

**REPORT OF THE INDEPENDENT REVIEWER**

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

**FOURTH REPORT: 2010-2011**

**Robert Whalley CB**

**November 2011**

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.

You re-appointed me to this post on 12 January 2011.

My Terms of Reference were set out in 2008 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*

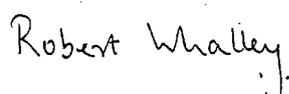
*The Reviewer will act in accordance with any request by the Secretary of State to include in a review specified matters over above those outlined in Sections 21 to 32 of the Act and the GOC remit outlined above.*

- *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, my second to him on 7 November 2009, and my third to you on 28 November 2010. All are available on the NIO website [www.nio.gov.uk](http://www.nio.gov.uk)

I now have pleasure in submitting to you my fourth report, which covers the period from 1 August 2010 to 31 July 2011.

**My conclusions are set out in Part 7, with recommendations in paragraph 437.**



**ROBERT WHALLEY CB**

November 2011

## **CONTENTS**

<b>Part 1: The Role of the Reviewer</b>	<b>4</b>
<b>Part 2: The Review Process</b>	<b>7</b>
<b>Part 3: The Political Background</b>	<b>13</b>
<b>Part 4: The Security Background</b>	<b>16</b>
<b>Part 5: The Operation of Police and Military Powers</b>	<b>22</b>
• Police powers against the residual terrorist threat	
• Linkages between the available powers	
• Police operational activity 2010-2011	
• Statistics on the use of the powers	
• Road closures	
• Military operations in support of the police	
• Case studies	
• Planning for public order situations	
<b>Part 6: Military Complaints Procedures</b>	<b>61</b>
<b>Part 7: Conclusions</b>	<b>69</b>
<b>Appendix A: The Powers Under Review</b>	<b>80</b>
<b>Appendix B: Statistics</b>	<b>85</b>
<b>Appendix C: Organisations and Individuals Consulted</b>	<b>92</b>
<b>Appendix D: Protection of Freedoms Bill: Explanatory Notes</b>	<b>93</b>

## Part 1: The Role of the Reviewer

### *The scope of this review*

1. This is my fourth report, which covers the period from 1 August 2010 to 31 July 2011. For consistency and ease of reference, the fourth 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, and road closures.
5. Part 6 examines complaints against the armed forces.
6. My conclusions are set out in Part 7, with recommendations in paragraph 437.

### *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 and re-appointed on 12 January 2011.
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 remains significant. It has taken on a new dimension this year with the revisions to the Terrorism Act in the amendments to stop and search powers using the Human Rights Act 1998 and in the Protection of Freedoms Bill, which I consider in detail below.

### *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.
  - In January 2009 the post of GOC Northern Ireland was abolished and subsumed under that of Brigadier 38 (Irish) Brigade. This has brought no change to the relationship between the senior military commander in Northern Ireland and the reviewer.
  - 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:

- **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**

14. My terms of reference require me to review the operation of those sections of the 2007 Act set out above. None of the changes proposed in the Protection of Freedoms Bill has yet been put into effect.

- **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 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**

15. The investigative powers in relation to military complaints are set out above. The number and nature of these complaints has been somewhat different this year. Detailed analysis and conclusions are in Part 6.

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

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

16. A review process to accompany legislation on terrorism dates back to the enactment of measures in respect of Northern Ireland in 1973 and in Great Britain following the Birmingham pub bombings in 1974.
17. From 2001 to 2010 the main legislation on terrorism in the United Kingdom was formally reviewed by The Rt Hon Lord Carlile of Berriew QC. Lord Carlile stood down from this role at the end of 2010. He is continuing in his non-statutory role as the independent reviewer of the national security arrangements for Northern Ireland. He is also chair of the Northern Ireland Committee on Protection (NICOP), which determines the policy for the provision of close armed protection to individuals living in Northern Ireland.
18. Lord Carlile's role in relation to the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006 was taken over on 21 February 2011 by Mr David Anderson QC. He published his first report, relating to the calendar year 2010, in July 2011. Since the powers which he is reviewing cover the United Kingdom as a whole, they apply in Northern Ireland in the same way as they do in Great Britain.
19. 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 were continued in the Justice and Security Act, which applies in Northern Ireland alone.
20. These are the powers which fall to me to review. 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. For that reason I have, as in previous years, examined their operation in relation to each of the threats which Mr Hain identified then. I have found that to be the best starting point for judging whether the original intentions and requirements continue to hold good in the light of events and experience. The questions need to be asked afresh each year.

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

21. Police powers in Northern Ireland can be found in at least three places – the Terrorism Act 2000 (including its recent amendments), the Justice and Security Act 2007 and the Police and Criminal Evidence Order. Each of these three powers has a different oversight mechanism. The Public Order (Northern Ireland) Order 1987 may also be relevant. I have commented before on the linkage between these powers in the way in which the police use them. That generates a commensurate need for linkage in the oversight processes if Parliament and the public are to be kept fully informed.

22. Lord Carlile, Mr Anderson and I have continued to work together closely to ensure that our three review processes are aligned in their approach and objectives. This has included holding joint meetings in Northern Ireland. At an early stage in my review this year, Mr Anderson and I met the Minister of Justice, Mr David Ford MLA, in view of his responsibilities for the Police Service of Northern Ireland. Shared working with the Northern Ireland Policing Board has been invaluable, especially in examining detailed police operations at a time of transition in the legislative framework.
23. Mr Anderson referred to the overlap of his review with mine in paragraphs 1.12 and 2.20 and 8.26 of his first report in July 2011. In particular, he commented on the linkage between the stop and search powers in section 44 on the Terrorism Act 2000 and additional stop and search powers in the Justice and Security Act.
24. Mr Anderson has recorded his agreement with me that the operation of section 44 in Northern Ireland should be covered in my reports. The public make no distinction between specific police powers in their interaction with the police and it makes sense to mirror that in the oversight process.

### ***Timescales***

25. My first report covered the first year of the operation of the Justice and Security Act, to 31 July 2008. My second and third reports covered the two successive calendar year – from 1 August 2008 to 31 July 2009 and 1 August 2009 to 31 July 2010 respectively. My fourth report therefore covers the calendar year from 1 August 2010 to 31 July 2011, with comment on the period since then where appropriate.

### ***Terminology***

26. I have used the term “residual terrorist groups” where relevant in this report. It has the value in that it does not associate violence solely with any one section of the community. The context in every case is Northern Ireland related terrorism. The term “dissident Republicans”, or “DRs” for short, is still commonly used in Northern Ireland, but I have not done so.
27. David Anderson, in paragraph 2.17 of his first report, said:  
  
*“It is not always easy (or politic) to decide whether Northern Ireland related violence should be classed as terrorism for the purposes of TA 2000, and official statistics tend to refer instead to incidents related to the security situation”.*
28. The security problems in Northern Ireland can be described in a number of ways. Some of my contacts this year have found this confusing and are uncertain about the extent of the problems, especially in relation to previous years, the trends and, most important, prospects for the future.

29. To meet these concerns, I have approached this issue broadly and looked at anything which might be seen as impeding the process towards a normal security profile which Mr Hain outlined in December 2006. A wide assessment of the security situation should therefore include incidents, hoaxes and public order events, together with trends in organised crime with a paramilitary aspect. None of my contacts has taken a different view.

### ***Review activity***

30. As before, I have kept in constant touch with developments in Northern Ireland throughout the year. I have made thirteen visits, some of extended duration, 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, which has been more extensive this year and has reached out beyond Northern Ireland into a wider UK audience.

### *Assessing the security position*

31. As well as our joint meeting with the Minister of Justice, Mr Anderson and I have jointly met the Policing Board for Northern Ireland and the Police Ombudsman. I have also once again met the Attorney General for Northern Ireland, John Larkin QC.
32. I have held regular meetings throughout the year with the police, the Security Service and the armed forces, at all levels in those organisations. For the first time this year, I held mid-year reviews (in March and April) to hear detailed reports of their operations.
33. It is now my practice to invite each of these services to offer me fully prepared, formal presentations of their analysis of events, with an assessment of the year ahead. These formal presentations took place in October this year, when there had been time to look back at the past year and also to think ahead.
34. The presentations cover the use which has been made of these powers and whether there is any continuing need for them. The purpose of all this is to enable me to consider afresh each year the case for retaining these powers so that I can advise the Secretary of State. There can be no question of simply rolling over the powers from one year to the next.
35. In the course of the year I have several times met the Chief Constable, Mr Matt Baggott CBE QPM BA (Hons) and three of those at Assistant Chief Constable rank, Mr Drew Harris OBE, Mr Alistair Finlay and Mr Gary White. I have also met several of the District Commanders, some of them quite frequently. I have met representatives of the Superintendents' Association of Northern Ireland and the Police Federation for Northern Ireland.
36. Police use of stop and search and stop and question powers is at the heart of this review. In March and September I visited Antrim Road police station to discuss the operation of stop and search powers with officers of various

ranks, and examined the records kept in that station. I have also kept in touch with the PSNI Central Statistics Branch.

#### *Public order*

37. On public order, I met the Chairman of the Parades Commission, Peter Osborne, and the Secretary, Ronnie Pedlow, in the course of the main parading season.
38. My first hand observation of police activity during the marching season included the Tour of the North parade in Belfast on 17 June, the Twelfth of July parades in Belfast and the 13 August parades in Londonderry.

#### *Road closures*

39. The powers to close roads under section 32 have been used again this year. I have made enquiries about the circumstances, and have discussed their impact with local residents and groups.

#### *Role of the armed forces*

40. I have made frequent visits to HQ 38 (Irish) Bde. for discussions with the Brigade Commander, Brigadier Ed Smyth-Osbourne. I have also, as in previous years, kept in close touch with his policy, operational and legal staff. These regular meetings give me a view about the specialist support which the armed forces provide to the police, principally these days consisting of a capability to defuse explosive devices, plus some liaison on public order support and specialist technical support.
41. In relation to military complaints, I have read through in full detail every file at HQ 38 (Irish) Bde relating to 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 all relate to military aviation.
42. I spent a day observing training for police officers in handling situations where live fire and home-made bombs may be present, whether in buildings or on roads and footpaths. This training is supported by Ammunition Technical Officers (ATOs). In the course of the day, I spoke to many of those taking part about how police operations in such situations are organised and supervised, and the role of ATOs in support of them.

#### *Wider discussions*

43. 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, public order and military complaints.

44. In addition to my formal meetings with the Northern Ireland Policing Board and the Police Ombudsman for Northern Ireland, I have worked closely with the Human Rights Advisor to the Policing Board and have met the Board's Human Rights and Professional Standards Committee.
45. 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 Shadow Secretary of State for Northern Ireland, Mr Vernon Coaker MP.
46. The Independent Monitoring Commission concluded their activities this year. I discussed with them their Twenty Fifth Reports and Twenty Sixth Reports (November 2010 and July 2011). The Twenty Fifth Report assessed the activities and state of preparedness of paramilitary groups in the first part of the review period and the Twenty Sixth Report gave an assessment of the period 2004 to 2011 under the heading "Changes, Impact and Lessons". The International Independent Commission for Decommissioning was also wound up in the course of the year and so did not feature in my review this year. But I have as last year met staff from the Organised Crime Task force and looked at some of their operational assessments.
47. I have met the British Ambassador in Dublin, Mr Julian King CMG, and the President of the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO), Sir Hugh Orde OBE QPM.

*Community contacts, human rights groups and academic insights*

48. The Northern Ireland Human Rights Commission, the Committee on the Administration of Justice and the British Irish Rights Watch have very helpfully shared their views with me. The Committee on the Administration of Justice gave me a copy of their submission in July 2011 to the United Nations Committee on Elimination of Racial Discrimination, which includes comment on stop and search and stop and question powers.
49. All these groups receive specific representations on behalf of individuals and groups who have been affected by these powers, which is a major element in my terms of reference. I have therefore drawn on their comments in my assessments and judgments. I once again invited comments from Amnesty International, Justice and Liberty but none of them offered me any. At the suggestion of the British Irish Rights Watch, I have met Dr John Topping of the University of Ulster to discuss his research into paramilitary groups.
50. I have met church and community leaders in areas affected by the actions of the police and armed forces in Belfast and Londonderry to hear first hand their impressions of the situation on the ground in their home areas, together with some of those (including former paramilitaries) now involved in local reconciliation projects. These valuable meetings give me insights which are different from those of the police and people in official positions.

*Preparation of this report*

51. I am once again very grateful to all of those who have given me their time and advice. They represent a wide range of interests and opinions. Their experienced and perceptive focus on events in Northern Ireland has been made freely and fully available to me.
52. I am aware, from comments made to me, that although this report is made to the Westminster Parliament its readership goes wider than that. In particular, some people may not be familiar with the present circumstances in Northern Ireland. I am also aware that some people draw selectively – to meet their own particular requirements – from specific parts of it. Hence the need for a certain amount of recapitulation from previous reports and repetition at some points in the text.
53. The conduct of this review and the preparation of this report have been mine alone. No-one has sought to influence or hinder me as I have gone about the job or come to my conclusions.

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

### ***Preliminary***

54. 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 2011. I am once again grateful to those who responded: the DUP, Sinn Fein, the SDLP, the UUP, the Alliance Party and the PUP.
55. Against a background of increasing resilience in the consolidation of devolved government in Northern Ireland it is pleasing to note a markedly more confident sense that the trajectory of political progress will be able to withstand serious security incidents, terrible though they are to those caught up in them.
56. 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. This year, the political parties have offered me views on a greater range of police activity than before. I have not attributed views to particular groups, so as to preserve confidences and encourage frank speaking.

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

57. 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 is important because of his accountability for the Police Service of Northern Ireland and his new power to exercise some of the provisions of the Justice and Security Act under agency arrangements. Hence the value which I attach to ready contact with him and his officials. I am very grateful to the Justice Minister for his continued co-operation and support.

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

#### ***Perceptions of the security threat***

58. Significantly this year, perceptions of the security threat were presented in a wider context than that of police operations alone. Preoccupations about historical enquiries, functioning of public bodies, conditions in the prisons and legal aid were seen as closely linked component parts of the security profile.
59. Concern about the residual terrorist threat remained high. Some of my interlocutors said that it was getting worse. Others believed that residual terrorist activity had reached something of a plateau, but no-one took the view that it was on the decline. This year, however, the dynamics of the security situation were discussed in much more detail than hitherto, and there was greater optimism that effective strategies had the potential to make an impact.

60. A new feature this year was concern about the greater activity of loyalist paramilitary organisations and its manifestation in street disorder and serious violence.
61. There was greater confidence than last year that, as the political process gained in maturity and depth, the potential for the activities of residual terrorist groups to derail the political settlement would diminish and they would become increasingly marginalised as having nothing to offer. The pace at which this might happen would depend on a range of factors, not all of them security related. But maintaining policing strategies which were both effective and sensitive was once again assessed as absolutely crucial to keeping progress on track.

*Comments on the police response*

62. There is widespread recognition that the police find themselves in a difficult position: they are rightly expected to police to the highest professional standards while themselves being increasingly among the main targets for attack - not now limited solely to attacks from elements in the nationalist community. This year it was apparent that police strategies are coming under closer scrutiny, especially at the local level, but also that some of the challenges are becoming better understood.
63. A strong message this year was the importance of making sure that community engagement strategies remain a high priority and do not take second place to security activity. Some believed that this was well understood by the police, while others expressed fears that the police were slipping back into a “security” mode in their operations. Three points emerged very clearly.
64. First, the importance of ensuring that senior commanders were not rotated between positions too frequently, since continuity of contact was seen as vital when confidences were being slowly built up: some people thought that the picture across Northern Ireland as a whole in this respect was patchy.
65. Secondly, maximising contacts between senior and junior officers so that all were working off the same script and that, in particular, the value of local community-based work was fully recognised and resources were not taken from it to reinforce security operations.
66. Thirdly, the importance of the speediest response to incidents likely to affect the public, for example where houses had to be evacuated. While recognising the risks of the presence of come-on or booby-trap devices, some people thought that the police were over-cautious both on their own account and for the public at large. Those who take this view do not have access to all the operational data driving these potentially life-and-death decisions, nor the extent to which residual terrorist groups set traps, either deliberately or recklessly. But they reflect considerations which are important to maintaining hard-won public confidence in the police.

### *Comments on handling public order situations*

67. Inevitably comments were coloured by the experiences in Great Britain in August. Some took the view that the police in Northern Ireland were rightly showing a firmer attitude this year and commended their tactics, for example deploying Attenuated Energy Projectiles (AEPs) and water cannon during the parades.
68. Others questioned the use of AEPs which they believed were used too readily and extensively, and compared their use in Northern Ireland with their non-use in English cities. They also took the view that water cannon, while preferable to AEPs, had been used too quickly this year.
69. The speed of arrests following the English riots was commented on. But “heat of the moment” arrests in Northern Ireland are likely to provoke much more immediate and contentious reactions than in an English city, where street allegiances may not be so well defined.
70. Some suggested that police tactics had been slower to develop in response to disturbances in loyalist areas than they were in nationalist areas and that correspondingly fewer arrests had been made in loyalist areas.
71. Some interlocutors laid emphasis on the significant number of injuries to police officers this year, while others regretted the need for large-scale deployment of Tactical Support Groups (TSGs), whose appearance in full riot equipment could set back months of work by community police officers.

