It would be good to reach the point where every group whose interests may be affected by military flying was known, so that their needs could be understood.

#### *Communications strategy*

265. The HQ 38 Brigade HQ staff have undertaken a comprehensive review of their communication strategy in respect of military aviation. It has overtaken the plans last year to re-issue information leaflets. This review covers media of all types. Many of those likely to be affected by helicopter flying make great use of the internet and are probably best reached that way. But not everyone, especially older people, has access to the internet and such people should not be disadvantaged. The current review should therefore include printed media.
266. These documents need not be “glossy” and in the current economic climate publications of that kind would probably cause justified adverse comment. But factual, accurate, up-to-date and informative print media which can be quickly produced and distributed have a part to play in getting the messages out. Local radio and television are of course available. The communications strategy also envisages increased community events, visits, Brigade events and other face-to-face occasions. It correctly notes that the Independent Reviewer will want to assess its effectiveness.

## Part 7: Conclusions

### Preliminary

267. These conclusions relate to the third full year of the operation of the Justice and Security Act, from 1 August 2009 to 31 July 2010. As before, they are based solely on the review activity described in the text above.

### The security profile

268. There is a clear consistency of view that the security profile in the past year has been very serious. I reach that conclusion on the basis of periodic meetings with senior staff in the police, the Security Service and the military authorities, as well as contact with operational commanders and their staff at all ranks. It also reflects my discussions with the political parties, interested groups and community contacts.
269. The assessment of the serious nature of the threat is also supported by a range of other commentators, whose views I have recorded above. These include the Secretary of State, the Minister of Justice, the Independent Monitoring Commission, Lord Carlile and the Chief Constable.
270. The seriousness of the threat can be judged in the separate but closely related areas of terrorism, public order and serious crime. This year the linkages between the three have grown more complex. To reach my conclusions I have had the benefit of formal presentations from the operational services and have examined case studies, statistics and operational reports.
271. So far as terrorism is concerned, the activities of the residual terrorist groups have been dangerous and disruptive. They have shown greater coherence in their attempts to kill police officers and security personnel, shoot at and bomb police stations and public buildings and disrupt the general public. Their reckless disregard of and contempt for the safety of the general public, especially children, is horrendous. They have little or no political or community support and their claim to act in the name of a long-standing political cause has been totally and universally condemned both north and south of the border.
272. For public order, the violence in the Ardoyne on 12 July and succeeding nights had a serious impact on a long-suffering local community and caused injuries to over 80 police officers. Its more sinister significance is the clear indication of the involvement of residual terrorist groups from outside the immediate area, as a further demonstration both of their capabilities and of their contempt for the safety of the public. The use of firearms against the police in the

Ardoyne and in other incidents has required a clear tactical response from the police.

273. For **serious crime**, the Organised Crime Task Force report an increase in activity attributable to residual terrorist groups who, they say, remain heavily involved in organised crime, involving firearms in some cases. There also remains some involvement in organised crime by some members of the UDA.

### **Operation of the powers**

274. The police have had to deal with more threats and attacks this year. In terms of bomb threats they have had to call upon the military authorities since they have no capacity of their own to deal with them. They face opponents who have demonstrated increased capacity and scope in their planning and greater ability to mount lethal attacks involving firearms and explosives. These have ranged across Northern Ireland and have not been confined to particular areas. The police response has required a commensurate geographic range and recourse to all the powers available to them.
275. This has led to a substantial increase (22%) in the use of stop and question and stop and search across the range of police powers – the Police and Criminal Evidence Order (PACE), the Terrorism Act and the Justice and Security Act.
276. Precise conclusions may be misleading, particularly where numbers may have risen from a small base figure and where the overall statistics may incorporate surges of activity in response to specific threats or attacks. The increase in the use of the PACE powers has been less than for the others. The Terrorism Act has been used more than the Justice and Security Act, but the proportion of activity under the latter has increased.
277. Some will find these statistics a welcome reassurance that the police are responding effectively to the challenges posed by the residual terrorist threat. Others will find them alarming confirmation of all their worst fears about an increase in the use of intrusive powers, out of all proportion to need.
278. In this complex and sensitive situation it remains of paramount importance that stop and question and stop and search operations are carried out only when absolutely necessary and in full recognition of their potential to alienate individual members of the public and groups whose support for the police is essential if normal policing is to develop. Wherever possible, less intrusive strategies should be used. But where these powers are necessary, they should be used.
279. My own judgment is that the overall increased use of these powers is justified in response to the scale of the challenge from the residual terrorist groups, and in particular the risk to life from firearms and

explosives (whether judged according to obligations under Article 2 of the European Convention on Human Rights or against more pragmatic criteria).

