

REPORT OF THE INDEPENDENT REVIEWER

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

FIFTH REPORT: 2011-2012

Robert Whalley CB

November 2012

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Presented to Parliament pursuant to Section 40 of the Justice and Security
(Northern Ireland) Act 2007

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The Rt Hon Theresa Villiers 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, the Rt Hon Shaun Woodward MP appointed me as Independent Reviewer under section 40 of the Justice and Security (Northern Ireland) Act 2007. The Rt Hon Owen Paterson MP 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 and above those outlined in Sections 21 to 32 of the Act and the GOC remit outlined above.

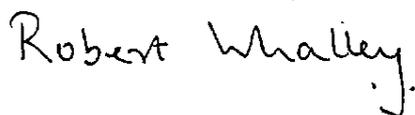
- *The Reviewer may make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act”.*

I submitted my first report to Mr Woodward on 31 October 2008, my second to him on 7 November 2009, my third to Mr Paterson on 28 November 2010, and my fourth to Mr Paterson on 26 November 2011. The most recent are available on the Northern Ireland Office website: <http://www.nio.gov.uk/Home>

I explained my approach to this task when we met on 19 November 2012.

I now have pleasure in submitting to you my fifth report, which covers the period from 1 August 2011 to 31 July 2012.

My conclusions are set out in Part 7, with recommendations in paragraph 638.



ROBERT WHALLEY CB

November 2012

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Part 1: The Role of the Reviewer

The scope of this review

1. **This is my fifth report, which covers the period from 1 August 2011 to 31 July 2012. For consistency and ease of reference, the fifth 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 comment and opinion and the 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 638.**

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). A summary of the powers is in Appendix A.
9. The Protection of Freedoms Act 2012 made major changes to the Justice and Security Act. These are set out in Appendix D.

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 in relation to the procedures for investigating military complaints 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. A summary of the main powers is in Appendix A, including the changes made in the Protection of Freedoms Act 2012, found in Appendix D.

- **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. There are also supplementary powers to be reviewed:

- **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. Detailed analysis and conclusions are in Part 6.

Part 2: The Review Process

Reviews of security in Northern Ireland

16. There are now three review procedures about security in Northern Ireland which are reported to the Westminster Parliament.
17. The Rt Hon Lord Carlile of Berriew QC has a non-statutory role as the independent reviewer of the national security arrangements for Northern Ireland. The former Secretary of State, the Rt Hon Owen Paterson MP, reported to the House of Commons about this on 19 December 2011.
18. Mr David Anderson QC is the independent reviewer of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. He published his second report, relating to the calendar year 2011, in June 2012. 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. 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.
20. My review covers powers in relation to the police and the armed forces in the Justice and Security Act 2007 (JSA), which applies in Northern Ireland alone.
21. The JSA powers 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. My purpose is to judge whether the original intentions and requirements continue to hold good in the light of events and experience. As I made clear in all my discussions with people this year, the questions need to be asked afresh in each review.
22. I explained my approach to this review task to the Secretary of State when I met her on 19 November 2012.

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

23. Police powers in Northern Ireland can be found in at least three instruments – the Terrorism Act 2000, the Justice and Security (Northern Ireland) Act 2007 and the Police and Criminal Evidence (Northern Ireland) Order 1989. (The Public Order (Northern Ireland) Order 1987 may also be relevant in some circumstances as also may be the Serious Organised Crime and Police Act (SOCPA) 2005).

24. Each of these three instruments has a different oversight mechanism but linkages are needed if Parliament and the public are to be kept fully informed.
25. Since we are Westminster appointees, Mr Anderson and I have no formal relationship with the Minister of Justice, Mr David Ford MLA, but we have held joint meetings with him. Similarly, we have together met the Northern Ireland Policing Board and the Board's Human Rights and Professional Standards Committee, so as to align our reporting to the Westminster Parliament with the oversight of the Police Service of Northern Ireland under the devolution settlement. We are grateful for the helpful contact and co-operation both with Mr Ford and with the Policing Board. We have also held joint meetings with senior PSNI officers and the Policing Board's Human Rights Adviser.
26. Mr Anderson has referred to the overlap of his review with mine in paragraphs 1.13(c) and 2.18 and 8.25 of his second report in June 2012. He has recorded in his report his agreement with me that the exercise of Terrorism Act stop and search powers in Northern Ireland should be dealt with as part of my review, so that a comprehensive picture is presented to Parliament.