### *Comments on continuation of the powers*

72. It continues to be the case that views diverge among the political parties as to whether these powers should be continued, although comments this year were more broadly expressed than hitherto.
73. Those for whom the security situation remains poised at a critical point think it would be madness to make any change to the present legislative structure, and indeed have questioned whether the police have enough powers, without suggesting any specific changes. Some of those believing that no changes should be made nevertheless believe that there are subtle movements in hitherto monolithic attitudes to the police, which require greater flexibility in the way the police carry out operations if new opportunities are to be grasped.
74. For others, opposition to these powers is a point of principle of the highest order, not only because of their historical resonance but because they damagingly entrench old attitudes. For some, their continuation, together with the use of stop and search operations under other powers, is now, more than ever, holding back progress towards a normal society. In their view, Northern Ireland will never be set free to move forward without imaginative steps in the area of security, of which abolition of these powers remains a priority.

## Part 4: The Security Background

### *Preliminary*

75. 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 position
  - The public order situation
  - The activities of organised criminals

### *The security position*

#### *Overall position*

76. There were many serious incidents in the year under review, including the terrible murder of Police Constable Ronan Kerr in Omagh on 2 April. Overall there was no lessening of the security threat and in the view of some people it got worse.
77. 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.

#### *Northern Ireland in a national context*

78. The Government noted the problems in Northern Ireland in two statements last year about national security policy. While much has elapsed since they were published, they nevertheless form part of the context against which security operations in Northern Ireland in the past year can be judged.
79. The National Security Strategy “*A Strong Britain in an Age of Uncertainty*” published in October 2010 said at paragraph 1.7:
- “At home there remains a serious and persistent threat from residual terrorist groups linked to Northern Ireland. Although these groups have no coherent political agenda and lack popular support, the frequency of terrorist attacks has increased over the last 18 months: there have been 37 attacks on national security attacks this year, up from 22 in the whole of 2009. The threat level within Northern Ireland is Severe; and the threat level for Great Britain has recently been raised from Moderate to Substantial, indicating that an attack is a strong possibility”.*
80. The Strategic Defence and Security Review “*Securing Britain in an Age of Uncertainty*” also published in October 2010 said at paragraph 4.A.2:
- “The threat from residual terrorism linked to Northern Ireland is a growing concern. There is a calculated campaign of violence from small dissident republican groups. Despite continuing political progress, their activities have increased in the last 18 months and the security situation is unlikely to*

*improve in the short term. There have been 37 attacks this year, compared with 22 in all of 2009. The ongoing recruitment of experienced terrorists and a younger generation will contribute to a continued high level of threat in Northern Ireland, as in Great Britain where the threat level was recently raised from Moderate to Substantial, meaning that an attack is a strong possibility”.*

#### *CONTEST: The United Kingdom’s Strategy for Countering Terrorism*

81. In July 2011, the Government set out its third published version of the United Kingdom’s counter-terrorism strategy, CONTEST. At paragraph 1.10 the Government said:

*“Over the past two years the threat from Northern Ireland Related Terrorism (NIRT) has also grown: there were 40 terrorist attacks in Northern Ireland in 2010 and there have been 16 terrorist attacks in Northern Ireland up to 30 June 2011”.*

#### *The Independent Monitoring Commission*

82. The reports by the Independent Monitoring Commission have been helpful in setting the context because of their independent assessment of the activity of groups who are seeking to perpetuate armed conflict. I have looked carefully at the comments of the IMC in their Twenty-Fifth Report (November 2010) and Twenty-Sixth Report (July 2011).
83. The Twenty-Fifth Report (November 2010) covers the first month of the year covered by my report (August 2010). For the period from then till their final report in July 2011, the IMC say, in paragraph 5.6 of their final report:

*“The position as we close is very far from ideal, as we described in our most recent (Twenty Fifth) report. Dissident republicans are brutally active, especially against members of the Police Service of Northern Ireland (PSNI) who are at greater threat than they were when we first reported. One result is that when we started we observed a scene from which terrorism against the organs of the state had largely disappeared, as we close we see classic signs of insurgent terrorism, albeit confined to the narrow dissident front and quite unlike the “Troubles” in its intensity or, we believe, its potential”.*

84. At Annex XIII of their final report, the IMC quote from an editorial in The Irish Times of 6 November 2010:

*“It is a depressing reality that extreme republicans still believe war and street violence can force unionists and nationalists into a so-called socialist republic. Oglaiigh na hEireann, which split from the Real IRA and draws support from former Provisional IRA and INLA members, insists that military action can achieve a united Ireland. It is actively recruiting and training young members and has been involved in robberies, kidnapping and extortion. There is equally disturbing news from within the loyalist*

*community. The IMC found the UDA and the UVF are continuing to recruit, which is inconsistent with their ceasefire commitments”.*

85. With the demise of the IMC there will be a need for regular updating of information to the public about the security position. I understand that the Government intend to do this frequently by means of statements in the House of Commons, either in answer to Parliamentary Questions or in Ministerial statements. It will be important to have regular on-the-record statements of the security position against which progress by the security authorities can be judged. The Government statements of October 2010 set the Northern Ireland situation in a national context.

#### *David Anderson QC*

86. In his first report as Independent Reviewer of legislation against terrorism, Mr David Anderson QC noted my comments last year about the security situation. In assessing the period between then (November 2010) and his own report (July 2011), Mr Anderson said at paragraph 2.20:

*“As demonstrated by the very serious incidents over the past few months, the deterioration remarked upon by Mr Whalley has unfortunately not been reversed.”*

#### *The Chief Constable*

87. The Chief Constable of the PSNI, in his introduction to the annual report for the financial year 2010-11, said:

*“Sadly the terrorist threat has remained severe throughout the year. The tragic murder of our colleague Ronan Kerr in April was a reminder that some people remained wedded to the violence that the vast majority of people in Northern Ireland reject. Ronan represented all that is good in the police service, joining the PSNI to serve everyone with impartiality and courage. In the days and weeks after his murder, the public display of support for PSNI underlined how isolated the terrorists are. Colleagues in Districts, Operational Support and Crime Operations have worked tirelessly to counter the threat posed by terrorism. This work has continued to benefit from the tremendous co-operation enjoyed with colleagues in An Garda Síochána. The signing of a joint Cross Border Policing Strategy in December further cemented this partnership.”*

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

88. I have discussed the security position with The Superintendents’ Association of Northern Ireland and the Police Federation for Northern Ireland. The increasing frequency and severity of threats to police officers and attacks on them has been a prominent feature this year, notably the terrible murder of PC Ronan Kerr on 2 April.

89. It is with deep sadness that I must once again this year offer my sympathies to the family of a murdered police officer, and to those officers and their families who have been injured in violence this year.
90. It is a tribute to both of these representative organisations that, in their comments, they have not restricted their remarks to the effects on their members but have also sought to describe and analyse the cumulative effects of security attacks on the general public in Northern Ireland as a whole.

### *Significant security incidents*

91. I have included in Part 5 a full analysis of the security activity which the police have had to deal with this year, with specific analysis of two incidents and how the police response to them was developed.
92. On 25 April, some 23 days after the murder of PC Kerr, a masked man at a rally organised by the 32 County Sovereignty Movement in Londonderry read out a statement in the name of the Real IRA that police officers would be targeted “*regardless of their religion, cultural background or motivation*”.
93. Attacks on police officers and state institutions are classified by the Government as “national security” attacks. These are the attacks reported in July 2011 in the third public iteration of the CONTEST strategy noted above. The PSNI statistics cover deaths due to the security situation, shooting incidents, bombing incidents, paramilitary style attacks, firearms and ammunition and explosives finds, and statistics about persons arrested under section 41 of the Terrorism Act and subsequently charged.
94. These are differing but equally valid ways of measuring the level of violent activity, which I discuss in more detail in Part 5 below. Whether the targets are members of the public, police officers, official buildings or infrastructure is irrelevant in terms of mounting an effective response and helping deal with the shock, hurt, disruption and damage caused to individuals, their families and local communities, and also to public assets whose continued functioning matters to everyone living in Northern Ireland.
95. The detail of the analysis in Part 5 leaves no room for doubt about the extent of the current threat. Some of the attacks have been crude and amateur, poorly planned and hastily or carelessly carried out. Others however have involved complex and sophisticated devices, deployed in scenarios which have presented greater challenges to the police. As before, these have entailed a major police response, with technical support from the military authorities, drawing on a wide range of operational powers and techniques.
96. 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.

97. Part of the response is fast reaction to avoid the public being put at risk. Equally important is painstaking work to defuse a bomb and collect vital forensic evidence.
98. The Justice and Security Act powers form part of that response, but they are not the only powers in use. Indeed, a major security operation is a complex combination of legal powers, police and military assets, logistics and support, community liaison, family support and welfare, public information and media contacts.
99. To gain a more precise perspective on this, I have, as in the past three years, asked the police and the military authorities to analyse their response to some of the specific incidents mentioned above, so that I could judge the precise utility of the Justice and Security Act powers within a major operation. This analysis is included in Part 5 below.

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

100. Many (but not all) of the public order issues in Northern Ireland are linked to parades, taking place throughout the year but principally during the summer months. The Parades Commission has a central role to play in the parading process in Northern Ireland. On 27 July, the Chair of the Parades Commission, Peter Osborne, said:  
  
*“We want to commend the efforts of community leaders and police throughout the July period. The positive work of many people on the ground, from both sides of the community, should be acknowledged. While there were some isolated incidents of violence the vast majority of parades this month passed off peacefully.*  
  
*“Of course, in some areas contention, difficulties and challenges still exist. As we look to the future in those areas, it is important to begin engagement, including dialogue processes, sooner rather than later. We are ready to help facilitate that engagement and call on everyone involved to participate in dialogue or support those who are”.*
101. I discussed this year’s parades with the Parades Commission. I asked them in particular about police operations, since it falls to the police to give effect to the determinations of the Parades Commission. I also joined the Chairman, Mr Osborne, in conversations with local residents in the centre of Londonderry on 13 August as the parades went past.
102. The powers in the Justice and Security Act were always envisaged by the Government as directed towards public order. While that has unfortunately proved to be not their sole utility, it is a major focus of my enquiries.

103. 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 (which was the case this year, as the police made clear in respect of the parade through the Ardoyne on 12 July), 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.
104. There was serious violence in the Ardoyne on the evening of 12 July whose impact was felt most directly by residents. While it was some relief that the violence was not prolonged over as many nights as last year, the damage and disruption was very serious indeed and on a level with the disorder of the previous year.
105. There was also sporadic violence in several towns across Northern Ireland during the summer months, some of it linked to the parading season, some of it opportunistic attacks on police officers, on members of the public and on property, and some with a sectarian dimension.
106. Injuries to police officers, heavy policing costs and adverse publicity for Northern Ireland have been additional consequences of disorder.

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

107. The link with serious criminality has been within the scope of the Justice and Security Act from the beginning, as the Secretary of State made clear when introducing the Bill in December 2006. Organised criminals, especially those with paramilitary links, either currently or in the past, have access to firearms and the police may need on occasions to move quickly to search for them. The police may also use powers under PACE, either on their own or as part of a co-ordinated use of powers.
108. The 2011 Annual Report and Threat Assessment from the Organised Crime Task Force says on page 16:

*“As the peace process has bedded in and Northern Ireland has become an increasingly normal environment, large sections of the membership of the main republican and loyalist groups have, at the instigation of their leaderships, moved away from widespread involvement in organised crime. However, there are members and former members of these groups who remain heavily involved in organised crime.*

*“Despite dissident republican (DR) groups’ public opposition to criminality and their use of violence (including paramilitary style attacks and shootings) to deter anti-social and criminal activity within nationalist communities, they nevertheless depend on involvement in a wide range of organised crime to fund their terrorist campaigns. Some DRs are generating significant sums of*

*money through organised crime. A small number of DRs are among the prolific smugglers of fuel and tobacco products into Northern Ireland and are generating millions of pounds annually. While (as with most DR criminality) the majority of this money is likely to be for personal gain, some is undoubtedly used to finance terrorist activity.*

*“In the past year DRs are believed to have been involved in extortion, tiger kidnapping, smuggling (mainly of tobacco), fuel laundering, weapons procurement and armed robbery.*

*“In terms of loyalist paramilitary groups, there remains some involvement in organised crime by some members of both the Ulster Defence Association (UDA) and the Ulster Volunteer Force (UVF)”*

109. I draw two main conclusions from these assessments. First, the link between paramilitary organisations and organised crime is still a factor, which means that when police are planning operations against organised criminals they cannot discount, and must indeed assume, that those involved may take the opportunity to attack them.
110. Secondly, those involved in activity of this kind readily resort to the use of firearms in the course of their actions. The police need to be able to search quickly for these firearms when intelligence suggests that this would be justified. Searches may involve people, vehicles or buildings.
111. The long term objective must be to avoid use of exceptional powers such as those in the Justice and Security Act in dealing with organised crime, as many people have said to me. But the problems presented by organised criminals cannot yet be separated from residual terrorist activity, with its use of firearms to intimidate and create violence. In terms of organised crime, the situation has not yet been fully normalised.
112. It remains my judgment therefore that the police are right to use the powers in the Justice and Security Act in the search for firearms in the course of their operations against organised crime, so long as that can be justified by the circumstances on every such occasion.

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

### ***Introduction***

113. 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 2010 to 31 July 2011 and what this shows about any continuing need for them.
114. I shall look at this in eight respects:
- ***Police powers against the residual terrorist threat***
  - ***Linkages between the available powers***
  - ***Police operational activity 2010-2011***
  - ***Statistics on the use of the powers***
  - ***Road closures***
  - ***Military operations in support of the police***
  - ***Case studies: Antrim Road, Belfast, 23 January 2011  
A1 Underpass, Newry, 7 April 2011***
  - ***Planning for public order situations***

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

115. It is now my practice to ask 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 formal presentations cover all aspects of the response, including preventative action to disrupt the planning and carrying out of threatened attacks, deployment of Ammunition Technical Officers (ATOs) in response to actual attacks and hoax calls and packages, and controlling the scene to prevent any or further danger to the public and enable forensic science enquiries to be made.
116. 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.
117. The starting point is the security profile set out in Part 4. I take no part in the process by which assessments about the security position are made. My function is to scrutinise the extent to which the powers in the Justice and Security Act have been used to deal with it and whether the manner in which this is done properly reflects statutory and operational requirements.
118. The public make no distinction between the various police powers in their interactions with the police. Nor do the political parties and others whom I have consulted. It is right therefore to examine police powers in the round and not just look at the Justice and Security Act powers in isolation. Policy and legislative changes this year reinforce the need for this. In particular, “stop and search” and “stop and question” powers are closely linked both in public perception and operationally.

119. For this reason David Anderson QC, the Independent Reviewer of the Terrorism Act, and I have agreed that my review should cover these powers together. (In terms of the legislative basis, the “stop and question” power is found in the Justice and Security Act while “stop and search” powers are provided under both the Justice and Security Act and the Terrorism Act, although for different purposes).
120. In effect, my principal focus will be on police operational activity up to the point of arrest, while Mr Anderson, as the Independent Reviewer of the Terrorism Act, will examine the conditions of detention and any charges and subsequent legal proceedings. We do not intend to follow this distinction slavishly, since it is important to view the operation – and impact – of the whole process as a unity, but it does enable us to look closely at critical points in the process in terms of the impact on individuals and their communities.
121. As before, all this review activity has been carried out in close working with the Northern Ireland Policing Board, and Mr Anderson and I express our appreciation for their ready co-operation and support.

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

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

122. I set out in some detail in my report last year (paragraphs 107 to 119) the narrative following the judgment in the European Court of Human Rights in the case of *Gillan and Quinton* which led the Government to withdraw the availability of section 44 of the Terrorism Act.
123. For the sake of brevity I will not rehearse all aspects of this narrative again but it may be helpful to set out the main points bearing on the exercise of stop and search powers in Northern Ireland. I quoted from statements by the Home Secretary on 7 July 2010, a letter from the Secretary of State for Northern Ireland to the Chief Constable of PSNI on 10 July 2010, and a statement by the PSNI to the effect that the section 44 authorisation in Northern Ireland would cease at midnight on 7 July 2010.
124. This change had a consequential impact on the use of powers in the Justice and Security Act in the concluding three weeks of the last reporting year, on which I commented in paragraph 184 of my last report.
125. It is worth recalling what PSNI said in July 2010 about how stop and search powers are used in Northern Ireland:

*“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”.*

#### *New section 47A of the Terrorism Act*

126. One power which subsequently became available on 17 March 2011 was a new section 47A of the Terrorism Act, as a remedial measure under section 10 of the Human Rights Act 1998, by means of the terms of the Terrorism Act (Remedial Order) 2011. This provision (a so-called “*Henry VIII clause*” in that secondary legislation is used as the means of amending primary legislation) anticipates the provisions of the Protection of Freedoms Bill currently making its way through Parliament.
127. Under a new section 47B of the Terrorism Act, as provided in the remedial order, a Code of Practice was introduced for England, Wales and Scotland, as David Anderson QC has reported in footnote 127 on page 65 of his 2011 report on the operation of the Terrorism Act in 2010. A comparable Code of Practice for Northern Ireland came into effect on 18 March 2011.
128. I have studied carefully the Reports of the Joint Committee on Human Rights on this order (14<sup>th</sup> Report 15 June 2011, and 17<sup>th</sup> Report 13 September 2011). Paragraph 4 of the Summary of the 14<sup>th</sup> Report begins thus: “*We accept the necessity of introducing a replacement stop and search power which is exercisable without reasonable suspicion but only available in tightly circumscribed circumstances*”. This conclusion is elaborated in detail in section 2 paragraph 31 of that Report.
129. In section 3 (1) of their 14<sup>th</sup> Report, under the section entitled “*Is a power to stop and search without reasonable suspicion inherently incompatible with Article 8 ECHR (the right to respect for private and family life)*” the Committee say at paragraph 55: “*In our view, a very tightly circumscribed power with sufficiently robust safeguards against abuse is not inherently incompatible with Convention rights, provided its definition and safeguards ensure that it is confined to the exceptional circumstances in which such a power is shown to be needed in order to prevent a real and immediate risk of terrorist attack*”.