280. I make that judgment against the clear assumption that every stop and search or stop and question must be capable of justification on its merits. These must relate both to the context of the security threat, which in Northern Ireland is not in doubt, and to the individual circumstances, for example in relation to movements of individuals, vehicles, weapons and explosives.
281. This year I have followed on the work of the first two years to examine whether the records of the use of Justice and Security Act which are mandatory are being kept fully and accurately. This is absolutely crucial if the police are to be able to demonstrate the justification for the use of the power in every individual case. Since the person stopped is entitled to a copy of the record there is an obvious risk of misunderstanding or resentment if the reasoning is not clear.
282. From my limited sampling of the records, I conclude that there is still some way to go in pursuit of best practice, but internal police briefing notes show that these issues are recognised. Instructions to police officers are clear and unequivocal and the training which I have observed is equally thorough. The increased use of these powers and the higher profile they have inevitably assumed in public consciousness reinforce the point. The need to follow operational orders accurately in every case must continue to be given high priority in police training and operations and in supervision by senior officers. The development of electronic recording which the police are pursuing is an excellent step.
283. The use of powers to close roads is fully justified against the risk to life but they will inevitably cause disruption to the public and may give rise to frustration. Since I can envisage a greater use of these powers if the threat continues it would be advisable for consultation procedures to be reviewed to make sure both that the reasons for a closure are fully understood and that any possible mitigation measures are adequately explored.

### *The role of the armed forces*

284. The transition to a normalised security profile, in which the armed forces act in a limited role in support of the police, was effectively completed in 2007. It is encouraging that everyone I have spoken to this year now takes that position for granted.
285. There is no doubt however that there has been a heavy demand for the services of Ammunition Technical Officers (ATOs) who perform life and death operations to defuse bombs. They were called out on 460 occasions this year, compared with 458 the previous year, in

circumstances of immediate danger to life. The police have no resources to do this.

286. The speed of the ATOs' response cannot be faulted, but it is crucial in resolving an actual or potential threat, reducing disruption to the public and restoring normality. It thus has a direct impact on community confidence in the overall response to the threat, including the police response. For that reason the speed and coverage of the ATOs' response will continue to need careful monitoring, particularly at a time when United Kingdom defence requirements over the longer term are being assessed and the balance between commitments at home and abroad is under scrutiny.
287. The powers in the Justice and Security Act which involve the armed forces in dealing with devices and hoaxes have therefore continued to be actively required. Other powers, in relation to arrest and public order, have not been used. They are dormant but are not yet redundant.

### **Public Order**

288. I have described above the police response to the serious disorder this year. Challenging though this has been, the police dealt with it according to carefully planned and executed strategies designed to maintain calm and avoid the creation of situations which could have given rise to injury or be exploited by malign influences. They have done this effectively. The problems they face are like no others in the United Kingdom and the tactical decisions they have to make are unique.
289. Although these matters are for others to decide, I see no need to change the basis of planning for next year or the disposition of assets and resources, subject to ensuring that vehicles which are used in demanding tactical situations are fit for purpose.
290. The armed forces can continue to be regarded as a background option and any reinforcements which PSNI require can be found from police assets from forces in Great Britain, drawing on standard mutual aid arrangements. The option of planning and training for such dispositions is a welcome assurance to the public in Northern Ireland. And PSNI have much to teach police forces in Great Britain about handling difficult public order situations.

### **Military complaints**

291. There were 56 complaints this year, compared with 124 the previous year, a fall of 55%. Of these 52 (93% of the total) were treated as formal complaints, the same proportion as last year. All 56 complaints relate to military flying (all but three helicopter flying). I have read through all the files relating to formal complaints and examined how the informal complaints have been resolved.

292. The target period of 15 days for responding to a formal complaint was met in 49 of the 52 cases to which it applied. The remaining cases acquired a complexity which meant it was not possible to keep to the 15 day rule. This was not due to inaction on the part of the investigation staff.
293. The handling of complaints cases this year has been effective. It follows that I have not felt it necessary this year to invoke my power to require the Brigade Commander to review a particular case or class of cases.
294. The departure of the Pumas of 230 Squadron RAF has removed the major source of complaint from previous years. Under the Flying Station Aldergrove, helicopter and fast jet flying and training will continue. The expectation is that this will be less intrusive than the noise caused by the Pumas. But the Station will need to maintain the capacity to respond readily to complaints and give accurate information, so that the current clear and timely response to complaints can be maintained.
295. The changing pattern of activity following the departure of the Pumas has triggered a reappraisal of communications strategies to explain the pattern of military flying to the public in Northern Ireland. I welcome this initiative. Evaluating its impact should form part of the task of the Independent Reviewer next year.

### **The future of these powers**

296. In his letter of appointment, the Secretary of State said:
- “The Reviewer may make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act”.*
297. In my judgment, this issue needs to be addressed each year. There is a danger that genuine concern and caution might foster an assumption that the powers can be carried over to the following year without rigorous examination. It has to be constantly remembered that they are exceptional powers whose rationale should be appraised afresh each year. They arouse a range of reactions from the enthusiastic to the hostile among the community in Northern Ireland.