Timescale

27. This report covers the year 1 August 2011 to 31 July 2012. Where appropriate I have referred to events occurring before the reporting year and since it ended.

Terminology

28. I have used the term "residual terrorist groups" where relevant in this report. It has the value 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 and I have used it where it seems to meet the need of the text. The former Secretary of State used the phrase "terrorists" and "terrorist groups" in his Parliamentary statements in 2012.
29. The context for my review was set in Parliamentary debates in 2006 and 2007. Guided by that, I have looked at anything which might be seen as impeding the process towards "normalisation", including incidents, hoaxes and public order events, together with trends in organised crime with a paramilitary aspect.

Review activity

30. As before, I have kept in constant touch with developments in Northern Ireland throughout the year. I have made eleven 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.

Assessing the security position

31. I have held regular meetings throughout the year with the police, the Security Service and the armed forces, at all levels in those organisations. My mid-year review (in March 2012) covered detailed presentations from all three organisations about their operations.
32. It is my practice to invite each of these services to offer me at the end of the reporting year fully prepared, formal presentations of their analysis of events, with an assessment of the year ahead. These formal presentations took place in September this year.
33. These presentations cover the use which has been made of the JSA powers against the security profile 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 the powers so that I can advise the Secretary of State. There can be no question of simply approving the existence of the powers from one year to the next. I am glad that all these organisations recognise this. They have offered me comprehensive information and answered every one of my many questions.
34. In the course of the year I have several times met the Chief Constable, Mr Matt Baggott CBE QPM BA (Hons) and the Deputy Chief Constable, Mrs Judith Gillespie OBE. I have also met four of those at Assistant Chief Constable rank, Mr Alistair Finlay, Mr Drew Harris OBE, Mr Dave Jones and Mr Will Kerr, and have continued frequent contact with District Commanders. I have met Representatives of the Superintendents' Association of Northern Ireland and the Police Federation for Northern Ireland.
35. Police use of stop and search and stop and question powers is at the heart of this review. This has implications for police training and record-keeping. In March I observed training at District level for PSNI officers at Mahon Road PSNI station, Portadown, and in May I observed senior officer training at PSNI Lisnasharragh. In September I visited Antrim Road police station in Belfast to discuss the operation of stop and search powers with officers of various ranks and the developing arrangements for database management. I have also kept in touch with the PSNI Central Statistics Branch and with those developing the Blackberry system for electronic recording.

Police Ombudsman for Northern Ireland

36. I have met the new Police Ombudsman for Northern Ireland, Dr Michael Maguire, and discussed with him the complaints about stop and search which he has received. These are very few. Dr Maguire and I have considered whether this means that few people have cause

to complain, whether they do not think it worth complaining, or whether they lack confidence in the complaints process. I look forward to further discussions with Dr Maguire about this.

37. On Dr Maguire's helpful advice I have drawn upon the report in September 2012 by the Acting Chief Inspector of Criminal Justice in Northern Ireland, Mr Brendan McGuigan, entitled *Policing with the Community: a follow-up review of inspection recommendations*. I have also discussed with Dr Maguire and his Acting Senior Director of Investigations, Mr Pete O'Sullivan, the available information on police records about the age profile of those subject to stop and search.

Public order

38. Parades and marches are closely linked with public order issues in Northern Ireland. I met the Chairman of the Parades Commission, Peter Osborne, and staff of the Commission during the main parading season.
39. To deepen my understanding of this complex issue, I observed the parades and associated police crowd management strategies at Drumcree on 8 July, the Twelfth of July parades in Belfast and the 11 August parades in Londonderry. I have also spent much time informally with local community and church leaders in Belfast and Londonderry to hear their views about parades and policing.

Road closures and land requisitions

40. The powers to close roads and requisition land under sections 32 and 29 have been used again this year. I have made enquiries about the circumstances, and have discussed their impact with local residents and groups. I report on this in Part 5.

Role of the armed forces

41. I have made frequent visits to HQ 38 (Irish) Brigade for discussions with the Brigade Commander, Brigadier Rob Thompson. I have also, as in previous years, kept in close touch with his policy and operational 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 and specialist technical support.
42. In relation to military complaints, I have read through in full detail every file at HQ 38 (Irish) Brigade 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.