#### *Protection of Freedoms Bill*

130. Clauses 58 to 61 of and Schedule 6 to the Protection of Freedoms Bill as introduced have the effect of replacing section 44 of the Terrorism Act 2000 with new powers.
131. These are major changes to stop and search powers under the Terrorism Act, applying to the United Kingdom as a whole. David Anderson has discussed them in some detail in paragraphs 8.1 to 8.39 of his first report.

132. Mr Anderson's analysis draws particular attention, at paragraph 8.8 of his report, to the requirement that an authorisation for the use of the new stop and search power can only be given where a senior police officer giving it "reasonably suspects that an act of terrorism will take place" and considers that the authorisation "is necessary to prevent such an act". Mr Anderson goes on to say:

*"The authorisation can last for no longer and cover no greater area than he considers necessary to prevent such an act. These are very high thresholds, reflected in the fact that, since its introduction, no authorisation has been made under section 47A in any part of the United Kingdom".* Up to the end of my reporting year, that remained the case specifically in Northern Ireland.

### *Code of Practice*

133. The Code made under the remedial order sets out in extensive detail how PSNI are expected to use their powers. Since it is designed to regulate police operations I shall mention some of its main points. These are selective extracts: the Code must be read in its entirety to gain an understanding of how police officers are expected to conduct themselves and manage operations in a post-Gillan world. The underlinings below are mine:

*"3. The purpose of this code is...*

*3.3 To provide clarity that the threshold for making an authorisation is higher under the new powers and the way in which powers may be exercised is also different. There is far greater circumscription in the use of these powers and the manner in which these powers are to be implemented by the police. Section 47A powers should only be authorised where other powers or measures are insufficient to deal with the threat and, even where authorised, officers should still consider whether section 47A powers are the most appropriate to use".*

*"3.4 To promote the fundamental principles to be observed by the police and to preserve the effectiveness of, and public confidence in, the use of police powers to stop and search. If these fundamental principles are not observed, public confidence in the use of the powers to stop and search may be affected. Failure to use the powers in the proper manner also reduces their effectiveness. Properly used, stop and search can play an important role in preventing acts of terrorism and in bringing terrorists to justice.*

*"3.6 To set out that those using the powers may be required to justify the use of such powers, in relation both to individual searches and the overall pattern of their activity in this regard, to their supervisory officers or in court. Any misuse of the powers is likely to be harmful to counter-terrorism policing and lead to mistrust of the police. Officers must also be able to explain their actions to the member of the public searched...Proportionate use of the*

powers can contribute towards the primary purpose of counter-terrorism work: ensuring the safety of the public.

“4.2 This Code does not apply to other powers of stop and search under other legislation.”

“5.1 Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, disability, or whether or nor they have dependants.

“5.2 The powers must not be used to stop and search for reasons unconnected with terrorism. The intrusion on the liberty of the person stopped or searched must be as brief as possible...

“5.3 If these fundamental principles are not observed the use of powers to stop and search may be drawn into question. Failure to use the powers in the proper manner reduces their effectiveness and may expose officers to legal challenge. Stop and search can play an important role in the detection and prevention of crime, and using the powers fairly makes them more effective.

“6.7 An authorisation may relate to a single suspected act of terrorism, but where there are multiple threats it may be appropriate for these to be considered together and a single authorisation made that takes into account all the relevant information. Such an authorisation could relate to:

- multiple threats by different terrorist groups in the same or different areas;
- multiple threats by a single terrorist group in the same or different areas;
- multiple threats occurring at the same time, or over a short period of time; and/or
- multiple threats that are linked in some other way (for example, all relating to a particular event).

“6.8 The powers should therefore **not** be authorised solely on the basis that there is a general high threat from terrorism or that a particular site or event is deemed to be “high risk” or vulnerable. However, both these factors may be taken into account when deciding whether to make an authorisation, especially where intelligence about an attack is limited in terms of the potential target or attack method. An authorisation should not be given on the basis that the use of the powers provides public reassurance or that the powers are a useful deterrent or intelligence-gathering tool.”

*How the new Section 47A might apply in Northern Ireland*

134. I have quoted extensively from the Code because what it says needs to be judged against the position in Northern Ireland if the police are to decide to use section 47A. I draw the following conclusions:

- The new section 47A power is clearly designed for exceptional circumstances. The police are explicitly invited to consider using other powers first. In the Northern Ireland context that includes Justice and Security Act powers as well as others
- The threshold for its use is set very high
- It is designed for use in highly specific circumstances, relating to a target, a terrorist group, a planned event or a particular site. The nature of the potential terrorist group or groups is less important. All this is perfectly understandable as the Government seek to mark out a difference between this new power and the section 44 power which it replaced, so that, as paragraph 3.2 of the Code says, “*these powers entirely replace those previously found in sections 44-47 of the 2000 Act and are not simply a modification of those provisions*”.
- Some of the factors set out in paragraph 6.7 of the Code may apply in Northern Ireland, others may not. For example, PSNI have to cope both with ongoing threats, if not “campaigns” in the former sense, from residual terrorist groups as well as specific threats which become known from intelligence.
- The PSNI operational guidance indicates 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.
- I was told of concern that the proposed new power might be insufficient in all circumstances in Northern Ireland, for example in some public order situations which may not meet the test for authorisation.

### *Implications of the new Code*

135. In other respects the Code is quite helpful, even though it says in paragraph 4.2 that it “*does not apply to other powers of stop and search under other legislation*”. It carries important messages which should underpin all police activity, and can be easily read across into use of the Justice and Security Act. These include:
- Powers of search must be used fairly, responsibly and without discrimination. To that I would add, to capture the full flavour of the requirements under the Human Rights Act, proportionately and only to the extent necessary
  - Any misuse of the powers is likely to be harmful to policing and lead to mistrust of the police. That holds true generally but is of utmost importance in Northern Ireland, particularly when much effort is being made to build confidence with communities who have long been alienated from the police
  - Officers must also be able to explain their actions to the member of the public searched. That is very important in exercising powers where there is no explicit requirement for reasonable suspicion, as I have commented in the past.

### *Linkage with other powers*

136. I have set out all these developments in some detail because of the linkage with other powers available to the police. Legislative changes in the past year help to illustrate and explain the statistical analysis of Justice and Security Act powers set out below and in Appendix B.
137. These changes have flowed from the judgments in *Gillan and Quinton* which related to the use of section 44 of the Terrorism Act 2000. These judgments did not apply to powers in the Justice and Security Act, which remain untouched by them, and which the police are therefore using unchanged.
138. In the strict sense that is the correct process to follow, but the judgments in *Gillan and Quinton* and the changes in law following from them are so significant and far-reaching that it is right that the powers in the Justice and Security Act should be scrutinised carefully in the light of them.
139. This is particularly so following comments in the Grand Chamber judgment about the authorisation process at senior police level and the discretion afforded to the individual officer. These issues were reflected in the Home Secretary's statement on 8 July 2010 that *"The Court found that the powers are drawn too broadly – at the time of their initial authorisation and when they are used."*

### *Amendments to the Justice and Security Act*

140. The Secretary of State for Northern Ireland responded to these developments in a Written Ministerial Statement on Wednesday 9 February 2011 in these terms:

*"Following the Counter Terrorism Legislation Review the Home Secretary decided to replace section 44 of the Terrorism Act 2000 with a more tightly circumscribed power. Consistent with those changes, I have decided to make a similar amendment to a power of stop and search in Northern Ireland.*

*"I intend to amend the power to stop and search a person without reasonable suspicion contained in paragraph 4 of Schedule 3 to the Justice and Security (Northern Ireland) Act 2007. In future, prior authorisation by a senior police officer, confirmed by the Secretary of State, will be required before the power to search a person without reasonable suspicion to ascertain whether he has munitions unlawfully with him or wireless apparatus can be exercised by a police officer. I will also create a new power for police officers to search for such items with reasonable suspicion. In due course I will exercise the power in section 34 of the 2007 Act to make a Code of Practice governing the exercise of these powers.*

*"Powers of stop and search for the military under the 2007 Act will not be amended.*

*“Changes to the legislation will be brought forward in the Protection of Freedoms Bill, which will be introduced into Parliament shortly. Robert Whalley, the Reviewer of these powers appointed under section 40 of the 2007 Act, is aware of the changes I plan to make”.*

141. I am grateful to the Secretary of State for keeping me in touch with these developments.
142. Accordingly, clause 62 of the Protection of Freedoms Bill refers to stop and search powers in relation to Northern Ireland, by means of Schedule 6 to the Bill. There are two main changes:
- the police (but not the armed forces) are required to have reasonable suspicion before stopping and searching a person in a public place under Schedule 3 to the Justice and Security Act
  - a senior PSNI officer may authorise the use of the stop and search without reasonable suspicion powers in a specified area if he reasonably suspects that the safety of any person might be endangered by the use of munitions or wireless apparatus
  - the authorisation may be given only if the senior officer considers that it is necessary to prevent that danger and the area or place specified in the authorisation is no greater than is necessary and the duration of the authorisation is not longer than is necessary
  - the power to search under the authorisation can be carried out by a constable without reasonable suspicion.
143. Because these new provisions make significant changes to Schedule 3 I have set them out in Appendix D. I have seen the Written Evidence to the House of Commons Committee Stage provided by the Northern Ireland Human Rights Commission in March 2011. I have also seen the submission by the Committee on the Administration of Justice to the Public Bills Committee (Scrutiny Unit) of May 2011.
144. The Bill is still subject to debate and possible amendment in both Houses of Parliament and I am told that the expectation is that it will not receive Royal Assent until sometime next year. Meanwhile the present regime will apply. The introduction of extensive changes to central provisions in the Act might be the time to use the power in section 34, hitherto unused, to draw up a Code of Practice, for the benefit of both the public and the police.

#### *Powers of the armed forces*

145. One issue which has already arisen in the context of the changes is the role of the armed forces in the exercise of the powers of stop and search. I have commented in the past that if these powers are not being used, or if their use is not contemplated, there is a case for removing them. That would confirm the “normalisation” process, confining the armed forces to a minor role.

146. The opportunity to do so arose in the debate on Clause 62 of the Bill in the Committee stage in the House of Commons. The Opposition tabled a probing amendment *“to find out why the military will have an extensive power to search without reasonable suspicion but the PSNI will not have that power”*.

147. In reply, the Minister of State at the Home Office said:

*“Clause 62 gives effect to schedule 6, which amends the stop-and-search powers in the Justice and Security (Northern Ireland) Act 2007. The proposed provisions in the Bill make changes to the stop-and-search powers exercised without reasonable suspicion. They do not remove those powers. The provisions seek to ensure that the stop-and-search powers in Northern Ireland are consistent with the replacement section 44 stop-and-search powers in the Terrorism Act, which operate UK wide. Accordingly, we are introducing a similar authorisation process for the use of the stop-and-search powers without suspicion, as is being provided for in the 2000 Act. An authorisation may be granted where a senior officer reasonably suspects that the safety of the person may be endangered by the use of munitions or wireless apparatus and that the authorisation of powers is necessary to prevent such danger.*

*“The provisions in schedule 6 also create a new power for the police to search with reasonable suspicion. As I have said, that has been closely considered by my right hon. Friend the Secretary of State for Northern Ireland in the context of the PSNI and with the devolved Administration. They are clear that they will not hinder the PSNI in its work. While I recognise the point which the hon Member for Gedling (Mr Coaker) is seeking to probe, we consider that the PSNI will ensure that safety and security is maintained.*

*“The hon Member for Strangford (Mr Shannon) highlighted the distinction between the PSNI and the military. This has been given careful consideration. It is worth stating that the military powers are designed to be used only in extremis – for example, if military support were needed during serious public disorder. It is equally worth underlining that there has been no recorded use of the powers since 2007. The military operate under police tasking, so in any event there would already be significant controls in place. It has been carefully considered and obviously we wish to bring together a normalisation approach, as the hon Members for Strangford and Gedling have rightly identified”.*

148. Several conclusions can be drawn from this statement:

- The Government are seeking to maintain consistency between the Terrorism Act and the Justice and Security Act, no doubt with the conclusions of the Grand Chamber in mind
- The Government’s approach has been taken with the views of the devolved Administration and the PSNI to hand
- There is to be no change in the normalisation process by which the armed forces operate in a secondary role

- The Government had the opportunity in this Bill to remove military powers of search, but decided not to take it
- The Government take the view that the time is not yet right to remove the military powers, and specific mention is made of military support being needed in extreme situations such as serious public disorder.

### *Authorisations*

149. If the Protection of Freedoms Bill comes into law, it will create an authorisation process for the Justice and Security Act Schedule 3 powers similar to that which applied to the old section 44. When Lord Carlile was Independent Reviewer of the Terrorism Act, it was his practice to scrutinise *post hoc* any authorisations under section 44. I have indicated to the Secretary of State and to the PSNI that, in my view, there would be value in the independent reviewer similarly scrutinising *post hoc* any authorisations made under Schedule 3 by virtue of the new power in Schedule 6 to the Bill.

### *Judicial process*

150. On the wider issue of consistency, it will be for the courts to decide in due course whether these proposed changes, taken as a whole, deal satisfactorily with any implications for the Justice and Security Act flowing from the Grand Chamber judgment in *Gillan and Quinton*. It is not a matter on which I intend to comment or speculate. I will however continue to monitor developments closely.
151. While all this going on there is nothing to stop the police continuing to exercise these powers if they think this is justified. Nor is there anything to prevent anyone from mounting legal challenges to them, either in terms of their compatibility with the European Convention on Human Rights or in the way that the police are operating them. I understand that there are four such challenges currently being heard in the High Court in Belfast. These cases are therefore *sub judice* and I shall make no further comment on them.

## ***Police operational activity 2010-2011***

### *Nature and extent of residual terrorist activity*

152. 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 2011 (up to the end of November) was 25. This compares with 40 in the whole of 2010 and 22 in 2009.
153. 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. I comment above on the various

methods of assessing the extent of illegal activity linked to the security profile.

154. The Chief Constable's Annual Report gives statistics for the year ending 31 March 2011. The number of shooting incidents decreased from 79 in 2009/10 to 72 in 2010/11. But there was "*a marked increase*" in the number of bombing incidents (from 50 in 2009/10 to 99 in 2010/11). The number of casualties as a result of paramilitary-style attacks (both shootings and assaults) decreased from 127 to 83. Eighty-six firearms and 2,574 rounds of ammunition and 2.9 kg of explosives were found during 2010/11.
155. The police have provided me with some provisional statistics for the period 1 April 2011 to 30 September. In that period there were 34 shooting incidents, 37 bombing incidents, one death (the murder of PC Ronan Kerr) and 35 casualties as a result of paramilitary-style attacks. Finds included 141 firearms, 2,719 rounds of ammunition, and 30.74 kgs of explosives. There were 25 arrests under section 41 of the Terrorism Act which led to charges.
156. Major incidents have included:
- a device left outside a shop in the Antrim Road area of Belfast on 24 January, described by the police as "*an anti-personnel bomb which was designed to kill people in the area*", with a second device found in the area three days later
  - shots fired at police officers in the Glen Road area of Londonderry on 2 March, which press reports said had been claimed by the Real IRA
  - a bomb (about 50 kg of home-made explosives, left in a beer keg in a stolen car, and described by the police as "*a substantial device*"), left near the courthouse in Londonderry on 27 March
  - a bomb left under the main A1 Belfast-Dublin road near Newry on 7 April
  - an explosive device found near a main road in Belfast on 19 April
  - finds of improvised explosive devices in Keady and Dungannon on 22 and 25 April
  - a bomb attack on a branch of the Santander bank in Londonderry on 21 May
  - a find of an improvised mortar device in the Ardoyne district of Belfast on 21 July
  - improvised explosive devices at the homes of a police officer and a doctor near Londonderry on 14 September
157. The 2011 statistics and major incidents show continuation of residual terrorist activity on broadly the same level as in 2010. But there has been a substantial increase in successful suppression of it. The amount of *materiel* found is significant of police success but also of the potential amount not yet discovered.

### *Police strategic response*

158. The police have outlined to me the main elements of their strategic response to these incidents. This must continue to have full regard for their obligations to all members of the public under human rights legislation.
159. The police are faced with a range of terrorist methods and targets in the main centres of population in Belfast and Londonderry, as well as smaller towns such as Newry, and rural areas. To counter this they say that they are developing new strategies for investigations into reported threats and incidents. These involve planning ahead as far as events allow and mounting additional specialist searches where necessary, while anticipating the need for forensic retrieval and criminal investigations. The police place considerable value on close liaison with the military authorities, who are needed to deal with the variety of improvised devices now being found.
160. An important and valued part of this strategy is cross-border co-operation. There has been a significant amount of activity by An Garda Siochana, leading to a number of arrests.
161. The police have also been reviewing their public order strategies and have kept me up to date with this work. It stems in part from their assessment of the parades this year, as well as reaction to the August riots in England.
162. Part of this involves replacement of vehicles in the landrover fleet, many of which are ageing, now unfit for purpose and beyond repair. This is not an easy issue but it has been a problem for some time. A new fleet of landrovers will be seen by many as evidence of a move towards a tougher security strategy and carries a potentially negative message.
163. But the assessment of the ballistic threat to police officers from gunmen using the cover of public disorder is a real issue. Nor is it sensible to depend on unreliable vehicles, which as shown in the Ardoyne last year can put officers' lives at risk, and lead to loss of tactical control, to the benefit only of those seeking to exploit disorder. Since it would be extremely unwise to contemplate the use of military vehicles to control public order situations, I come to the conclusion, with some reluctance, that it is right to replace the ancient landrovers.
164. Community Impact Assessments play a key role in the policing of major events such as controversial parades. The police are very cognisant of the negative impact that deployment of large numbers of landrovers can have. They therefore seek to plan for "the minimum profile capable of achieving the necessary effect". They are working on developing multi-agency working, in six "pathfinder" areas, in recognition that dealing with anti-social behaviour and criminal gangs, and responding quickly to calls from the public, has to go hand in hand with the physical security response if public

### *Arrests and charges*

165. The number of people arrested in relation to security threats for the period 1 January to 14 November 2011 was 167, with 55 charges. That compares with 210 arrests and 108 charges in the whole of 2010 and 106 arrests and 37 charges in 2009. The basis for these arrests draws on all the police powers available.