### *Operational need and advice.*

298. My approach has been to examine whether there is likely to be an operational need for them, based on evidence from the past year, assessment of the likely security profile, and advice from the police.
299. All three indicators leave me in no doubt as to the continued requirement. Last year was very bad in security terms. This year the prospects at present seem no better. The threat level remains at

**“severe”. Both the PSNI and ACPO have told me that they think the powers remain necessary.**

300. **Some of the powers provided for the armed forces are effectively dormant if not yet redundant. There is the option of removing them piecemeal, leaving only those for which there is a demonstrable need. That is a judgment for others to make, not for me, but reflection on the current security profile does not suggest that now is the time to do this.**

*Other views*

301. **My discussions with political parties and other groups have naturally covered questions about the future. When I have asked people about this they have responded openly and frankly.**
302. **In some quarters the heightened security threat makes it unthinkable to envisage any change at present, nor could they envisage removing even those powers which are little used by the police or the armed forces. Nothing should be done, in their view, to reduce the capacity of the police to counter the residual terrorist threat as effectively as possible or to weaken public confidence in the police’s ability to do so. The fragility of the current security position makes such a conclusion inevitable, they believe, and it would be as well to recognise that and plan accordingly.**
303. **Others continue to see the powers as a major stumbling block on the path to normalisation, which they believe will become even more significant in a post- devolution environment. They believe that their impact is felt disproportionately in nationalist areas and that the continuance of intrusive police and military powers serves merely to recruit support for residual terrorist groups and perpetuate an image which is at stark variance with what is now urgently needed to maintain community confidence. Their objections in principle to these powers remain.**
304. **My conclusion from the operational indicators is that no change should be made to these powers for the current year. The balance of other views is not so clear cut. Objections of principle will remain, however conspicuously carefully the police operate these powers. To allow scope for these objections to be met, the police should continue to use the powers only where there is no alternative and subject to demonstrable need in every case.**
305. **Rigorous oversight from senior levels, careful monitoring and record keeping, and a training programme which focuses on all the sensitivities set out in this report will continue to be essential. But where it is necessary to use these powers, they should be used.**

## **Recommendations**

306. I recommend that:

- (1) PSNI should develop further their operational orders and training programmes to ensure that all officers likely to use these powers are fully trained to do so when individual circumstances justify and when no other powers are appropriate (*paragraphs 124 and 278*)**
- (2) If those conditions are satisfied, the powers should be used (*paragraphs 124 and 278*)**
- (3) Wherever possible, the basis for a stop should be shown on the record, whether electronic or paper based, in a manner likely to be readily understood by the subject of the stop (*paragraph 135*)**
- (4) The police should proceed as rapidly as possible with their system for the electronic recording of stop and search and stop and question activity (*paragraph 140*)**
- (5) Police operations against suspected terrorists should, as in the past year, involve specialist support from the armed services (*paragraph 198*)**
- (6) The speed and coverage of response to bomb incidents by Ammunition Technical Officers (ATOs) should be carefully monitored (*paragraph 197*)**
- (7) Police planning for public disorder should continue to follow carefully prepared strategies, based on a clear regard for obligations under human rights legislation and the need to avoid confrontation under provocation, whilst maintaining firm control over events (*paragraph 212*)**
- (8) PSNI should plan to meet public order commitments from their own resources, using all the powers and assets available to them (*paragraph 216*)**
- (9) Contingent planning for the invocation of mutual aid from police forces in Great Britain should however continue as necessary, so as to put further into the background any potential need for military assistance in meeting public order commitments (*paragraph 217*)**
- (10) Powers to close roads should be used where necessary but the procedures for public consultation should be reviewed to ensure, whenever time permits, maximum public involvement and the exploration of mitigation measures (*paragraphs 184 and 189*)**
- (12) HQ 38 Brigade should continue to maintain a robust and effective system for investigating and resolving complaints about military aviation and ensure that service personnel newly deployed in Northern Ireland are made fully aware of the sensitive legacy of past military involvement (*paragraphs 258 and 259*)**

**(13) HQ 38 Brigade should make every effort to engage complainants and it should be standard practice to offer a visit to Aldergrove to a repeat complainant (*paragraph 260*)**

**(14) HQ 38 Brigade should complete their review of communications strategies in relation to military aviation, including their audit of interest groups and utilising all available media, and ensuring that websites about planned flying are kept up to date (*paragraph 265*)**

**(15) The powers in sections 21 to 32 of the Justice and Security Act should be continued in their entirety for a further year, subject only to any wider legal or legislative developments (*paragraphs 304 and 305*)**

**ROBERT WHALLEY CB**

**November 2010**

## Appendix A: The Powers under Review

1. I set out below a summary of each of the powers under review, drawn from the Explanatory Notes prepared by the Northern Ireland Office, with an indication of its predecessor legislation.