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. I invited all the political parties in Northern Ireland to meet me and have met the DUP, Sinn Fein, the SDLP, the UUP, and the PUP. The Alliance Party referred me to my discussions with Mr David Ford MLA. I have also met the Shadow Secretary of State for Northern Ireland, Mr Vernon Coaker MP, and the Chair of the House of Commons Northern Ireland Affairs Committee, Mr Laurence Robertson MP.
45. I have met the British Ambassador in Dublin, Mr Dominick Chilcot CMG, Her Majesty's Chief Inspector of Constabulary, Sir Denis O'Connor QPM, and Assistant Commissioner Cressida Dick QPM of the Metropolitan Police Service (on behalf of the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO)).

Community contacts, human rights groups and academic insights

46. The Northern Ireland Human Rights Commission, the Committee on the Administration of Justice, the International Committee of the Red Cross and British Irish Rights Watch have very helpfully shared their views with me, and given me access to several of their recent reports relevant to my review.
47. 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. These representations are a rich source of material about public perspectives about the police. I once again invited comments from Amnesty International, Justice and Liberty but none of them offered me any. I have again met Dr John Topping of the University of Ulster to discuss his research into paramilitary groups. I have included comment from a recent report by the Northern Ireland Community Relations Council.
48. I have met church and community leaders in Belfast and Londonderry to hear first hand their impressions of security operations on the ground in their home areas, together with some of those (including former paramilitaries) now involved in local reconciliation projects. I have extended these contacts this year: they provide me with valuable perspectives about the impact of police operations at local level.
49. In the final stages of completion of the report this year, the Committee on the Administration of Justice (CAJ) kindly sent me a copy of their report of November 2012 *"Still part of life here? – a report on the use and misuse of stop and search/question powers in Northern Ireland"*.

This is a substantial document and I am grateful to the CAJ for sharing it with me. The report looks at these questions in the context of a report of similar title published in 1994. It requires proper consideration by the PSNI and the Police Ombudsman and I will be consulting them about it. Some of the issues which the CAJ raise have already been dealt with by the NIO and the PSNI, as I shall record in this report. Other issues will require further consideration.

Follow-up to recommendations in 2011 report

50. For the first time this year, the Secretary of State's officials have compiled for me a summary of the responses to the recommendations in my report of the previous year. This is a helpful recognition of the progress which is being made to ensure that the Justice and Security Act powers are being used properly and effectively. I have referred to this at various points in the text which follows.

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 knowledge about events in Northern Ireland has been made freely and fully available to me.
52. This report is made to the Secretary of State and the Westminster Parliament. They are the principal audience for a review such as this. Any wider readership may be limited to those with a particular interest. My reports for 2010 and 2011, for example, have been used in judicial proceedings in the High Court in Belfast.
53. Inevitably much of what follows is highly technical but I am conscious that my report needs to be as accessible and informative as possible, so I have tried to draw out the main points from each detailed section, with the general reader in mind.
54. I am also aware that some people draw selectively from the report to meet their own particular requirements, for perfectly understandable reasons. Hence the need for a certain amount of recapitulation from previous reports and repetition at some points in the text.
55. 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: Comment and Opinion

Preliminary

56. The political context against which the policing function is delivered in Northern Ireland is unique. Political and public events create an environment in which the police need to operate with the utmost care and against which their performance is acutely judged.
57. My terms of reference require me to find out the views of those affected by the Justice and Security Act powers as well as those who use them. Hence my discussions with all the main political parties, in their role as elected representatives, and many other groups, official and unofficial.
58. These discussions cover a wide range of policing activity, ranging from the operational end of the spectrum through to wider community impact and perception. In the sensitive area of security policing, perception is just as important as reality and hard fact.
59. I am grateful to the Minister of Justice for his ready engagement with me, both in formal discussions and informally. My report goes to the Westminster Parliament, but needs also to recognise the role of the Minister of Justice under the devolution settlement, because of his responsibility for the PSNI and also his exercise of the road closure and land requisitioning powers under agency arrangements with the Secretary of State.
60. 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 2012. The timing of those meetings was significant this year, as I describe below.
61. I am once again grateful to those who responded: the DUP, Sinn Fein, the SDLP, the UUP, and the PUP. The Alliance party offered me their comments through the Minister of Justice.
62. The range of other groups offering opinion, shown in Appendix C, has increased further this year. I have done this quite deliberately. It is right to reflect a wide range of opinion. A review based solely on the views of those in official positions would be incomplete.
63. I have briefly synthesised all this comment and opinion here. As before, there is no attribution of views, so as to preserve confidences and encourage frank speaking.
64. Some may find a summary of this kind of limited value, since it compresses many different views into a few short paragraphs. On the other hand a wider readership, especially in the Westminster environment, may find an overview helpful at this point in the report.