### *Police training and operational orders*

166. The police have responded to my recommendation last year that operational orders and training programmes should be further developed to ensure that all officers likely to use these powers are fully trained to do so.
167. The police tell me that *“the practical workings of the Justice and Security Act are constantly under review as part of the integrated response to Terrorism and Serious Harm. Examples in the last year alone are training videos on tactical patrolling, stop and search, training and awareness on the use of Vehicle Check Points (VCPs) and e-learning interventions”*.
168. On the specific (and important) point about making sure that the subject of the stop is given as much information as possible about it, the police report that:

*“The service has been issued with guidance when conducting stop/search/question operations regarding terrorism. Officers are instructed to inform the subject that “Due to the ongoing terrorist threat you are being stopped today for the purpose of a search under...” the relevant legislation. This information is given to inform the subject of the basis for the search.”*

*“Work is ongoing which will ultimately develop the inclusion of the basis for the search on the electronic recording system “Puma”. This will progress with the delivery of a comprehensive training package to all frontline officers on the Justice and Security Act powers likely to be rolled out prior to statutory amendment of the legislation in winter/spring 2011/2012”.*

169. In my judgment it remains essential that the momentum of the training commitment should be maintained. A comprehensive training programme is due to be completed by the end of April 2012. The police were slow to come to terms with the arrival of the Justice and Security Act in 2007, but valuable ground has been made up since then. Even without the complicated legislative changes now under way, pressure would have been needed to keep up the rate of progress on training. So it is doubly necessary to do so now. The changes to the Act now in progress will entail review by the police of their operational orders.

### *Police records: current practice*

170. In my report last year I described the procedures which the police follow in every case where they stop and question someone or stop and search

them, their vehicle, or their property. On two occasions this year (March and September) I visited Antrim Road police station in Belfast to talk to officers involved in conducting these operations and the oversight and recording of them. On my visit in September I read through every stop and search record conducted in “A” District (North and West Belfast) in July and August.

171. Detailed police records derive directly from operations under specific powers which are currently the subject of the legal proceedings recorded above. I am mindful of that but it need not inhibit me from describing current practice in general terms and the conclusions I draw.
172. Given the background of current litigation, it may be helpful briefly to set out what the police are required to do by way of recording. 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 (known as PACE), the Justice and Security Act, the Terrorism Act, and the Public Order (Northern Ireland) Order 1987.
173. 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.
174. 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.
175. 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 and it is police practice to keep such records and report on them. For the sake of consistency it might be desirable to include a requirement to keep records under section 21 as for section 24. This need not cover as much information as is required in schedule 3 paragraph 6 but would be an added element of accountability. It could be included under a Code of Practice under section 34 of the Act.

#### *Police records: assessment of quality*

176. The forms which I saw were a sample from a two month period, and they related to only one police district in Northern Ireland, so it would not be wise to draw too much by way of conclusions from them. A large proportion of them relate to routine activity under the PACE order. The circumstances

usually involved suspicions about the use or handling of drugs or excessive use of alcohol. I have not concerned myself with these records.

177. I focused this year on what the forms show about the basis for a stop under either the Terrorism Act or the Justice and Security Act. There were of course no stops this year under section 44 of the Terrorism Act 2000, following its discontinuance in July last year, and the replacement power in the new section 47A has not been used. The majority of stops (apart from those under the PACE order set out above) related to the Justice and Security Act, section 21 and sections 24 and 26 (which trigger the schedule 3 powers).
178. Taking up from my narrative last year, my concern has turned on whether the legislative basis and the grounds for the stop are separately shown on the completed records. There are two separate entries to complete. I found fewer cases than last year where the two had been run together, which is an encouraging sign of progress. The need for separation of the decision on which power to use from the reason for using it seemed clearer to officers using the form this year. The existence of a power is not in itself a reason for using it.
179. My particular focus of enquiry has been on the basis for the stop. Last year I noted how the police have been dealing with this issue in their training and operational guidance. To recall the current position, even when an 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.
180. Guidance produced by the Criminal Legislation and Procedures Branch of the PSNI in November 2009 said in relation to section 21: *“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.”*
181. Given the sensitivity of this issue, shown in current litigation, the context created by the *Gillan and Quinton* judgment and in comments made to me about police practice, it is even more 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.
182. 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, as I noted last year. Hence the continuing need for the guidance reported as part of the police operational response above. Rigorous scrutiny by senior officers after the event can be just as powerful a mechanism of command and control as prior authorisation.

### *Best practice*

183. I saw evidence this year that more information is being recorded to show the basis of the stop where no reasonable suspicion is required. In some cases this was quite brief but that is all that is required at that point. The interaction with a member of the public should in any case be as short as possible, consistent with ensuring that proper procedures are followed.
184. References included “VCP” (Vehicle Check Point) or “suspicious behaviour”. The first of these would fall into the kind of operations which the police might need to organise in response to a particular threat or intelligence stream – activity which in my judgment would be justified in the context of the current security threat based on recent activity from residual terrorist groups, whether nationalist or loyalist.
185. The second would fall within the judgment of the individual officer, which will be shaped by three elements: his training, his professional skills and experience, and full briefings given before he goes out on patrol, briefings which will be based among other things on the intelligence picture.
186. Mere “intuition” alone is not sufficient, nor does it match up to the exacting standards which best practice requires. I would expect professional policing to be informed by more than “intuition”, and specifically to include the three elements mentioned in the preceding paragraph. In that sense I would expect the PSNI already to be able to meet – and indeed far exceed – what the Grand Chamber may have had in mind when they said: *“The officer’s decision to stop and search an individual was one based exclusively on the “hunch” or “professional intuition”.”*
187. Provided that these three elements (training, professional skills and experience, and full briefings) are fulfilled, individual officers must in my judgment be allowed discretion in the difficult circumstances of operations in Northern Ireland against the background of the security threat shown in Part 4, so long as that discretion is clearly and demonstrably exercised within the boundaries of these three elements.
188. There remain those cases where no basis is shown for the stop. Sometimes this related to a stop of a residual terrorist who is known to the police. In these circumstances it will be the context which matters – what is known about current or planned terrorist activities and who might be involved in them. The closer the link with information of this kind, the better will be the justification for the stop.
189. It may not always be possible for the police to set this down on a PACE 1/TA form, a copy of which must be handed to the subject on request, but the more information is given, the less likely is it that the basis for the stop will be challenged. It is unsatisfactory for a member of the public who is stopped to be given no information about the reason for the stop. The officer must be able to account for his actions in every case where he makes a stop. If he cannot do so, he risks bringing the powers into disrepute.

*Police records: electronic data capture*

190. Last year, I described the project under way to move to electronic recording of every use of stop and search and stop and question powers by means of a mobile data device developed from a blackberry. I have kept in touch with the progress of this project throughout the year, and discussed it with the officers developing it in March, September and October. It is referred to briefly in my comments above on police operational orders and training.
191. Since November 2010 the PSNI have been operating a STOPS database, which is an integrated electronic database designed to capture stop and search information. Officers who are engaged in the use of a stop, search or question power can input directly into this system from mobile data devices or can complete the hard copy PACE1/TA forms.
192. There has been excellent progress in moving to the electronic capture of data. Under Phase 1 of the project, some 2000 officers had been issued with mobile data devices by April 2010. That has now increased to 4600 officers. Priority has been given to front-line officers, based on operational need. Within "A" District (North and West Belfast) the proportion of these forms inputted from blackberry devices increased from 19% in March 2011 to 43% in August 2011.
193. The police report that the functionality deployed includes the capability to perform person and vehicle searches, update crime incidents and complete stop and search records. The stop and search functionality includes the ability to clone a ticket, which means that if more than one person is stopped the time to complete records can be significantly reduced. Should a person require a copy of a stop and search record, the introduction of a central stop and search database enables them to attend any operational police station, where the Station Enquiry Assistant has the ability to print any stop and search record.

*Benefits for the public and the police*

194. The new system benefits both members of the public and police officers. The advantages to the public lie mainly in the reduction of the time needed in conversation with an officer, since information given (for example addresses or car registration numbers) can be checked immediately, reducing scope for confusion and hence delay. It will also give a much clearer indication to the subject of the stop about the police power used and the basis for it.
195. For the individual officer, the benefits lie in the clarity of the recording requirements and in speed and accuracy in verifying information. For PSNI as a whole, the instant capture of data makes it much easier to compare data, to correlate databases (for example names and addresses) and to interrogate records to show whether the subject has been stopped recently. When the new system is fully operational, it will bring about dramatic

changes in the way in which patrolling officers operate. In the field of security operations, there are significant potential benefits.

196. A project of this scale will naturally raise concerns about personal privacy and data storage, and it will be important that the PSNI are able to answer every question about that and reassure members of the public.
197. One specific area where concerns may be raised is in the wider uses to which the data may be put. There is a physical separation between this system and intelligence databases, which are discrete business systems with their own safeguards. The PACE/1TA form is not an intelligence collecting tool. Stops should not be made for the purposes of collecting intelligence. The physical separation of the stops and intelligence databases is an important safeguard in this respect and must be rigorously maintained.

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

198. **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 2010 to 31 July 2011. 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.
199. The statistics set out below have been provided by the Central Statistics Unit of the PSNI. This year, they show the statistics for each month of the reporting year (1 August 2010 to 31 July 2011). Other indices (relating to the PACE and Terrorism Act powers) are collected and reported on the basis of calendar quarters but the Central Statistics Branch have provided these on a monthly basis also.
200. 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 draw upon them.
201. There may be minor variations between the provisional and final statistical returns because of late reporting and adjustment but these are single digit changes and are not significant in terms of the broad conclusions which can be drawn from them. I shall make comparison with those statistics which I gave last year, but these may also vary slightly for similar reasons of late reporting and adjustment.
202. 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

203. **Table 2A**, together with **Table 1**, shows the numbers of people stopped and questioned by the police under section 21(1), month by month. The average for each month of the reporting year (August 2010 to July 2011) was 362, with a total of 4,347. Compared with a monthly average of 560 for the period August 2009 to July 2010, with a total of 6,722, this represents a reduction of 35% on last year's statistics.
204. Part of the reduction is accounted for by the ending of section 44 stops, which were in some cases combined with a section 21 stop. To the extent that stops under section 24 of and schedule 3 to the JSA have been used where section 44 might have been used before, stops under section 21 have continued. This would be expected where the police wish to establish identity and movements, for which section 21 provides specific authority. But the overall use with the new combination of section 21 and section 24 shows a decrease over the former use of section 21 and section 44.
205. With the exception of a spike of 817 in October 2010, the numbers of section 21 stops have come within a monthly range of 405 to 233. The police say that individual surges in specific months are accounted for by police preventative or reactive activity in relation to specific threats or incidents.
206. There was no usage by the armed forces of the stop and question power under section 21(2).

### Section 22

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

### Section 23

208. 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 59 occasions compared with 91 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

209. 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.

210. So far as searches of people are concerned (**Table 2C**, schedule 3 paragraph 4), there has been a very large increase this year in searches in public and a significant increase in searches in private. A total of 16,023 people were stopped and searched. Of the total of 16,023, 15,628 were in public places and 395 on private property. This compares with figures of 1,163 (1,047 and 116) in 2009-10 and 356 (266 and 90) in 2008-9. The overall increase from last year to this is 1,277% - twelve times as great.
211. To some extent 2009-10 was a transitional year with the ending of the use of section 44 in July 2010, and arguably the better comparison is with 2008-9, when there were no transitional complications. But to establish the true significance of this very large increase, we need to consider the comparative position taking the former section 44 searches into account, which I do below.
212. The total of 16,023 represents a monthly statistic of 1,335 persons stopped and searched under section 24, with the highest figure of 2,879 in October 2010, and a monthly range otherwise of 1,751 to 803. Where searches of people are carried out on private property, a reasonable suspicion is required, linked to a specific basis or reasoning probably about the possession or movement of explosives, firearms or ammunition.
213. 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 significant increase this year in the use of this power, which was used on 368 occasions this year, compared with 251 last year. Most of the searches this year were in private houses – 272 out of the total of 368, with 96 in other premises.
214. There is a power to seize items found in these searches (paragraph 5 of Schedule 3). This has been used on a similar number of occasions this year: 80 compared with 84 last year.
215. 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 – 95 occasions, compared with 60 last year. But 53 of those 95 came in August 2010, with the largest monthly total otherwise of 10 in September and no use at all in January 2011.
216. 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

217. 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. The ongoing threat to the lives of police officers represents the most likely circumstance where the power might be necessary.

## Section 26

218. 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 very marked increase: 18,893 vehicles were stopped and searched compared with 1,387 last year (which was a transitional year in this respect also) and 239 the year before. The highest figure was in October 2010, when 4,255 vehicles were searched, with a monthly range otherwise of 2,235 to 803. The year-on-year increase is 1,262 – again, a twelve-fold increase. As with section 24 stops, there is a direct relationship with the ending of section 44, which I consider below.
219. There is also a power to remove a vehicle for search. This was used 13 times this year, compared with four times the previous year. It is needed when a more thorough search of a vehicle is needed, by taking it to a police compound.
220. 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

221. 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.

### *Comparative use of powers*

222. In matching the operational presentations by the police alongside evidence from the records, I observe that police planning has been further refined, as indicated in operational orders, on the basis that the use of available powers should be integrated so as to employ the most appropriate and least intrusive for the intended purpose.
223. In this analysis, I have examined the use of the PACE Order, the Terrorism Act and the Justice and Security Act, based upon the statistics for all three instruments, which are provided on a quarterly basis to the Policing Board. I have had helpful discussions with the PSNI Central Statistics Branch.
224. As indicated above, I have included Terrorism Act statistics in agreement with David Anderson QC. I have also noted the statement of 17 December 2010, by the then chair of the Northern Ireland Policing Board's Human Rights and Professional Standards Committee, Mr Basil McCrea, when they considered the first statistical report following the end of section 44.
225. 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**, which is in a different format this year and shows the comparative

use of powers over the exact reporting period. Caution should therefore be exercised when comparing Table 3 this year with the previous year, since the reporting periods are not entirely comparable, but the new format gives a more accurate match than in previous reports.

226. Over the period 1 August 2010 to 31 July 2011, there were 41,936 uses of PACE, Terrorism Act and Justice and Security Act stop and search powers compared with 65,521 uses of these powers for the previous year:

- The number under PACE was 21,129 compared with 24,557 the previous year
- Under the Terrorism Act the number was 435 compared with 33,073 the previous year
- For the Justice and Security Act the number was 20,372 compared with 7,891 the previous year
- **The numbers of stops in absolute terms in all three categories were therefore lower by 36%, with the numbers dealt with under PACE declining by 14%, those under the Terrorism Act declining by 99%, and those under the Justice and Security Act growing by 158%.**

227. The relative proportions in the use of powers have also changed:

- The proportion dealt with under PACE was 50% compared with 38% last year
- For the Terrorism Act the proportion was 1% compared with 50% last year
- For the Justice and Security Act the proportion was 49% compared with 12% last year
- **Compared with last year, therefore, stops under the Terrorism Act have effectively come to an end (apart from a small number under section 43). Stops are now split, in even proportions, between PACE and the Justice and Security Act.**

228. 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. As indicated above, 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.

229. The even split between PACE and the Justice and Security Act confirms my scrutiny of the PACE 1/TA forms. Effectively the PACE code is used for stops and searches in non-terrorist activity and the Justice and Security Act for anything with a security dimension or the potential for one, in broadly equal proportions.

230. In summary:

- The increase in the use of the Justice and Security Act powers which was evident at the end of the last reporting year following the ending of section 44 has continued
- The increase is linked with the fall in the use of Terrorism Act powers. Non-PACE stops have however declined overall as a proportion of stop activity
- The use of the stop and question power (section 21) has declined by 35%. It is the stop and search powers (sections 24 and 26), especially in relation to vehicles, which have increased, by 1,277% and 1,262% respectively
- To understand the reasons for these apparently huge increases, we need to take account of the substantial displacement from section 44 to sections 24 and 26
- The comparison of the last quarter when section 44 was in full use (1 April to 30 June 2010) with the corresponding quarter in 2011 shows a fall in non-PACE related stops of 52%, from 11,011 to 5,271
- **Overall, PACE stops fell by 14% and non-PACE stops fell by 49%.**
- **Total stops fell by 36%.**

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

231. Displacement from section 44 would not in itself be sufficient reason for increased use of section 24. That would have short-circuited all the careful procedures set out above which guide and constrain the individual officer's discretion. Any increase in the use of section 24 must be capable of justification on its merits and not simply as a response to the loss of a similar power.
232. A continued use of stop and question and stop and search was to be expected in view of the amount of residual terrorist activity with which PSNI have had to contend this year. Overall, however, non-PACE stops have declined, both absolutely and as a proportion of all PSNI stops.
233. Senior PSNI officers have told me, when I have asked them formally, that in their view the use of these powers has had a significant preventative and disruptive effect on residual terrorist groups and contributed to their overall strategy to protect the public. I also judge that senior police officers recognise that it is wise to use these powers only when alternatives are not available or are likely to prove insufficient. The statistics are compatible with that strategy. But proportionate use of the proposed authorisation procedure, and careful continued monitoring of its impact by senior officers, will be necessary.