### 2. **Section 21: Stop and question:**

*provides a member of the armed forces on duty or a constable with the power to stop and question a person for so long as is necessary to establish their identity and movements.*

*Additionally, members of the armed forces may stop a person to question him or her about a recent explosion or incident endangering life, or about their knowledge of a person killed or injured in a recent explosion or incident. These additional grounds are intended to assist the military to undertake explosive ordnance work, where they may wish to question people about explosions to gain knowledge which will help them ensure the safety of the area. Anyone who fails to stop or answer to the best of their knowledge and ability commits an offence.*

3. This power is based on section 89 of the Terrorism Act 2000.

### 4. **Section 22: Arrest:**

*allows a member of the armed forces to arrest and detain a person for up to four hours if he or she reasonably suspects they are committing, about to commit or have committed an offence. Premises where that person is or is reasonably suspected to be may be entered and searched for the purposes of an arrest.*

*The power to detain a person for up to four hours is intended to allow sufficient time for a PSNI officer to attend in order to re-arrest the person and charge them with an offence, if appropriate.*

*It is envisaged that members of the armed forces will be deployed increasingly rarely, so will not have recourse to these powers on a regular basis. They are not expected to know the law as intimately as a police constable, hence in exercising their powers of arrest they will not be required to provide detailed legal grounds for arrest. Subsection (2) provides that members of the armed forces comply with any laws requiring them to state grounds for arrest by saying that they are making the arrest as a member of Her Majesty's Forces. There is an exception in subsection (5) for laws that have effect only by virtue of the Human Rights Act 1998. The effect of this is that the armed forces satisfy their legal obligations if they comply with subsection (2), except any overarching requirement under the Human Rights Act 1998.*

*A member of the armed forces can seize and detain for up to four hours anything he or she reasonably suspects is being, has been or is intended to*

*be used in the commission of an offence under section 31 or 32 (offences related to powers of road closure and land seizure). This measure enables the retention of articles to be used in the commission of those offences until a constable attends who will decide whether to arrest and charge.*

5. This power is based upon section 83 of the Terrorism Act 2000.

6. **Section 23: Entry:**

*provides a power of entry to premises. Premises are defined at section 42 to include vehicles.*

*This section allows a member of the armed forces or a constable to enter premises if he or she considers it necessary in the course of operations for the preservation of peace or the maintenance of order. Since no warrant is required, this section enables officers on the ground to respond immediately to events as they arise.*

*A constable may not enter a building unless the conditions in subsection (2) are satisfied. First, there must be written authorization from an officer of the rank of superintendent or above. If no such authorization is in place and it is not reasonably practicable to obtain written authorization, then oral authorization may be provided by an officer of the rank of Inspector or above. If it is not reasonably practicable to obtain either written or oral authorization then a constable may enter a building without it.*

*An authorization must relate to a specified area within Northern Ireland. All authorizations must be retained in written form and constables who enter premises must make a record of each entry as soon as is reasonably practicable. Subsection 6 sets out the information that should be included in such records. Copies of records or authorizations must be given to the owners or occupiers of buildings which have been entered as soon as is reasonably practicable.*

7. The general power of entry is drawn from section 90 of the Terrorism Act 2000. The procedures to be followed for authorizations and record keeping are new: they are similar to those for the examination of documents, as an added safeguard on powers of entry.

8. **Section 24: Search for munitions and transmitters:**

*gives effect to Schedule 3, detail of which is provided below.*

9. This section is the same as the preceding section 84 of the Terrorism Act 2000, together with Schedule 10 to that Act.

10. **Section 25: Search for unlawfully detained persons:**

*allows members of the armed forces to enter and search any premises in order to search for any person whom they reasonably believe has been*

*unlawfully detained and whose life is endangered. No warrant is to be required because time will be critical in these situations.*

*The section requires the power to search a dwelling to be exercised only if authorized by a commissioned officer. This recognizes the special status of people's homes: "dwelling" is defined at section 42 of the Act.*

11. This power is based upon section 86 of the Terrorism Act but is now restricted to the armed forces: the police rely upon powers under the Police and Criminal Evidence Order and the power of entry in section 23.

12. **Section 26: Premises: vehicles, &c:**

*provides that a power to search premises includes a power to stop a vehicle, and where necessary or expedient, cause it to be taken away for searching. References to premises (found in sections 22(3), 23, 25, 28 and 33 and Schedule 3) include vehicles by virtue of section 42. Where records must be made of a search, and that search is of a vehicle, references to the need to record an address will be taken as a reference to the location of the vehicle and its registration number. References to the occupier will be taken to refer to the owner or driver of the vehicle. An offence of failing to stop a vehicle is created.*

*Subsection (5) enables, when searching a vehicle for munitions and transmitters, the searcher to require a person to remain with the vehicle or to go to any place the vehicle is taken where the searcher reasonably believes it necessary for carrying out the search. Reasonable force may be used to secure compliance with these requirements.*

*Subsection (6) provides that a requirement to stay with the vehicle, or to go to where it is taken, may only last as long as the search, or for four hours (extendable to eight hours in certain circumstances), whichever is shorter. A record must be made and a copy given to the owner or driver of the vehicle.*

13. This power is based upon section 95 of the Terrorism Act 2000.

14. **Section 27: Examination of documents:**

*provides that a member of the armed forces may examine documents found in a search under sections 24 to 26 in order to ascertain whether the information contained in them is likely to be useful for terrorism, and if necessary or expedient remove them to another place, for up to 48 hours.*

*A person may not examine a document which he or she has reasonable cause to believe is subject to legal privilege.*

*It is an offence to obstruct a member of the armed forces in exercising this power.*

15. This power is based upon section 87 of the Terrorism Act 2000, but is now restricted to members of the armed forces. The police have separate powers

under the Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007, Article 13, provided for a wider range of purposes.

**16. Section 28: Examination of documents: procedure:**

*provides that documents examined using the power at section 27 of the Act may not be photographed or copied. Written records of examinations must be made as soon as reasonably practicable and must include the information listed at subsections (2) and (3). A copy of the records should be supplied to the person who had custody of the document or to the occupier of the building where the document was found.*

17. This power is based upon section 88 of the Terrorism Act 2000, but is restricted to members of the armed services in line with section 27.

**18. Section 29: Taking possession of land, &:**

*provides that the Secretary of State may authorize someone to take possession of land or property and carry out work on it. He may also authorize a person to place buildings and other structures in a state of defence, for instance through fortification. Property may be detained, destroyed or moved by authorized persons, and the Secretary of State may also authorize persons to take actions which interfere with public rights or private rights of property. These powers may only be exercised where it is necessary for the preservation of peace or the maintenance of order. It is intended that such powers will be used during the marching season in Northern Ireland and to allow the rapid creation of "peace walls" at interfaces where there is community tension. These powers may be exercised at very short notice, hence they are exempt from normal planning processes.*

19. This section reproduces section 91 of the Terrorism Act 2000.

**20. Section 30: Road closure: immediate:**

*provides that a member of the armed forces, or someone authorized by the Secretary of State, may close roads, divert them and restrict and prohibit the use of rights of way or waterways where it is immediately necessary for the preservation of peace or the maintenance of order. These powers are also intended for the management of the marching season in Northern Ireland. For example, roads and public rights of way may be closed at short notice in reaction to events on the ground.*

21. This power is based upon section 92 of the Terrorism Act 2000 but is restricted to the armed forces. The police rely on Article 12 of the Policing (Miscellaneous Provisions) (Northern Ireland) Order and powers under road traffic legislation.

**22. Section 31: Sections 29 and 30: supplementary:**

*creates an offence of interfering with works and equipment used to take possession of land or close or divert roads, rights of way, etc, unless there is a reasonable excuse for doing so.*

*This section also provides that authorizations under sections 29 and 30 may authorize the exercise of all powers, or only some of them, and that authorizations may relate to a person or to a group of people.*

23. This section reproduces section 93 of the Terrorism Act 2000.

24. **Section 32: Road closure: by order:**

*provides the Secretary of State with a power to close, partially close, or divert roads if necessary for the preservation of the peace or the maintenance of order. An offence of interfering with road closure works or equipment is created. Offences of executing bypass works within 200 metres of road closure works, having materials and tools for executing such works within 200 metres and knowingly permitting either of these to take place on land are created. There is a defence of reasonable excuse.*

25. This section reproduces section 94 of the Terrorism Act 2000.

## Appendix B: Statistics

### **Table 1: Police Service of Northern Ireland Summary Sheet**

Justice and Security Act – 1<sup>st</sup> August 2009 - 31<sup>st</sup> July 2010