234. 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, with whom I discussed these matters in August.
235. I said last year 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. These concerns remain, and some people have expressed them to me more strongly this year, fearing an unwelcome “resecuritisation” of the police in Northern Ireland. In their view, the continuance of the Justice and Security Act powers is not compatible with a “normal” security strategy. The statistics do not however bear out fears that the police are increasing their security-related stop activity – in fact, there has been a decrease this year.
236. While the views of those opposed to these powers deserve respect and are held with a genuine concern that the long-hoped for normality should not be jeopardised, it is an unavoidable fact that systematic attempts are being made to murder police officers by terrorist groups, even if those groups are described as “residual”. That is in my judgment not compatible with an objective concept of normality. There is unfortunately some way to go before the security position in Northern Ireland can be thought of as “normal”. That is not to deny that enormous improvements have been made in public safety and security in recent years.

### **Road Closures**

237. These are public order powers enabling roads to be closed by order to deal with disorder or community tensions associated with the marching season and to restrict access to particular sites. Orders may be made to close roads in specific locations for a limited period.

#### *New agency arrangements*

238. There has been a change in the process by which these orders are made. Orders can now be made by the Minister of Justice under an agency arrangement signed by the Secretary of State and the Minister of Justice which came into effect on 27 June 2011. The new arrangement will last for three years in the first instance.
239. The agency arrangement provides that where the Minister of Justice makes an order the Department of Justice must keep records of his actions. It further provides that these records will not be disclosed but will be made available to me as Independent Reviewer.
240. The Secretary of State remains responsible in law for any exercise of these powers under the agency arrangements. There are detailed arrangements for the allocation of responsibility for any costs arising from them.

## Section 29

241. **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*

242. The Secretary of State again this year exercised this power 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 23 June to 13 July. The Secretary of State considered this authorisation to be necessary for the preservation of the peace and the maintenance of order.
243. I described last year the reasoning for the use of this power, which was to provide flexibility in handling the parades on the Springfield Road during the marching season, against the background of the Whiterock disturbances of 2005. This strategy worked well again this year as it has done in the past and I consider that it is justified. It assists in preventing disturbance to local residents in the nationalist community. The power was exercised by the Secretary of State because the agency arrangements had not yet been made.

## Section 32

244. **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 was used on two occasions last year and continues in operation in those cases. It has been used on two further occasions this year.

### Chichester Street

245. 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 took effect from 30 April, shortly after the attack on Newry Court House, and has been kept in force since then. The effect of the order was to restrict vehicular access to the Laganside Court House and the Royal Courts of Justice.
246. The closure was effected by the installation of retractable bollards in the road which caused inconvenience to those regularly needing access, especially to the Bar Council Library car park, and required the re-routing of private cars. I have again this year walked round the site and the adjacent roads to see the effect for myself.

247. Last year, I asked the General Secretary of the Bar Council for Northern Ireland for his comments, on which I reported. I met him again this year and am once again grateful to him for his comments.
248. It is clear that regular users of the site have, perhaps with some reluctance, come to terms with this closure. To their credit, they accept the security arguments for it and have furthermore given careful thought to the wider issues of security of the site. They have offered constructive comments, which I have passed on to officials in the Northern Ireland Office, about how such closures might best be put into place at short notice.
249. I understand that there has been progress towards resolution of the compensation issues to which this closure gave rise. I have not been involved in those discussions. They have clearly fallen as something of a burden on the authorities responsible for the Bar Library, but they report that the general position has improved.

### Ballykinler

250. On 21 July 2010 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 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. Last year I visited the site and asked the police to explain the risks as they saw them. I also arranged to meet local residents.
251. I noted last year that the need for the closure was clear and was not disputed locally. But it had evidently 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 were specifically affected. The concrete blocks used to effect the closure were unsightly and the absence of any signage left residents unclear about what passage, if any, was permissible.
252. I walked over the site again this year while on a visit to Ballykinler. I have also seen the documents prepared in July 2011 for the annual review of this closure. Their overall finding is that there is a necessity to keep the closure in place but that changes should be considered to the physical measures themselves. I agree with both those conclusions.
253. The use by residual terrorist groups of car bombs in the intervening year to attack the police clearly demonstrates that the security threat remains and the site would be vulnerable without the closure.
254. I welcome the attention now being given to mitigation measures. One such is the repositioning of the barrier to ease access to the landowner and the

farmer, and to lessen disruption to the domestic property at the end of the lane.

255. The question of signage is progressing slowly: it now awaits consideration as part of the ongoing drafting of guidance. It is unfortunate that this is taking so long and it should be completed as soon as possible. Some consideration is being given to whether concrete blocks are the best way of closing the road.
256. Local residents have got used to the closure. But the results of local consultation as part of the first official review show that residents, while accepting the need for it, are hoping that it will be removed as soon as the situation allows. They do not want it to become permanent.
257. There will be a further review next year but in the meantime it seems unlikely that there will be any alternative to maintaining this closure. It could be improved.

#### *Brompton Park Belfast*

258. Under the new agency arrangements, the Minister of Justice made an order on 8 July directing that the alleyway to the rear of Brompton Park, Belfast, should be closed at the rear of 1 Brompton Park, for preservation of peace and maintenance of order. The Justice Committee of the Assembly were notified the same day. The Minister helpfully explained the purpose of the order when Mr Anderson and I met him.
259. The rationale of the order, as explained to me, was to restrict access from Brompton Park in the direction of the Ardoyne shop fronts in advance of the parade along the Crumlin Road some four days later. Having looked at the footage of the disturbances on the Ardoyne shop fronts the previous year, where trouble was caused by youths climbing onto the roofs, it was obviously sensible to deny them that space this year. To the extent that this closure contributed to those tactics, I consider it was justified, though it is of course yet one more inconvenience to residents in the Ardoyne.

#### *Asylum Road, Londonderry*

260. The Minister of State made a section 32 order on 20 December 2010 for the partial closure of a section of Asylum Road in Londonderry adjacent to Strand Road police station. The effect of the closure was to put out of public use 28 parking spaces, obliquely located next to the footpath, and a small portion of the road above them. The closure was made by the positioning of large brown steel barriers which come up to about chest height. They are marked with a horizontal yellow strip running the whole length of the barrier, some 50 metres long.
261. This is a significant new road closure. I have studied the papers on which the closure decision was made. I also visited the site and spoke to a number of interested parties.

### *Case for closure*

262. The case for this closure was put forward by the police. It was based on the danger if a Vehicle Borne Improvised Explosive Device (VBIED) were to be positioned close to the perimeter wall of Strand Road police station. This concern followed on from the detonation of a 200 lb VBIED at the main entrance of the police station in August 2010 (which I reported last year) and the risk of further attacks on the station. The concern had been exemplified by VBIED attacks on Newtonhamilton PSNI station, Newry courthouse and Palace Barracks in Holywood.
263. The supporting papers for the case covered the reasons for the request, technical specifications, a community impact assessment, photographs and diagrams. I have examined these papers in detail. The material they cover would not, in my judgment, be suitable for public disclosure, but I am satisfied that all relevant issues have been raised for consideration. The essence of the case is the security threat assessment and the reduction in blast impact if there is a greater distance ("stand-off") between the VBIED and the perimeter wall of the police station. The technical reports indicate that reduction of the blast impact would produce a commensurate reduction in the risk to the lives of those working inside the police station in the vicinity of the perimeter wall, and to the infrastructure of the police station.
264. I have discussed the basis of the police request with senior police officers. I am satisfied that they have made a careful assessment of the threat, that the technical work in support of the case has been thoroughly completed, and that alternative measures have been considered. The results of consultation have been set out in a formal community impact assessment.
265. Inevitably, a large police station in a busy area of the city will be vulnerable, but it is located where it is. The police are realistic about that and indeed value their close proximity to the busy life of the city.

### *Impact of closure*

266. The effects of the closure locally are quite significant. Asylum Road is one of the busy side streets linking Strand Road with the central areas of the city. The area houses a mixture of commercial and residential premises. The footpath adjacent to the perimeter wall is still available to the public but pedestrians might hesitate to use it because the footpath runs between the wall and the new barrier. The footpath on the opposite side of Asylum Road is unaffected. Traffic can continue to flow, although the road is not wide and passing is not easy at the best of times.
267. My concern has been with the local impact, in two respects. The first is on the immediate locality and the second is the wider perception of the closure in the city.
268. Locally, the effect has had most impact on the residents of Bayview Terrace, which runs as part of Asylum Road on the other side from the police station.

The loss of parking spaces has had an adverse impact. This is an area of the city where parking is at a premium, both for those needing direct access to Bayview Terrace and those wanting to park in order to visit premises in the area. On-street parking outside Bayview Terrace is limited to 60 minutes, and I was told that the charges at a nearby municipal car park off Strand Road have recently been increased from 90p to £3.60. The adverse impact has been felt for example by a local professional firm, who told the police that they were very unhappy with the proposal when they were consulted about it.

269. The greatest impact has been felt by a doctors' General Practice in Bayview Terrace. I am grateful to the staff there for taking time out of their busy schedule to discuss this with me. The negative effect is on the GPs themselves, who are in and out of the surgery all day, on disabled patients, on parents with babies and young children who have hitherto relied on close access to the surgery, and on sick people who want to be able to get easily from their cars to the surgery. It is clear to me that the effect of the road closure has been quite disruptive to the life and work of the General Practice.
270. The second concern has been the impact on the wide community. I have discussed this with several representative groups. At its starkest this has been expressed as "the police looking after their own" but I think that is rather a narrow view since it discounts the deterrent effect of the measures from which nearby properties will benefit. Physical measures are much more justifiable in any case than a suggested alternative of more police patrols in Asylum Road, which would take up resources which would be better used for community policing.
271. More justified are the regrets of those who thought that road closures were a thing of the past. One person in particular expressed concern that this closure would be followed by others, contributing further to the "securitisation" of the city, to the detriment of its people, while in the process handing small but not insignificant victories to residual terrorist groups.

#### *Assessment of the closure*

272. This development has come at a time of economic downturn when businesses of all kinds are finding things hard. At the same time, there are some positive factors. The city is emerging from a long and dark time of suffering and sorrow, the peace bridge across the Foyle is a spectacular addition to the city, and the award of the UK City of Culture in 2013 is a superb achievement.
273. No-one to whom I spoke challenged the rationale for the closure, which I believe is a tribute to the thought and care with which the police have handled the issue. Some of those to whom I spoke said that they hoped the closure would be temporary.

274. I believe that this closure is justified. But more needs to be done to mitigate its impact. First, I am not satisfied that everything possible has been done to alleviate the local parking problems affecting the General Practice and others in Bayview Terrace. I recognise that the authorities have little room for manoeuvre in a busy central area, but it would not be impossible to create more dedicated parking spaces for the disabled (there is only one at present) and for others specifically visiting the surgery, and to make some of them available for periods greater than 60 minutes, which would benefit other professional practices locally. Ideally this would be done in Bayview Terrace but, if not in there, in the car park on Strand Road.
275. Secondly, there is no doubt that the current barriers create a brutal visual impact. They were justified because speed was important last December, and at least have the virtue that they are temporary and hence moveable (with heavy lifting gear). But it would be quite feasible to replace them with barriers which are easier on the eye, while retaining the necessary strength.
276. There are many such examples in the city, such as those around some of the gates in the walls. Options include retractable metal bollards and painted ornamental metal structures, whose effect would be much more in keeping with an old, historic part of the city. A notable feature of the initial consultation was the hope, expressed by some of those who accepted the need for the closure, albeit with reluctance in some cases, that they should be as aesthetically pleasing as possible.
277. I do not think that barriers of a different type need imply permanence. There would of course be a cost, but, as I have argued elsewhere, costs seem inevitable where roads are closed. In this case I believe the benefit would not only be visually more pleasing. It would also meet some of the concerns which have been expressed and hence would increase the acceptability of the measure.

### ***Military operations in support of the police***

278. 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. Several of these operations have extended over several days and have involved extensive access to private land using the powers in section 24. This is particular the case where command wires extend some distance from the device. They can be hard to locate, especially in rural areas.
279. **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 2010 to 31 July 2011.**

### *Extent of activity*

280. The table is in a slightly different format this year from last. It shows statistics for each month of the reporting year. These are shown separately for live devices, explosions, hoax calls, false alarms, incendiary devices (shown separately for the first time this year) and finds of explosive materials. The totals for each month are shown in bold in the column on the right.
281. The number of call outs this year was 444 compared with 460 the previous year. There are variations from month to month. There was a significant amount of activity in April 2011, which included 34 hoax calls. There were also spikes of hoax calls in August 2010 and May 2011.

### *Schedules of Army activity*

282. As well as providing summary statistics, the Army have provided me with detailed schedules describing 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.
283. As before, the schedules reveal the large amounts of dangerous materials which are now being found across Northern Ireland. The military call outs average 37 per month – more than one a day.

### *Nature of the military response*

284. The case studies described below are examples of the response being made by the Ammunition Technical Officers (ATOs). Once again the speed of their response has been 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.
285. Dealing with these incidents, and similar incidents described to me, has required the police to engage powers to deploy 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).
286. Last year I commented on the need for the speed and coverage of response to bomb incidents by the ATOs to be carefully monitored. I have been told about the liaison meetings now in place between the police and the military authorities for this purpose. I am told that response times will be one of the areas kept under review at these meetings. This is desirable.

### *Need for military response*

287. The police do not have the resources to deal with bomb incidents and are reliant on the armed forces for these essential tasks. For that reason, 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 and is likely to remain so throughout the current year.
288. I believe that this continued military support remains essential. It has been suggested to me that the police should develop this capability, thus relieving the armed forces of the duty. I think that would be a backward step, and a distraction from the necessary police focus on civilian community-based strategies. This is highly technical work, carried out by skilled personnel whose experience of similar devices in Afghanistan gives them an up-to-date professional competence which would be hard to replicate to the required standard. I doubt that there would be any net saving to public funds, and there would indeed be real dangers, both operationally and in terms of community impact.

### ***Case study: Antrim Road, Belfast, 23 January 2011***

289. On the evening of Sunday 23 January an incident occurred at an Xtravision shop in the Antrim Road in Belfast. This was not of itself significant but was followed by calls next day claiming to be from Oglagh na hEireann. It was not until Tuesday afternoon that the bomb was located. It proved to be an improvised device near some metal railings at the side of the premises. There were indications that it was in an unstable condition.
290. Antrim Road (a main arterial road into north Belfast) was closed from Tuesday until Thursday. The location of the device, and the insufficient warnings to locate it, meant that large numbers of the public walked past it before it was located. It soon became clear that this was likely to be a complex “come-on” incident, and indeed another device was found nearby chained to a child’s bicycle behind a scout hall.
291. Some 100 families were evacuated from their homes for two nights or otherwise affected. Full deployment of Army Technical Officers and Army Advanced Search Officers, operating in public in an urban environment, was required.
292. This was the first Command Wire Improvised Explosive Device (CWIED) found in Belfast for several years. The massive impact on communities in north Belfast, both families and business premises, was the focus of heavy media focus for several days.

### ***Case study: Newry A1 Underpass 7 April 2011***

293. At around 2300 hrs on Thursday 7 April, two bomb warnings were received which led to the discovery of a transit van abandoned in an underpass on the main A1 road from Belfast to Dublin, near Newry. The police, suspecting

a “come-on” device in the knowledge of a significant number of possible threats, tasked aerial surveillance of the van. They decided that night in liaison with the armed forces to delay deployment until the morning. They cordoned off the van with traffic cones but these were removed (not by the police) early on Friday morning, with the result that motorists drove past the van.

294. Ammunition Technical Officers attended to it on Friday morning and Army Advanced Search Officers were required. The device, which was confirmed as a live 500 lb bomb, had been placed in a wheelie-bin in the transit van, which proved to have been stolen, its number plates showing registration in County Donegal.
295. The road under the motorway was partly re-opened on Saturday 9 April. The police have told me that had the bomb been detonated in an urban area it could have caused devastation and multiple deaths.

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

#### *The profile of public order incidents in 2011*

296. 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.
297. 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.
298. My comments are based upon my observation of significant parading events during the summer months, discussion with many interested parties, and analysis of incidents of public disorder.
299. Such incidents should never be seen in isolation or simply as they appear at face value. They reveal much about local dynamics in a particular area, the extent of shifting paramilitary influences and aspirations, and the ability of political groupings and others to control and influence events. Unfortunately, police officers and ordinary members of the public are caught in the middle of these competing pressures.

#### *Belfast: Tour of the North*

300. I observed the Tour of the North parade in Belfast on 17 June. This parade passes through the Ardoyne area of the city and is seen by many as a dress

rehearsal for the main parade on 12 July. What it reveals about community feelings and the potential for exploitation of tensions by others is therefore important.