|  | Aug-09 | Sep-09 | Oct-09 | Nov-09 | Dec-09 | Jan-10 | Feb-10 | Mar-10 | Apr-10 | May-10 | Jun-10 | Jul-10 | Total        |
|--|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------------|
| <b>1. JSA Section 21 - Number of persons stopped and questioned</b>                  | 274    | 1335   | 277    | 415    | 335    | 744    | 747    | 399    | 712    | 706    | 539    | 239    | <b>6,722</b> |
| <b>2. JSA Section 23 - Power of Entry</b>  | 15     | 10     | 2      | 0      | 3      | 7      | 6      | 7      | 8      | 15     | 13     | 5      | <b>91</b>    |
| <b>3. JSA Section 24 (Schedule 3) - Munitions and Transmitters stop and searches</b> |        |        |        |        |        |        |        |        |        |        |        |        |              |
| No. of persons stopped and searched, public place:                                   | 24     | 79     | 42     | 33     | 31     | 104    | 45     | 38     | 44     | 34     | 62     | 509    | <b>1,045</b> |
| No. of persons stopped and searched, private place:                                  | 9      | 11     | 7      | 4      | 1      | 4      | 26     | 11     | 11     | 11     | 10     | 9      | <b>114</b>   |
| Persons stopped and searched - total   | 33     | 90     | 49     | 37     | 32     | 108    | 71     | 49     | 55     | 45     | 72     | 518    | <b>1,159</b> |
| <b>JSA Section 24 (Schedule 3) - Searches of premises:</b>                           |        |        |        |        |        |        |        |        |        |        |        |        |              |
| No. of premises searched - Dwellings:  | 3      | 5      | 28     | 10     | 17     | 23     | 14     | 28     | 14     | 26     | 23     | 29     | <b>220</b>   |
| No. of premises searched - Other:  | 2      | 2      | 2      | 3      | 1      | 4      | 5      | 3      | 5      | 1      | 2      | 1      | <b>31</b>    |
| No. of occasions items seized or retained  | 1      | 4      | 2      | 1      | 3      | 9      | 6      | 3      | 8      | 16     | 13     | 18     | <b>84</b>    |
| <b>JSA Section 24 (Schedule 3) Use of Specialists:</b>                               |        |        |        |        |        |        |        |        |        |        |        |        |              |
| Use of specialists - No. of occasions 'other' persons accompanied police:            | 1      | 10     | 2      | 2      | 2      | 9      | 2      | 10     | 2      | 2      | 7      | 11     | <b>60</b>    |
| <b>4. JSA Section 26 (Schedule 3) - Search of Vehicles</b>                           |        |        |        |        |        |        |        |        |        |        |        |        |              |
| (1) (a) Vehicles stopped and searched under section 24                               | 21     | 117    | 35     | 28     | 34     | 199    | 59     | 47     | 51     | 95     | 51     | 650    | <b>1,387</b> |
| (1) (b) Vehicles taken to another location for search                                | 1      | 1      | 0      | 0      | 0      | 1      | 0      | 0      | 0      | 1      | 0      | 0      | <b>4</b>     |

Source: Central Statistics Unit, Police Service of Northern Ireland, Lisnasharragh

**Table 2: Use of Powers by Police in Northern Ireland under the Justice and Security (Northern Ireland) Act 2007 between 1<sup>st</sup> August 2009 and 31<sup>st</sup> July 2010**

**Table 2A**

**Justice and Security (NI) Act 2007 Act Section 21 – Stop and Question**

| Year     | Police Service of Northern Ireland       |  |
|----------|--|--|
|          | Number of Persons Stopped and Questioned |  |
| 2009     |  |  |
| Aug-Sept | 1,609                                    |  |
| Oct-Dec  | 1,027                                    |  |
| 2010     |  |  |
| Jan-Mar  | 1,890                                    |  |
| Apr-Jun  | 1,957                                    |  |
| Jul      | 239                                      |  |

Source: Police Service of Northern Ireland

**Table 2B**

**Justice and Security (NI) Act 2007 Act Section 23 – Power of Entry**

| Year     | Police Service of Northern Ireland |  |
|----------|------------------------------------|--|
|          | Number of Premises entered         |  |
| 2009     |                                    |  |
| Aug-Sept | 25                                 |  |
| Oct-Dec  | 5                                  |  |
| 2010     |                                    |  |
| Jan-Mar  | 20                                 |  |
| Apr-Jun  | 36                                 |  |
| Jul      | 5                                  |  |

Source: Police Service of Northern Ireland

**Table 2C****Justice and Security (NI) Act 2007 Act Section 24 (Schedule 3) – Munitions and Transmitters Stop and Searches**

| Year     | Number of Persons Stopped and Searched by Police |               |       |
|----------|--|---------------|-------|
|          | Public Place                                     | Private Place | Total |
| 2009     |  |               |       |
| Aug-Sept | 103  | 20            | 123   |
| Oct-Dec  | 106  | 12            | 118   |
| 2010     |  |               |       |
| Jan-Mar  | 187  | 41            | 228   |
| Apr-Jun  | 140  | 32            | 172   |
| Jul      | 509  | 9             | 518   |

Source: Police Service of Northern Ireland

**Table 2D****Justice and Security (NI) Act 2007 Act Section 24 (Schedule 3) – Searches of Premises**

| Year     | Searches of Premises by Police |       |                                    |  |
|----------|--------------------------------|-------|------------------------------------|--|
|          | Dwellings                      | Other | Occasions items seized or retained | Occasions 'other' persons accompanied police |
| 2009     |                                |       |                                    |  |
| Aug-Sept | 8                              | 4     | 5                                  | 11   |
| Oct-Dec  | 55                             | 6     | 6                                  | 6  |
| 2010     |                                |       |                                    |  |
| Jan-Mar  | 65                             | 12    | 18                                 | 21   |
| Apr-Jun  | 63                             | 8     | 37                                 | 11   |
| Jul      | 29                             | 1     | 18                                 | 11   |

Source: Police Service of Northern Ireland

**Table 2E**

**Justice and Security (NI) Act 2007 Act Section 26 (Schedule 3) – Searches of Vehicles**

| Year     | Searches of Vehicles by Police                                  |   |
|----------|---|---|
|          | Vehicles stopped and searched under JSA Section 24 (Schedule 3) | Vehicles taken to another location for search |
| 2009     |   |   |
| Aug-Sept | 138   | 2   |
| Oct-Dec  | 97  | 0   |
| 2010     |   |   |
| Jan-Mar  | 305   | 1   |
| Apr-Jun  | 197   | 1   |
| Jul      | 650   | 0   |

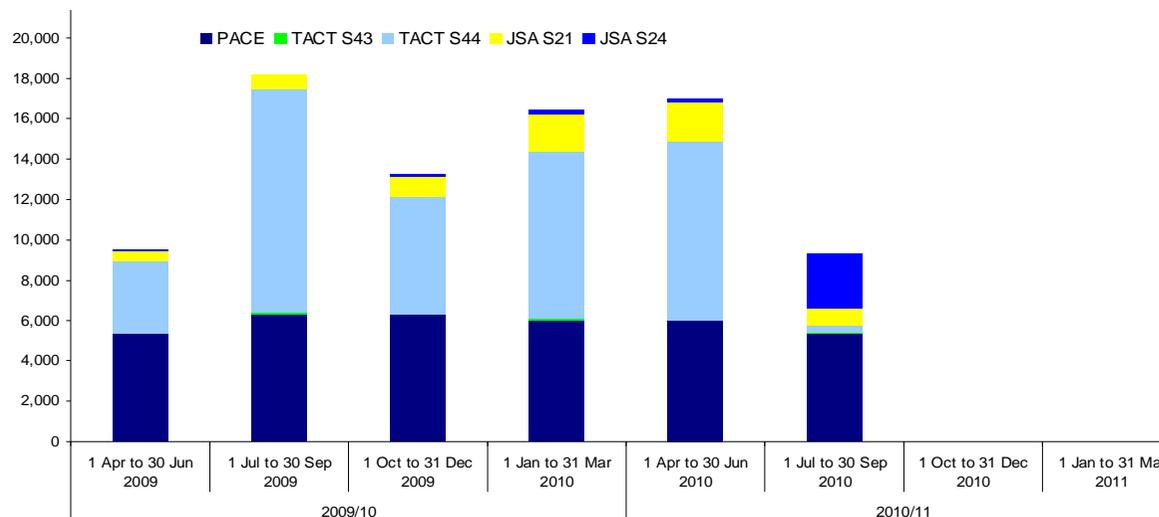
Source: Police Service of Northern Ireland

**Table 3: Number of persons stopped/searched and stopped/questioned under PACE, Terrorism Act and Justice and Security Act – Trend Information**

|  | 2009/10              |                      |                      |                      | 2010/11              |                      |                      |                      |
|--|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
|  | 1 Apr to 30 Jun 2009 | 1 Jul to 30 Sep 2009 | 1 Oct to 31 Dec 2009 | 1 Jan to 31 Mar 2010 | 1 Apr to 30 Jun 2010 | 1 Jul to 30 Sep 2010 | 1 Oct to 31 Dec 2010 | 1 Jan to 31 Mar 2011 |
| Number of persons stopped and searched under PACE              | 5,346                | 6,312                | 6,286                | 6,046                | 5,970                | 5,298                |                      |                      |
| Number of persons stopped and searched under TACT S43          | 15                   | 34                   | 27                   | 21                   | 34                   | 134                  |                      |                      |
| Number of persons stopped and searched under TACT S44          | 3,571                | 11,136               | 5,786                | 8,277                | 8,832                | 312                  |                      |                      |
| Number of persons stopped and questioned under JSA Section 21* | 494                  | 1,874                | 1,027                | 1,890                | 1,957                | 848                  |                      |                      |
| Number of persons stopped and searched under JSA Section 24*   | 96                   | 179                  | 118                  | 228                  | 172                  | 2,732                |                      |                      |
| <b>Total Stop and Search/Questions*</b>                        | <b>9,522</b>         | <b>19,535</b>        | <b>13,244</b>        | <b>16,462</b>        | <b>16,965</b>        | <b>9,324</b>         |                      |                      |

\* Please note that this is not the total number of persons stopped and searched/questioned as a stop and search/question can be carried out under two different legislations e.g. TACT S44 and JSAS21

**Number of persons stopped/searched and stopped/questioned under PACE, Terrorism Act and Justice and Security Act – Trend Information**