301. I spent some time in the area, at the police Silver Command room in Antrim Road police station, and in the police Gold Command room at Castlereagh. The basis of the police operation is to ensure that the parade takes place in accordance with the determination of the Parades Commission and with as little disruption to the local community as is possible.
302. The Silver Commander has the task of tactical planning and handling of the event while the Gold Commander has the responsibility to ensure that sufficient resources are available to the Silver Commander and that political and other pressures are absorbed with as little interference as possible with the police operations.
303. The police attempted to manage the event with a “soft” line of officers in ordinary police uniforms but, as disorder mounted, they quickly moved forward Tactical Support Groups with uniform and equipment sufficiently robust to withstand missiles and petrol bombs, supported by the familiar white landrovers.
304. I believe it was right to try the soft line approach first but equally important to switch tactics quickly. It would have been in no one’s interest if the police had been unable to maintain tactical control of street dynamics and crowd movements.

*Belfast: Twelfth of July*

305. The main risk in the Twelfth of July parades in Belfast is the return parade up the Crumlin Road in the early evening. The Ardoyne shopfronts are the traditional flashpoint as the parade passes through nationalist areas on either side. The timing of the event itself and the protests against it are carefully choreographed, for the most part in close liaison with community interests and the police.
306. What is never clear until the day is the extent to which tensions will be exploited and street disorder fomented by other people coming into the area, and how much the close proximity of rioting crowds will be used as a cover for gunmen to attack the police.
307. The main focus of my observation was again the Silver Command at Antrim Road police station and the Gold Command at Castlereagh and I spent several hours in each, in frequent dialogue with senior police commanders, and in the welcome company of members of the Parades Commission, the Police Ombudsman’s office, human rights advisers and others.
308. The police had intelligence of the presence of firearms and munitions in the area, as they made clear next day. That was the basis for their decision to deploy heavily protected officers and equipment at an early stage. Although

it inevitably sends a negative message to the public in the immediate area (which is no doubt the intention of the gunmen) to do otherwise would have been to put police officers at risk, handing the gunmen easy victories. The police decision to occupy the roof area of the Ardoyne shop fronts and deny it to petrol bombers was I believe justified.

309. The police approach was therefore firmer than last year, based upon past experience, the intelligence available to them, and events during the Tour of the North. The parade passed through without significant disorder but some of those associated with the parade subsequently tried to re-enter the area and were met by waiting groups. Violent disorder broke out and police used water cannon and fired Attenuated Energy Projectiles (AEPs) to keep the crowds apart and at a sufficient distance to limit the range of missile throwers and petrol bombers.
310. Violence also occurred in the Short Strand area in East Belfast, with several incidents of hijacked vehicles being set on fire. CCTV footage of youths trying to get into a blazing car to push it along the road shows the extent to which street disorder can prompt reckless stupidity by young people. To some extent the violence in the Short Strand area followed on from attacks in previous weeks, orchestrated by loyalist paramilitary groups in East Belfast, including shots aimed at police officers on 20 June, and significant disorder in the area on 1 July.

#### *Other disorder*

311. Indeed widespread localised street violence was more of a pattern this year, with rioting on a wider scale than in previous years, and not just in the summer months. Police officers were attacked with petrol bombs, fireworks and paint bombs in Lurgan on 29 January. Disorder in Ballyclare, Carrickfergus and Newtonabbey on 9 July demonstrated that loyalist areas were affected this year also.
312. On 14 July police were attacked in street disturbances in West Belfast, Londonderry and Portadown, disorder which continued over the following two nights. Houses and cars were damaged in an interface area of North Belfast on 22 July, and there were other incidents in other towns throughout the summer, some linked to parades, some at interface areas, some sectarian attacks on property associated with the other community, and some directed against the police.

#### *Londonderry: 13 August*

313. The Apprentice Boys of Derry parades, this year on 13 August, attracted over 10,000 marchers and supporters and 140 bands. Because these people travel from all over Northern Ireland, the police plan the day as a Province-wide operation, with the major co-ordination in the Gold Command room in Strand Road police station in Londonderry.

314. I spent the day on the ground in the centre of the city, in discussion with members of the Parades Commission, local community and church leaders, including representatives of the commercial community in the city, who expressed concern about the harmful effects of the parades on shopping activity on what would otherwise be a busy Saturday. I watched the parades march through the centre of the city and observed the protesting crowds, held back by high perspex barriers, but mostly well-behaved. I spoke to police officers at various points in the city and watched a planned protest near to The Diamond.
315. From the Gold Command room I observed the final stages of the parades and ensuing disorder in the Bogside area as police vehicles came under attack. Several attempts at car hijacking throughout the day in the environs of the city were intended to distract the police from their main focus, which was to ensure the safety of the many people in the city and to allow the parades to take place peacefully, in accordance with the Parades Commission's determinations.
316. By and large, the day's events passed off as planned, reflecting the hard work of many residents and other groups, with some disorder during the latter part of the parade. But there was more serious disorder later on, in the early evening, which the police believe was orchestrated by residual terrorist groups.

*Conclusions from this year about police public order strategies*

317. There were several new factors in public disorder this year. First, it was more widespread both over time and in its geographic distribution. Secondly, there was resurgent disorder in loyalist communities. Thirdly, it was not all linked with the marching season. In this disorder, it was clear that attacks on the police were the priority of those orchestrating the violence, whether in terms of missiles, pipe and petrol bombs or shooting attacks.
318. But some of the flashpoints associated in the past with the marching season were peaceful this year, the violence in the Ardoyne did not continue over as many nights, and crowds were generally smaller and less hostile. People have shared with me their speculation as to whether residual terrorist groups failed to mobilise sufficient crowds to give cover for attacks or were simply adopting different tactics this year.
319. Some people have said to me that the police deployed AEPs and water cannon too readily. Others have commented that community confidence can be knocked if community engagement activity is seen to take second place to harder-edged tactics, and that it takes much longer for community-based officers to regain trust than it does for them to lose it.
320. Some people said that problems are more likely if senior police officers lack intimate knowledge of their communities and that they are moved on to other posts too frequently. It was also said that communication between

senior commanders and patrol officers was on occasion too slow when situations changed rapidly.

321. Others have criticised the police for not moving in more quickly in the face of petrol and pipe bombs and doing too little to protect marchers. Inevitably, comparisons have been drawn with police tactics in dealing with the serious riots in England in August. Some have commented that the police in England were quicker at arresting people, and have commented that the swift process of charges and prosecutions, followed by convictions and substantial sentences, showed Northern Ireland in an unfavourable light.
322. Nearly all of those issues lie outside my terms of reference: I am concerned only with police strategies and operations. It is easy to pass judgments on police operations from a distance. What matters is that the police should have clear strategies which accommodate the interests, whether expressed in the specific terms of human rights requirements or more broadly in terms of public safety, of all those likely to be involved, be they residents in any area or people coming in from outside, in whatever capacity or guise.
323. All officers need to be briefed about these strategies and must clearly follow them. Tactical judgments need to reflect developing situations, in particular when the scene can change in a matter of seconds. The tactics used this year in responding to the situation resulted in a reduced effect.
324. Furthermore, “snatch” operations, which might have had their place in London, Birmingham or Manchester, can rarely be carried out without consequences in Northern Ireland and need to be judged with the greatest care and sensitivity. Similar tactics are needed, as in England, in using CCTV to the full to arrest and charge suspected offenders as soon as possible. But otherwise the circumstances in Northern Ireland bear little relation to what happened in England this summer.

#### *Future planning*

325. On the specific use of the Justice and Security Act powers, a fast-moving situation of disorder can entail the use of stop, search and question powers, for example to find out why someone is coming into an area where he is not habitually known, or where (as this year) the police believed that firearms or munitions were present and likely to be deployed.
326. There was no role for the use of military assets this year, other than Ammunition Technical Officers, or for the use by the armed forces of their powers under the Justice and Security Act, nor did police planning envisage their deployment on the ground. The police have strengthened their links with police forces in Great Britain under mutual aid arrangements in specialised areas such as search. A total of ten Police Support Units from forces in Great Britain have trained alongside PSNI in Northern Ireland.
327. This seems to me now to be the right way to go forward to ensure that the PSNI have access to further police support if they need it. The

arrangements are mutual, and will come into play again for the Olympics in 2012.

328. Some people have commented to me adversely on the decision of the police to purchase new vehicles for public order, and believe that this sends a negative message and will make it more difficult to plan to handle public disorder in a normalised context over the next few years. The police have looked at the strengthened public order vehicles in Great Britain, but consider them unsuitable because of the level of attack faced in Northern Ireland, such as masonry, pipe bombs and ballistic threat.
329. Misgivings about the purchase of new vehicles have to be set against the need for the police to be able to keep control of difficult situations and never to allow troublemakers to think it worthwhile to try to confront the police. No-one benefits if public order is lost, and communities can be badly damaged if it is.
330. Planning of this kind must however be preceded by months of painstaking police engagement with communities and their leaders to work out what strategies will work best. I have had the privilege of meeting this year some of the community leaders involved in this work, including church leaders from both the Catholic and Protestant communities. Their dedication and commitment against difficult odds are rarely publicly acknowledged but deserve the highest respect. Without the altruistic work of such people, the task of the police would be even more difficult.
331. There are already some indications that the public order scene in 2012 may be more challenging than in 2011 and that, as this year, comprehensive planning for the parading season will be necessary for many months

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

### ***Introduction***

332. 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.
333. 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*

334. The role of the armed forces in Northern Ireland now is very different from what it was before 2007. And following the drawing down of the Royal Air Force from Aldergrove on 20 September 2009, the number and pattern of complaints has changed even further.
335. All complaints against the armed forces in Northern Ireland fall to be investigated by the military authorities in Northern Ireland. The system is thus locally based. Investigation 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.
336. There were eight complaints this year, all about aircraft and helicopter flying. Not all involved military aircraft, but some raised issues about liaison with other authorities, on which I comment below.

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

337. The Joint Helicopter Command Flying Station Aldergrove (known as JHC (FS) ALD) is at the centre of the investigation process. JHC (FS) ALD came into being when RAF Aldergrove closed on 20 September 2009. For ease of reading I shall subsequently in this report refer to JHC (FS) ALD as the Flying Station at Aldergrove.

338. 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.
339. The Flying Station at Aldergrove has information on its website 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”.*

340. I have quoted this message in full because not every complainant is able to provide information to this level of detail, but will nevertheless expect some information bearing on his complaint. This was an issue in one case this year.

#### *Compensation claims*

341. 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.
342. 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 copy their reply to HQ 38 Brigade for audit purposes.
343. I have been given information about the numbers of claims, the numbers on which payments have been made, and the amounts paid, over the past four financial years. But I have no formal role in the process.

#### *Statistics*

344. There has been a major reduction in the number of complaints this year. There were 8 in the year under review, including one which properly belonged to the previous year but was documented at the end of July 2010, which for accuracy of reporting I have included in this report.

345. This total of 8 compares with 56 in 2009-10 and 124 in 2008-9. So the downward trend from the previous year has continued. In percentage terms, the total represents a reduction of 86% on last year. Of the 8 complaints this year, 3 were classed as formal and 5 as informal. The reduction in formal complaints, of which there were 52 the previous year, was 94%.
346. Informal complaints increased from 4 to 5, which is a nominal increase of 25%, but that percentage change should be treated with caution in statistical terms given that the sample sizes are quite small. Of more significance is the fact that the proportion of informal complaints this year was 62% compared with 7% the previous year – but again on small sample sizes.
347. 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. One this year was anonymous and rightly classified as informal since it was not possible to follow the investigation process through to a formal reply from the G9 Policy staff. It was nevertheless correct to investigate it.
348. Both formal and informal complaints require proper and effective investigation and resolution. All the complaints I saw this year were legitimate and were rightly registered as complaints by the G9 Policy staff. They all thus fell within my area of scrutiny. All related to helicopter and aircraft flying.
349. **Table 5** shows the total of formal aircraft and helicopter complaints from 1 January 2007 to 31 July 2011. **Table 6** shows informal aircraft and helicopter complaints for the same period. The major reduction in complaints is clear from these tables.

### ***Analysis of the case files***

350. HQ 38 (Irish) Brigade provided me with the folders of all 8 aircraft and helicopter complaints from 1 August 2010 to 31 July 2011, which I reviewed in April and September.
351. Some of the complaints came in direct to HQ38 Brigade HQ staff, either by email or by telephone, or by telephone to the Flying Station at Aldergrove. Some came in via the Civil Representative or after contact with the police. No complaints this year went direct to the Ministry of Defence Duty Officer or the Ministry of Defence Claims Officer. As before, the Civil Representative has continued to play an important role in the handling and informal resolution of aircraft and helicopter complaints.

### ***Case recording***

352. The procedures for recording a case and keeping track of it are now well established. When a complaint is received by the HQ38 Brigade HQ staff it is formally opened in a file (MoD Form 953, entitled “Military Aircraft Activity 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.

353. 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 a 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 been 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.
354. 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*

355. The target period of three weeks from the date of receipt for the despatch of a reply was comfortably met in 2 of the 3 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 conclude with a formal reply).
356. The remaining case did not meet the three week rule. The complaint was received on 30 November. An interim reply was sent on 21 December saying that investigations were ongoing and that it would not be possible to send a reply until 10 January. The final reply was indeed sent on that day.
357. At the front of this file was a note setting out the time line of events. The case concerned a complaint about a helicopter allegedly hovering over a farm for 2 hours in the late afternoon, the resulting noise causing annoyance to high-value horses. Problems arose when the reply from the Flying Station at Aldergrove arrived 10 days later than the requested date, because the pilot concerned was no longer in Northern Ireland. There also seemed to be doubt whether the local "avoid" over the property was still in force.
358. Definitive information was received on 5 January and a reply was sent as promised on 10 January. This made clear that aircrew were aware of the location but might on occasions not be able to avoid it. A visit to Aldergrove was offered, which is good practice, together with an apology. The outcome was satisfactory but some of the delay was in my view avoidable.

359. It was unfortunate that this case had been preceded by a similar complaint from the same person some 4 weeks earlier. (Indeed, the file shows that the complainant had experienced a further similar incident only 4 days before that, but there is no documentary record of it). There is a note on the file of the second case to the effect that sensitivity was advisable when operating in this area, which perhaps explains why an informal complaint was followed by a formal one, relating to a new incident, some three weeks later.
360. One other case caused me some concern. This was a formal case where the facts were not totally clear at the outset. The initial response from the Flying Station at Aldergrove said that inadequate information had been provided, so that more information was requested. That was perfectly reasonable but I think it would have been possible, from the data on the file, to start off basic enquiries to establish some of the facts, and the reasons given for not doing so were inadequate. Not surprisingly there is a comment on the file that the initial response was “unhelpful”.
361. Cases such as this are rare but they do illustrate the point that the welcome fact of fewer complaints does not justify any slackening in the procedures for investigating them. The process of investigation needs to be effective in every case and kept in good shape. It would be unfortunate if complaints were thought now to have less priority just because there are fewer of them. They matter both to the individual complainant and to the integrity of the complaints system. That is still fully recognised on the formal website of the Flying Station at Aldergrove and at HQ 38 Irish Brigade. There is self evident recognition that the files will be inspected, to establish whether everything has been done to meet the expected high standards.

#### *Files*

362. The quality of file-handling this year has been good and I have found no errors. The audit trail has been clear in every case and I have had no difficulty in following the sequence of events on each one. The outcome of each complaint has also been clear and the follow-up work has been fully documented.

#### *Replies to complainants*

363. Formal replies were sent to each of the three formal complaints. As before, they have included a brief summary of the findings and offers of apology for distress or inconvenience and expressed sympathy where this is appropriate. In the one case where it was appropriate, the complainant was told of the route for compensation claims to the Ministry of Defence claims organisation.
364. In one case where it was clear that a non-military helicopter has been involved, a contact point for the Civil Aviation Authority was given. In another case, it was clearly helpful to give the complainant more information about

low flying procedures and this was included. Reference was also made to the assistance which the Civil Representative can give.

365. It is encouraging that five of the cases were satisfactorily resolved informally. This involved discussion with the complainant at an early stage, active engagement and the offer of advice and reassurance where appropriate. I am satisfied that in no cases were complainants put under any pressure for their cases to be resolved informally, and indeed they seem to have welcomed informal resolution.

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

366. 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*

367. All but one of the complaints this year related to helicopter flying, the other relating to the visit of the Red Arrows on 7 August. One complaint referred to Air Cadet Air Experience flying, for which the Officer Commanding provided a comprehensive explanation. Five of the complaints this year related to nuisance to livestock, reflecting Northern Ireland's predominantly rural nature. One complaint alleged dangerous flying by two helicopters and two were general complaints about nuisance.
368. The geographical breakdown is more diverse than in previous years and follows no particular pattern. Complaints have come from Ballymoney, Belfast, Broughshane, Crumlin, Dungiven, Killylea and Lisburn.

#### ***Conclusions about helicopter and aircraft flying***

##### *Finding out whose helicopter it was*

369. It is becoming increasingly difficult to find out who is responsible for any particular helicopter flight. The old assumption that a helicopter was probably a military one no longer holds good and it is clear that the public as a whole have now come to recognise that, which is a welcome development.
370. Some of the comments on the files bring this out. In one case where it was possible that low helicopter flying could be attributed to work inspecting electricity pylons I noted the comment that "*Civil aircraft can't be ruled out but gone is the day of them informing us and there are more civil helicopters in Northern Ireland than ever before*".
371. In one case the complainant said that he telephoned the police and was promptly referred to the military authorities without detailed enquiry. In other case the complainant said that, when he telephoned the police, he was told

that the police and the military authorities “*could fly where they wanted*”. These are anecdotal comments which are not verified on the files so it is impossible to tell if there is any substance in them. To the credit of the Flying Station at Aldergrove, in one such case they contacted the police to establish the facts.