Source: Central Statistics Unit, Police Service of Northern Ireland, Lisnasharragh

## Table 4: Explosive Ordnance Disposal (E.O.D) Activity in Support of the Police

### EOD Call Outs: August 2009 – July 2010

| Type of Call Out                        | Aug-09    | Sep-09    | Oct-09    | Nov-09    | Dec-09    | Jan-10    | Feb-10    | Mar-10    | Apr-10    | May-10    | Jun-10    | Jul-10    |
|---|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| <b>321 EOD Sqn Call Outs:<br/>Total</b> | <b>36</b> | <b>42</b> | <b>35</b> | <b>26</b> | <b>28</b> | <b>56</b> | <b>30</b> | <b>46</b> | <b>46</b> | <b>34</b> | <b>39</b> | <b>42</b> |
| 321 EOD Sqn Live Device                 | 6         | 9         | 6         | 2         | 1         | 6         | 4         | 3         | 10        | 12        | 11        | 11        |
| 321 EOD Sqn Find                        | 20        | 18        | 13        | 13        | 14        | 33        | 15        | 24        | 13        | 10        | 20        | 21        |
| 321 EOD Sqn Hoax                        | 5         | 8         | 12        | 3         | 4         | 5         | 9         | 14        | 18        | 9         | 5         | 5         |
| 321 EOD Sqn False                       | 5         | 7         | 5         | 8         | 7         | 12        | 4         | 5         | 5         | 3         | 3         | 5         |
| 321 EOD Sqn Search Assists              | 0         | 0         | 0         | 0         | 2         | 0         | 0         | 0         | 0         | 0         | 0         | 0         |

**Table 5: Formal Helicopter Complaints – 1 January 2007 – 31 July 2010**

|              | 2007      | 2008      | 2009       | 2010                 |
|--------------|-----------|-----------|------------|----------------------|
| January      | 1         | 1         | 13         | 1                    |
| February     | 2         | 4         | 8          | 2                    |
| March        | 1         | 3         | 13         | 1                    |
| April        | 5         | 18        | 2          | 2                    |
| May          | 5         | 4         | 10         | 0                    |
| June         | 3         | 9         | 10         | 1                    |
| July         | 5         | 11        | 19         | 0                    |
| August       | 4         | 1         | 13         |                      |
| September    | 1         | 24        | 6          |                      |
| October      | 2         | 9         | 12         |                      |
| November     | 1         | 11        | 6          |                      |
| December     | 1         | 0         | 3          |                      |
| <b>Total</b> | <b>31</b> | <b>95</b> | <b>115</b> | <b>7<sup>1</sup></b> |

<sup>1</sup> This represents first seven months of 2010

**Table 6: Informal Helicopter Complaints – 1 January 2007 – 31 July 2010**

|              | 2007      | 2008      | 2009     | 2010                 |
|--------------|-----------|-----------|----------|----------------------|
| January      | 8         | 3         | 1        | 0                    |
| February     | 12        | 4         | 0        | 0                    |
| March        | 3         | 2         | 0        | 0                    |
| April        | 7         | 1         | 1        | 1                    |
| May          | 9         | 0         | 1        | 0                    |
| June         | 7         | 3         | 1        | 1                    |
| July         | 13        | 4         | 0        | 2                    |
| August       | 4         | 0         | 0        | -                    |
| September    | 0         | 4         | 0        | -                    |
| October      | 3         | 0         | 0        | -                    |
| November     | 0         | 0         | 0        | -                    |
| December     | 2         | 1         | 0        | -                    |
| <b>Total</b> | <b>68</b> | <b>22</b> | <b>4</b> | <b>4<sup>2</sup></b> |

<sup>2</sup> This represents first seven months of 2010

## **Appendix C: Organisations and Individuals Consulted or Submitting Evidence**

ACPO  
Alliance Party  
Amnesty International  
Attorney General for Northern Ireland  
Bar Council for Northern Ireland  
British Irish Rights Watch  
Chief of Air Staff, Ministry of Defence  
Civil Representatives  
Committee for the Administration of Justice  
Community groups in Ballykinler, Belfast and Londonderry  
Directorate of Safety and Claims, Ministry of Defence  
DUP  
The Rt Hon Paul Goggins MP  
HM Ambassador to Ireland  
HQ 38 (Irish) Bde  
Independent Monitoring Commission  
International Independent Commission for Decommissioning  
Justice  
Liberty  
Lord Carlile  
Lord Chief Justice of Northern Ireland  
Northern Ireland Office  
Northern Ireland Human Rights Commission  
Northern Ireland Policing Board  
Organised Crime Task Force  
Parades Commission  
Police Federation for Northern Ireland  
Police Ombudsman of Northern Ireland  
Police Service of Northern Ireland  
PUP  
SDLP  
Security Service  
Sinn Fein  
Superintendents' Association of Northern Ireland  
UUP  
University of Leeds School of Law