372. Faced with this diverse picture, where civil helicopter flying in Northern Ireland is increasing, there is a continuing need for liaison between the military and civil aviation authorities and the police to gain clarity about who is flying where and, more important, how to communicate with the public about this.
373. To put this in proportion, there is a tiny number of complaints in comparison to the total volume of helicopter traffic, so the extent of the issue should not be exaggerated. But greater liaison might prevent the kind of unhelpful comment quoted above. It would certainly be of benefit to the armed forces, since the default mode - that an unknown helicopter must be a military one - is certainly a feature of the past.

#### *Notice about flying*

374. In the past there have been complaints 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. There have been no such complaints this year about lack of notice, but it should continue to be given sensitive consideration.
375. 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*”.
376. On the days when I have checked the website the information given has been up-to-date and referred to the week ahead. It was unspecific about areas but gave the planned flying times as 11.00 to 23.59. On one day, a specific reference was made to a visiting aircraft but this related to the previous week and had not yet been deleted.

#### *Communications strategies*

377. The website for the Flying Station at Aldergrove includes a section headed “*Outreach*” which begins: “*As normalisation becomes established it is the Station Commander’s desire to improve our interaction with Local Community.*”
378. It also includes some important messages, which I quote verbatim:

*“We now endeavour to personally visit any complainants across the Province to discuss their concerns.*

*“Eventually, when the Political Climate is right we plan to visit Community Groups to explain how we go about our business.*

*“The main message is that for 35 years we have, for one reason or another, been distant from those in the local Community. However, we believe that the time is now right for us to interact more fully with those whom we impact on the most and explain how and why we carry out as business as we do...Professional, Committed to lessening the impact we have and Understanding to the needs of all”.*

379. The website also included a poster about the Aldergrove “Families Day” early in September offering a variety of activities and displays for children and adults.
380. HQ 38 Brigade HQ staff have undertaken a comprehensive review of their communication strategy in respect of military aviation. As I indicated last year, I have reviewed this strategy. It has included wider exposure of military activity at public events. The basic messages and means of outreach are now clear and need to be maintained. It is always possible, though not at present very likely, that numbers of complaints may rise.
381. The Ministry of Defence publish annually a report on *“Military Flying in the United Kingdom”*, which is available on the MoD website. The Statistical Appendix for 2010-2011 has information about the amount of routine low flying conducted in the training year 2010-2011. In particular, it shows the amount of flying in proportion to land area and the number of complaints in relation to the hours flown.
382. There are 19 Low Flying Areas (LFAs) in the United Kingdom. A positive message is that Northern Ireland comes 17<sup>th</sup> or 18<sup>th</sup> in terms of the annual average minutes flown in relation to the land area, depending on aircraft type. But that activity generates more complaints per hour flown than any other area except South East England. So tolerance of military flying is still sensitive. Hence the need to keep all these strategies going forward.

## Part 7: Conclusions

### Preliminary

383. These conclusions relate to the fourth full year of the operation of the Justice and Security Act, from 1 August 2010 to 31 July 2011. As before, they are based solely on the review activity described in the text above.

### The security profile

384. There were many serious incidents this year, including the terrible murder of Police Constable Ronan Kerr in Omagh on 2 April. Overall there was no lessening of the security threat and in the view of some people it got worse. Others take the view that terrorist activity has reached something of a plateau, while commenting that there has been no lessening of intent.
385. My judgment reflects the wide range of views which have been offered to me this year. It also takes account of the expressed views of the Government as set out in the National Security Strategy, the Strategic Defence and Security Review, and in CONTEST (the United Kingdom's Strategy for Countering Terrorism). It reflects opinion specific to Northern Ireland itself, including the final reports of the Independent Monitoring Commission, comments about Northern Ireland in the first report of David Anderson QC as Independent Monitor of the Terrorism Act, and the Chief Constable. I have also taken into account the comments on the security situation which the Minister of Justice made in the Northern Ireland Assembly on 14 November.
386. In following the original presentation given in 2006 by the Secretary of State at the time the Justice and Security Bill was before Parliament, I have examined in detail the areas of terrorism, public order and serious crime. As before, the interplay between all these three areas is subtle and intricate.
387. To analyse this I have once again drawn upon formal presentations from the operational services, case studies, statistics and operational reports. But this year I have broadened out my range of non-official contacts, so as better to reflect the diversity of opinion in Northern Ireland, especially those who are affected by the Justice and Security Act powers.
388. In terms of terrorism, the detail of the analysis in Part 5 leaves no room for doubt about the extent of the current threat. Some of the attacks have been crude and amateur, poorly planned and hastily or carelessly carried out. Others however have involved complex and increasingly sophisticated devices, deployed in scenarios which have presented greater challenges to the police.

389. The principal targets have been police officers, their vehicles and police stations, but inevitably the public have been directly affected by bomb devices and also by discoveries of terrorist *materiel* and hoaxes, which can have a major disruptive effect, involving displacement of families from their homes and harmful effects on business, farming and community activity.
390. For public order, there was serious violence in the Ardoyne on the evening of 12 July whose impact was felt most directly by the residents. While it was some relief that the violence was not prolonged over as many nights as last year, the damage and disruption was very serious indeed and on a level with the disorder of the previous year.
391. There was also sporadic violence in several towns across Northern Ireland during the summer months, some of it linked to the parading season, some of it opportunistic attacks on police officers, on members of the public and their property, and some with a sectarian dimension.
392. Injuries to police officers, heavy policing costs and adverse publicity for Northern Ireland have been additional consequences of disorder.
393. For organised crime, the view of the Organised Crime Task Force is that large sections of the membership of the main republican and loyalist groups have, at the instigation of their leaderships, moved away from widespread involvement in organised crime. However, the Task Force report that members and former members of these groups remain heavily involved in organised crime.

### Operation of the powers

#### Dealing with security incidents and threats

394. Police activity can be required in response to an attack using firearms or an improvised explosive device (IED), a warning or find of a suspected device or a hoax call. These incidents range from crude pipe bombs to complex and sophisticated devices. They are the most frequent and visible manifestations of residual terrorist activity. But there is also the painstaking work to follow a developing line of intelligence or a detailed forensic examination. The objective of this work is the prevention of further attacks and the preparation of cases for arrest, charge and prosecution.
395. A major security operation is a complex combination of legal powers, police and military assets, logistics and support, community liaison, family support and welfare, public information and media contacts. The Justice and Security Act powers form part of that response, but they are not the only powers in use.

396. **Police activity draws on powers in the Police and Criminal Evidence Order (PACE), which is the main instrument in relation to suspected non-security crime. In dealing with the security situation, the main powers are the Terrorism Act and the Justice and Security Act. All three instruments provide powers to stop members of the public, which may lead to searches of people, vehicles or premises. The power to ask about identity and movements is in section 21 of the Justice and Security Act.**

Statistics on the use by the police of their powers

397. **Analysis of police records across this whole range shows a fall this year of 36% in stop activity. In following through the withdrawal of section 44 of the Terrorism Act in July 2010, the numbers dealt with under PACE have declined by 14% and under the Terrorism Act have declined by 99%. The numbers dealt with under the Justice and Security Act have risen by 158%. Within that, the use of stop and question powers has declined by 35%, while there has been a twelve-fold increase in the use of stops and searches of people, premises and vehicles. Overall the number of stops in relation to the security situation has fallen by 49%. Analysis is in Part 5 and Appendix B.**
398. **Displacement from section 44 of the Terrorism Act would not in itself be sufficient reason for increased use of the Justice and Security Act powers. That would have short-circuited all the careful procedures which guide and constrain the individual officer's discretion.**
399. **A continued use of stop and question and stop and search was to be expected in view of the amount of residual terrorist activity with which PSNI have had to contend this year. Overall, however, non-PACE stops have declined, both absolutely and as a proportion of all PSNI stops.**
400. **Senior PSNI officers have told me, when I have asked them formally, that in their view the use of these powers has had a significant preventative and disruptive effect on residual terrorist groups and has contributed to strategies to protect the public. I also judge that senior police officers recognise that it is wise to use these powers only when alternatives are not available or are likely to prove insufficient. The statistics are compatible with that strategy. They do not bear out the fears, expressed to me, that the police are increasing their security related stop activity – in fact, there has been a decrease this year.**

Police records

401. **The Act places specific requirements both on the Chief Constable and on individual police officers to keep records of stops. That is essential so that someone who is stopped can be given some reason for it. It is also essential so that a review such as this can report on the extent and nature of police actions.**

402. Police practice in terms of record keeping is improving but the pursuit of best practice must be relentless. This has implications for operational orders, oversight by senior officers and training programmes. Whatever the pressures of budgets and operational imperatives, and the desire to focus activity on the “front-line”, these commitments are inescapable.
403. The encouraging progress on the use of making records on blackberry devices - now running at 43% of records in one police district whose records I have sampled – has benefits both for the public and for the police in terms of speed, clarity of reasoning, accuracy of recording and rapid availability of data for senior officers. It also must be pursued vigorously.

#### Road closures

404. The power to close roads has been exercised to deal with disorder or community tensions associated with the marching season and to restrict access to particular sites. In addition to the continuation of the power at Chichester Street in Belfast, at the Invest Northern Ireland site in Springfield Road in Belfast, and at Ballykinler camp, it has also been used in Brompton Park in Belfast and in Asylum Road in Londonderry.
405. From examination on the ground, discussion with those affected locally, and analysis of the arguments on the papers, I am satisfied that these closures are justified. Their acceptability locally depends in part on the extent and nature of consultation procedures. An annual review process enables all these matters to be looked at afresh each year. But the visual impact of these road closures carries important messages to individuals and communities and thus has a direct effect on their acceptability. In some cases there is room for considerable improvement.

#### The role of the armed forces

406. The role of the armed forces has remained at the limited level envisaged in the 2007 settlement. There is no desire in any quarter for any change to that.
407. But when it comes to the life and death operations to deal with explosive devices and materials, the police are dependent on the armed forces for the response. The number of call outs of the armed forces this year was 444, compared with 460 the previous year.
408. The key part of this response is the Ammunition Technical Officers (ATOs) whose skills are deployed with exemplary courage in Northern Ireland, as they are also in Afghanistan. Once again the speed of their response has been crucial in resolving an actual or potential threat, reducing disruption to the public and restoring normality, so that

people can return to their homes, roads can re-open and businesses and farmers can return to work. Their efforts have a direct effect on community confidence.

409. Several of these operations have extended over several days and have involved extensive access to private land using powers in section 24 of the Justice and Security Act. This is particularly the case where command wires extend some distance from the device. They can be hard to locate, especially in rural areas. But this year there have also been devices left in densely populated areas, notably in the Antrim Road in North Belfast in January, where hundreds of people unwittingly walked past a bomb described by the police as an “anti-personnel” device designed to kill.
410. The need for powers of entry and search, under which the armed forces act in support of the police, has continued throughout the reporting year and is likely to remain so throughout the current year. By contrast, other powers, in relation to arrest and public order, have not been used. I note that the Government decided, in the course of proceedings on the Protection of Freedoms Bill, not to withdraw these powers. I cannot currently envisage any circumstances when they might be used.

#### **Public order**

411. There were several new factors in public disorder this year. It was more widespread both over time and in its geographic distribution. There was resurgent disorder in loyalist communities. And it was not all linked with the marching season. But some of the flashpoints associated in the past with the marching season were peaceful this year, the violence in the Ardoyne did not continue over as many nights, and crowds were generally smaller and less hostile.
412. Attacks on the police were the priority of those orchestrating the violence, but some if it was directed towards members of the public and their property, and some had a sectarian dimension. Injuries to police officers, heavy policing costs and adverse publicity for Northern Ireland have been additional consequences of disorder.
413. Inevitably comparisons have been made with the way in which the police in Great Britain handled the disorder in English cities in August. In my judgment the circumstances were entirely different and hence I see no value in making comparative assessments of police strategies. These strategies in Northern Ireland should continue to reflect its unique combination of historical resonance, territorial affinity and adherence, need for reconciliation of the rights and expectations of all communities, and rapid tactical adjustments in the light of events.
414. Some people took the view that the greater firmness of the police this year was regrettable. Adverse comment has also been made on the

decision to purchase new vehicles for public order control. These views are important and need careful reflection. On a wider view however, no-one benefits if public order is lost, and local communities can be badly damaged if it is.

415. To meet these concerns, planning for public order events must be preceded by months of painstaking police engagement with communities and their leaders to work out what strategies will work best to give effect to determinations by the Parades Commission. There are already indications that the public order scene in 2012 will be more challenging than in 2011.

### **Military complaints**

416. The big reduction in complaints this year, down from 56 to 8, is the main point to report. Of the 8 complaints, 3 were classed as “formal”, generating the need for a response within 15 days. This target was met in 2 cases: the remaining case went over time, some of the delay being in my judgment avoidable.
417. The fall in the number of complaints continues previous trends following the departure of the Puma helicopters of 230 Squadron RAF in September 2009. All 8 complaints related to military aircraft and helicopter flying. It is now much less intrusive, but comparison with other flying areas in the United Kingdom shows that military flying is still tolerated less well by the public than in any other area of the country except South East England.
418. Nevertheless, the fall in complaints is welcome. The efforts of the Flying Station at Aldergrove to explain their purpose and activity, especially in respect of flying times, will have contributed to this.
419. There is much more helicopter activity in Northern Ireland than was the case a few years ago. There is a continuing need for liaison between the military and civil aviation authorities and the police to gain clarity about who is flying where and, more important, how to communicate with the public about this.
420. This would certainly be of benefit to the armed forces, since the default mode - that an unknown helicopter must be a military one – is certainly a feature of the past. To put this in proportion, there is a tiny number of complaints in comparison to the total volume of helicopter traffic, so the extent of the issue should not be exaggerated.
421. An efficient and responsive complaints system has undoubtedly contributed to the improved position, as is clear from comments from members of the public noted on the files. I have not therefore found it necessary this year to invoke my power to require the Brigade Commander to review a particular case or class of cases. It will be important to make sure that this positive progress is maintained.

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

422. 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”***

423. In my judgment, and in my approach to the task, this issue needs to be asked afresh each year. There can be no question of simply rolling over these powers from one year to the next. They are exceptional powers, to be used when no other course is open, and then as sparingly as possible. Hence my formal enquiries as to their utility and any continuing need for them.

#### *Operational need and advice*

424. As before, I have enquired whether there is likely to be an operational need for these powers, based on evidence from the past year, assessment of the likely security profile, and advice from the police.

425. On all three counts I judge that the case for retention has been made, based on the matters covered principally in Parts 4 and 5 of this report. Recent improvements to the security position, as noted by the Minister of Justice on 14 November, give grounds for encouragement. But that is an argument as much in favour of continuing on the present path as for departing from it.

426. While there is always a danger of holding on overcautiously to a portfolio of powers for longer than is justified, there are unfortunately many indicators suggesting that the current formal assessment of the security threat as “severe” accurately captures present realities.

427. Senior officers in PSNI and ACPO take the view that the police powers in the Act will continue to be needed for a further year. They also regard operational support from the armed forces as an ongoing necessity. That suggests only the limited option of removing those military powers for which there is no demonstrable need, a choice which remains open to Ministers at any time. Of course, other legislative changes will be made – and will come into effect – before the reviewer’s report is written next year.

#### *Other views*

428. The range of opinion which I have canvassed this year has been wider than in past years so as to capture a diversity of views as well as the formal views of the political parties and the security authorities.

429. Inevitably, at a time of much change in the security profile, police operations and the legislative basis for them, the comments offered to me have ranged far beyond the operation of these specific powers, and

indeed beyond police operations generally. All this comment is valuable in setting the context in which police operations are conducted, especially now that the devolution settlement is becoming more embedded.

430. Comments offered to me about a particular location or police operation, and views about the position across Northern Ireland as a whole, inevitably involve presentation to me of subjective assessments. I take no position between conflicting points of view but reflect on all of them when making my own judgments.
431. The central question, however, which I have raised for discussion is whether these powers should be continued for a further year.
432. Those for whom the security situation remains poised at a critical point think it would be madness to make any change to the present legislative structure, and indeed have questioned whether the police have enough powers, without suggesting particular changes. Some of those believing that no changes should be made nevertheless believe that there are subtle movements in hitherto monolithic attitudes to the police, which require greater flexibility in the way police carry out operations if new opportunities are to be grasped.
433. For others, opposition to these powers is a point of principle of the highest order, not only because of their historical resonance but because they damagingly entrench old attitudes. For some, their continuation, together with the use of stop and search operations under other powers, is now, more than ever, holding back progress towards a normal society. In their view, Northern Ireland will never be set free to move forward without imaginative steps in the area of security, of which abolition of these powers remains a priority.

#### *Concluding judgments*

434. The operational indicators lead me to the conclusion that the powers should be continued for a further year. They have formed a major part of the police response to the security situation and I cannot see how they could realistically be removed in the current circumstances, notwithstanding the encouraging signs of progress in some respects.
435. The changes to legislation now in train, including new authorisation and oversight mechanisms, and the production of a Code of Practice specific to these powers, together with renewed operational guidance and training and enhanced recording and monitoring, offer opportunities to continue the downward trend in stop and question and stop and search activity in response to the security profile which is evident from the statistics this year.

436. There is no reason why this downward trend should not be continued. But where the police see no alternative to using these powers, I have no doubts that they should do so.

**Recommendations**

437. I recommend that:

***Police powers***

(1) A Code of Practice under section 34 of the Act should be prepared to accompany the introduction of changes, by means of the Protection of Freedoms Bill, to powers in the Justice and Security Act (*paragraph 144*)

(2) Consideration should be given to including in the Code a record-keeping provision for use of the power in section 21 of the Justice and Security Act. This should be similar to the requirement in paragraph 6 of schedule 3 to the Act for use of the powers under sections 24 and 26 (*paragraph 175*)

(3) PSNI should review their operational orders to give effect to the changes brought about by the Protection of Freedoms Bill and the Code (*paragraph 169*)

(4) PSNI should reinforce their training programmes to ensure that all officers likely to use the powers in the Justice and Security Act are aware of the changes to them and use them only when no other powers are available (*paragraph 169*)

(5) PSNI should reinforce in their training programmes the need to ensure that when police officers record their use of these powers on the PACE/1TA forms they make separate records of the power used and the basis for using it (*paragraph 178*)

(6) PSNI should accelerate the transition to the system of electronic recording of stop and search and stop and question activity and should review their training to ensure that officers are trained to use the system effectively (*paragraphs 194 and 195*)

(7) Senior PSNI officers should review their arrangements for the monitoring of the use by their officers of Justice and Security Act powers to ensure that it accords with the forthcoming new system of authorisations (*paragraph 233*)

(8) Senior PSNI officers should arrange to review, either systematically or by directed sampling, individual completed PACE/1TA forms so as to assess whether operational orders are being fully complied with (*paragraph 182*)

**(9) Subject to these changes, the powers in the Justice and Security Act should continue to be used where necessary for the prevention of crime and the protection of the public (*paragraph 436*)**

### ***Police operations***

**(10) PSNI should continue their current strategy for dealing with suspected terrorist activity so that they continue to have full regard for their obligations to all members of the public under human rights legislation (*paragraph 158*)**

**(11) In executing operations of this kind, whether planned or in response to events, PSNI should continue to reconcile the need for the protection of life with expectations that disruption to the community will be kept to the minimum possible in extent and duration (*paragraph 66*)**

**(12) As part of these operations, PSNI should continue to involve specialist support from the armed forces in accordance with existing protocols, drawing on the powers in the Justice and Security Act where necessary (*paragraph 287*)**

**(13) Specialist support in dealing with suspected or actual finds of explosive should continue to be provided by the armed forces, and military planning (both within the Ministry of Defence and within HQ 38 (Irish) Brigade) should continue to assume an ongoing need for such support (*paragraph 288*)**

### ***Public order***

**(14) Police planning for public disorder should continue to follow carefully formulated strategies, which should be fully briefed to all officers likely to be involved, so as to ensure maximum understanding by all officers of the nature and objectives of the planned police operation (*paragraphs 322 and 323*)**

**(15) This planning should take account of experience this year, obligations under human rights legislation, consultation with local community groups and leaders and the need to ensure that violence and disorder are kept to a minimum (*paragraphs 330 and 415*)**

**(16) PSNI should develop further training and support programmes with other UK police forces so as to ensure that existing mutual aid arrangements are fully exploited, both as part of planning for the 2012 Olympics and in support of public order events in Northern Ireland in the current year (*paragraphs 326 and 327*)**

**(17) PSNI should continue to plan on the basis that the armed forces will not be called upon to carry out public order duties (*paragraph 326*)**

### ***Road Closures***

**(18) The existing road closures should be maintained, but should be reviewed during the course of the year (*paragraph 405*)**

**(19) The current review of consultation procedures should be concluded as quickly as possible, especially in relation to signage (*paragraph 405*)**

**(20) Alternatives to the physical barriers currently in place at Ballykinler camp and in Asylum Road Londonderry should be actively explored, so as to find something less harsh in appearance and more in keeping with the local environment (*paragraphs 257 and 275*)**

### ***Military complaints***

**(21) The current effective arrangements for the investigation of complaints against the armed forces should be maintained, ensuring that they continue to function properly whatever the number of complaints (*paragraph 361*)**

**(22) The military authorities should continue to make available to the public as much information as possible about planned military aviation (*paragraph 374*)**

**(23) They should continue with their current successful programmes for active community engagement (*paragraph 380*)**

**(24) The military authorities should review with the police and the civil aviation authorities how they can best liaise to ensure that enquiries from the public about helicopter flying are directed as quickly as possible to the responsible authority (*paragraph 372*)**

### ***Future of the Justice and Security Act powers under review***

**(25) The powers in sections 21 to 32 of the Justice and Security Act should be continued in full for a further year, subject only to wider legislative changes or judicial intervention (*paragraph 436*)**

**ROBERT WHALLEY CB**

**November 2011**

## 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.

**Table 1: Police Service of Northern Ireland Summary Sheet**Justice and Security Act – 1<sup>st</sup> August 2010 - 31<sup>st</sup> July 2011

	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Total
<b>1. JSA Section 21 - Number of persons stopped and questioned</b>	405	276	817	370	237	353	357	338	367	358	236	233	4,347
<b>2. JSA Section 23 - Power of Entry</b>	5	3	0	3	2	4	2	3	11	3	6	17	59
<b>3. JSA Section 24 (Schedule 3) - Munitions and Transmitters stop and searches</b>													
No. of persons stopped and searched, public place:	1,539	825	2,838	1,303	806	1,187	996	1,277	1,705	1,448	914	790	15,628
No. of persons stopped and searched, private place:	21	21	41	56	23	38	32	24	45	39	41	14	395
Persons stopped and searched - total	1,560	846	2,879	1,359	829	1,225	1,028	1,301	1,750	1,487	955	804	16,023
<b>JSA Section 24 (Schedule 3) - Searches of premises:</b>													
No. of premises searched - Dwellings:	32	11	21	15	8	33	15	12	51	21	28	25	272
No. of premises searched – Other:	40	6	6	6	2	7	2	2	8	6	8	3	96
No. of occasions items seized or retained	15	2	10	3	2	4	9	7	9	5	7	7	80
<b>JSA Section 24 (Schedule 3) Use of Specialists:</b>													
Use of specialists - No. of occasions 'other' persons accompanied police:	53	10	5	3	1	0	3	3	9	2	1	5	95
<b>4. JSA Section 26 (Schedule 3) - Search of Vehicles</b>													
(1) (a) Vehicles stopped and searched under section 24	2,235	1,033	4,255	1,381	803	1,213	1,065	1,292	1,914	1,795	1,091	816	18,893
(1) (b) Vehicles taken to another location for search	2	1	3	2	1	4	0	0	0	0	0	0	13

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 2010 and 31<sup>st</sup> July 2011**

**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	
2010 - 2011		
Aug - Oct	1,498	
Nov - Jan	960	
Feb - Apr	1,062	
May - Jul	827	

**Table 2B**

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

Year	Police Service of Northern Ireland	
	Number of Premises entered	
2010 - 2011		
Aug – Oct	8	
Nov – Jan	9	
Feb – Apr	16	
May - Jul	26	

**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
2010 - 2011			
Aug - Oct	5,202	83	5,285
Nov - Jan	3,296	117	3,413
Feb – Apr	3,978	101	4,079
May - Jul	3,152	94	3,246

**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
2010 - 2011				
Aug - Oct	64	52	27	68
Nov - Jan	56	15	9	4
Feb – Apr	78	12	25	15
May - Jul	74	12	19	8

**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
2010 - 2011		
Aug - Oct	7,523	6
Nov - Jan	3,397	7
Feb – Apr	4,271	0
May - Jul	3,702	0

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

### 1<sup>st</sup> August 2010 – 31<sup>st</sup> July 2011

Persons stopped and searched under:	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug 10 - Jul 11
PACE	1,811	1,943	2,686	1,591	1,289	1,823	1,695	2,013	1,698	1,713	1,485	1,382	21,129
TACT S43	73	51	30	33	30	24	29	26	48	26	41	22	433
TACT S44	1	0	0	1	0	0	0	0	0	0	0	0	2
JSA Section 21	405	276	817	370	237	353	357	338	368	358	236	233	4,348
JSA Section 24	1,560	846	2,879	1,359	829	1,225	1,028	1,301	1,751	1,488	955	803	16,024
<b>Total*</b>	<b>3,850</b>	<b>3,116</b>	<b>6,412</b>	<b>3,354</b>	<b>2,385</b>	<b>3,425</b>	<b>3,109</b>	<b>3,678</b>	<b>3,865</b>	<b>3,585</b>	<b>2,717</b>	<b>2,440</b>	<b>41,936</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

**Note: The above statistics are provisional and may be subject to minor amendment.**

### 1<sup>st</sup> August 2009 – 31<sup>st</sup> July 2010

Persons stopped and searched under:	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug 09 - Jul 10
PACE	1,996	2,295	2,645	1,905	1,736	1,897	2,028	2,121	2,187	2,038	1,772	1,937	24,557
TACT S43	9	23	11	7	9	10	7	4	13	9	11	46	159
TACT S44	1,551	8,146	1,764	2,219	1,803	3,532	2,580	2,165	4,220	2,919	1,702	313	32,914
JSA Section 21	274	1,335	277	415	335	744	747	399	712	707	543	240	6,728
JSA Section 24	33	90	49	37	32	108	71	49	56	47	72	519	1,163
<b>Total*</b>	<b>3,863</b>	<b>11,889</b>	<b>4,746</b>	<b>4,583</b>	<b>3,915</b>	<b>6,291</b>	<b>5,433</b>	<b>4,738</b>	<b>7,188</b>	<b>5,720</b>	<b>4,100</b>	<b>3,055</b>	<b>65,521</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

**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 2010 – July 2011**

	LIVE	EXPLOSION	HOAX	FALSE	INCENDIARY	FINDS	TOTAL
Aug-10	4	4	22	10	0	13	53
Sep-10	5	0	6	6	0	11	28
Oct-10	6	0	9	4	0	17	36
Nov-10	8	1	3	2	0	13	27
Dec-10	4	0	2	4	0	9	19
Jan-11	9	1	9	6	1	8	34
Feb-11	4	1	7	6	0	9	27
Mar-11	6	1	8	8	0	14	37
Apr-11	8	3	34	15	0	16	76
May-11	3	1	16	9	0	10	39
Jun-11	7	2	9	5	0	11	34
Jul-11	6	3	7	6	1	11	34
<b>Total</b>	<b>70</b>	<b>17</b>	<b>132</b>	<b>81</b>	<b>2</b>	<b>142</b>	<b>444</b>

**Table 5: Formal Helicopter Complaints – 1 January 2007 –  
31 July 2011**

	2007	2008	2009	2010	2011
January	1	1	13	1	0
February	2	4	8	2	1
March	1	3	13	1	0
April	5	18	2	2	0
May	5	4	10	0	0
June	3	9	10	1	0
July	5	11	19	0	1
August	4	1	13	0	-
September	1	24	6	0	-
October	2	9	12	0	-
November	1	11	6	1	-
December	1	0	3	0	-
<b>Total</b>	<b>31</b>	<b>95</b>	<b>115</b>	<b>8</b>	<b>2<sup>1</sup></b>

<sup>1</sup> This represents first seven months of 2011

**Table 6: Informal Helicopter Complaints – 1 January 2007**  
**– 31 July 2011**

	2007	2008	2009	2010	2011
January	8	3	1	0	0
February	12	4	0	0	0
March	3	2	0	0	0
April	7	1	1	1	1
May	9	0	1	0	0
June	7	3	1	1	1
July	13	4	0	2	0
August	4	0	0	2	-
September	0	4	0	0	-
October	3	0	0	0	-
November	0	0	0	1	-
December	2	1	0	0	-
<b>Total</b>	<b>68</b>	<b>22</b>	<b>4</b>	<b>7</b>	<b>2<sup>1</sup></b>

<sup>1</sup> This represents first seven months of 2011

## **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  
Church leaders from Catholic and Protestant communities  
Civil Representative  
Committee for the Administration of Justice  
Community groups in Ballykinler, Belfast and Londonderry  
David Anderson QC  
Derry Chamber of Commerce  
Derry City Centre Initiative  
Derry City Centre Traders' Forum  
Directorate of Safety and Claims, Ministry of Defence  
DUP  
HM Ambassador to Ireland  
HQ 38 (Irish) Bde  
Independent Monitoring Commission  
Justice  
Liberty  
The Rt Hon Lord Carlile of Berriew QC  
Northern Ireland Office  
Northern Ireland Human Rights Commission  
Northern Ireland Policing Board  
Northern Ireland Policing Board Human Rights and Professional Standards Committee  
  
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  
Dr John Topping (University of Ulster)  
UUP  
University of Leeds School of Law  
Vernon Coaker MP

## **Appendix D: Protection of Freedoms Bill – Explanatory Notes**

***The Government published the following Explanatory Notes when the Protection of Freedoms Bill was introduced in the House of Commons***

### **Clause 62: Stop and Search Powers in relation to Northern Ireland**

236. Clause 62 introduces Schedule 6 which amends the stop and search power for munitions and transmitters in relation to a constable.

### **Schedule 6: Stop and Search Powers: Northern Ireland**

237. Paragraph 1 amends Paragraph 4 of Schedule 3 to the Justice and Security (Northern Ireland) Act 2007 which provides that a constable or member of Her Majesty's forces on duty (an "officer") may stop a person in a public place in Northern Ireland to search persons for munitions held unlawfully and wireless apparatus. The officer does not need to have any reasonable suspicion for doing so.

238. *Paragraphs 1 (2) and (3)* replaces the word "officer" with "a member of Her Majesty's forces on duty". A constable can no longer stop and search a person in a public place without reasonable suspicion but the existing power for the military to stop and search a person remains unchanged.

239. *Paragraph 1 (4)* inserts new sub-paragraph (4) so that a constable can search a person who he reasonably suspects to have munitions with him or her or to have wireless apparatus with him or her regardless of whether he or she is in a public place or not (currently the power only applies where the person is not in a public place).

240. *Paragraph 2* inserts a new paragraph 4A into Schedule 3 to the 2007 Act. New paragraph 4A (1) provides that a senior police officer of the Police Service of Northern Ireland may authorise the use of the stop and search without reasonable suspicion powers in a specified area if the senior police officer reasonably suspects that the safety of any person might be endangered by the use of munitions or wireless apparatus.

241. The authorisation can be given only if the senior police officer considers that it is necessary to prevent that danger and the area or place specified in the authorisation is no greater than necessary and the duration of the authorisation is not longer than is necessary.

242. New paragraph 4A (2) states that any constable is authorised to stop and search an individual in the area or place specified in the senior police officer's authorisation.

243. New paragraph 4A (3) specifies that the purpose of the search as covered by the authorisation will be to ascertain whether the person is carrying munitions unlawfully or wireless apparatus.

244. New paragraph 4A (4) provides that the power conferred by the authorisation may be exercised whether or not the constable reasonably suspects the person has such munitions or wireless apparatus.

245. New paragraph 4A (5) states that a constable searching a person in public under new section 4A, cannot require that person to remove clothing with the exception of headgear, footwear, outer coat, jacket, or gloves.

246. New paragraph 4A (6) provides that a person can be detained for so long as reasonably required to search the person near or where he or she was stopped.

247. New paragraph 4A (7) places a duty on a senior police officer who has made an authorisation orally under new paragraph 4A, to confirm it in writing as soon as reasonably practicable.

248. New paragraph 4B states that an authorisation given under new paragraph 4A has effect from the time it is given and ends at the time or date specified in the authorisation subject to new paragraphs 4C to 4G of the Schedule.

249. New paragraph 4C provides that an authorisation cannot specify a date or time which is more than 14 days after the date the authorisation is made.

250. New paragraph 4D places a requirement on the senior officer who has made an authorisation under new paragraph 4A to inform the Secretary of State of it as soon as reasonably practicable (sub-paragraph (1)). If the Secretary of State does not confirm the authorisation within 48 hours of it having been made, it ceases to have effect (sub-paragraph (2)). If an authorisation is not confirmed and ceases to have effect by virtue of sub-paragraph (2), it does not affect the lawfulness of anything carried out under the authorisation before it ceased to have effect (sub-paragraph (3)). The Secretary of State may, when confirming an authorisation, shorten its duration or reduce its geographical extent (sub-paragraph (4)).

251. New paragraph 4E provides that the Secretary of State may cancel an authorisation at any time.

252. New paragraph 4F confers a power on a senior police officer to cancel an authorisation, shorten its duration or reduce its geographical extent (sub-paragraph (1)). If an authorisation has already been confirmed by the Secretary of State under paragraph 4D when a senior police officer cancels or amends it, the amended authorisation does not require confirmation from the Secretary of State (sub-paragraph 2).

253. New paragraph 4G provides that a new authorisation can be given regardless of whether a previous authorisation continues in force, has expired or has been cancelled

254. New paragraph 4H provides that a senior police officer may give an authorisation which covers either the whole of Northern Ireland or an area or place in Northern Ireland together with all or part of the internal waters adjacent to that area (sub-paragraph (1)). “Internal waters” are defined as waters in the United Kingdom that are adjacent to Northern Ireland (sub-paragraph (2)). Sub-paragraph (3) makes provision for authorisations which specify more than one geographic area and provides that such an authorisation can specify more than one end date or time (consequently powers to substitute an earlier end date or time include powers to substitute some but not all of the end times specified in the authorisation) and that the Secretary of State and a senior officer, when substituting a smaller geographic area under new paragraphs 4D(4)(b) and 4F(1)(c) respectively, may remove an area from the substitution.

255. New paragraph 4I deals with circumstances in which a decision of a senior officer, or the Secretary of State, is challenged in any legal proceedings. Under sub-paragraph (2) the Secretary of State may certify that the interests of national security are relevant to the decision and the decision was justified. Such a certificate can be appealed to the tribunal established under section 91 of the Northern Ireland Act 1998 (“the National Security Certificates Tribunal”). The Tribunal has the power to uphold or quash the certificate. The procedural rules which are currently used by the Tribunal make provision for sensitive material to be considered in close session and for the appointment of special advocates.

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