Perceptions of the security threat

65. There was a greater degree of uniformity of view on the security position this year than in previous years. On the central issue of the dissident republican threat, there was general agreement that it seems unlikely that it will turn into a large-scale campaign threatening Northern Irish society as a whole. Nor did it any longer have the capacity to destabilise political progress.
66. As with official views, people's comments were acutely focused on the balance of terrorist capability and intent. Unlike last year, no-one suggested that the security situation overall was getting worse. Some people expressed cautious optimism. The continued influence of loyalist paramilitaries remained a worry, especially in Belfast.
67. Opinions did however vary on how best to assess or characterise the dissident republican threat. On the one hand, there was concern that it was being talked up and given more credibility than it deserved, with harmful effects, especially if individuals or communities felt that they were being targeted. But there was also a clear feeling that the dissident republican grip on communities was still strong, especially in pockets of Belfast, in Londonderry, Lurgan and Craigavon, and in rural and border areas, especially East Tyrone and South Armagh, where progress was in some cases not being maintained and was even being reversed.

Comments on the police response

68. As with assessment of threats, comments reflected local feelings as much as opinion across Northern Ireland as a whole. There were some familiar themes. The role of senior police officers comes across as crucial in setting the tone of policing in their areas as well as in the conduct of operations. There was particular comment on the role of District Commanders, especially about their oversight of all the police operations in their area.
69. The greatest risk seems to arise if policing is perceived as coming from outside local areas rather than arising from within it. I was told that specialist operations mounted from outside the area and the deployment of Tactical Support Groups (TSGs) can often be seen as alien, carrying risks of perceived over-reaction by the police and estrangement of communities and families whose longer term support is vital if normal policing is to become embedded. I was also told of deep anger in cases where a police operation goes wrong, affecting communities who have signed up to the policing project but then feel badly let down.
70. One suggested remedy was to balance security expertise with ensuring that officers did not remain for too long in security-related posts. Northern Ireland should be regarded now as a post-conflict zone and

police attitudes should reflect that. This was seen as a significant management challenge for the police.

71. On the other hand, enthusiasm for local community officers was clearly expressed by nearly everyone I spoke to. I was struck by how frequently people referred to their local officers by their first names in circumstances when I might not have expected them to do so. Continuity of contact and personal acquaintance are highly valued.
72. Others suggested that the threat from dissident republicans needed constant vigilance. Police activity was the response to this threat, not the cause of it. A limited police response, especially in pursuing suspected criminals, gave rise to frustration. Others spoke about the unwillingness of the police to use discretion and common sense: they were hidebound by bureaucracy and fearful of complaints against them. This was interfering with their duty to protect public safety. At the same time as the police were backing off, it was said; dissident republicans were assuming the familiar role of territorial defenders and were using it to infiltrate schools and community groups.
73. I noted expressions of concern about lack of police presence in rural areas, especially near the border. It was said that some senior officers seemed unwilling to engage with their local communities or to deal with frustrations about delays in response to bomb or firearms incidents, where the need to declare an area safe before detailed forensic work could start was not being properly explained. The reference to the lack of police presence was linked particularly to closure of police stations.
74. I have explained to those making these points that I have no role in the use and allocation of police resources. I recognise the clear advantages in concentrating resources and expertise in larger police stations. But more may need to be done to explain all this, especially in rural areas, and to reassure vulnerable individuals or those haunted by past insecurities.

Comments on handling public order situations

75. By far the strongest comments came in relation to police handling of public order events. This perhaps reflected the topicality of disorder this summer, since most of my discussions took place in September and October, after the disturbances in North Belfast.
76. One senior political figure described parading as toxic for the police, putting them in positions where tactical mistakes can set back progress for months if not years. But there seemed general acknowledgment that most public order events were policed to a good standard. Lapses occurred where the police misjudged the likely turn of events or lost the feel of local opinion, for example by underestimating the size of a potential crowd.

77. The tactical handling of operations, in the spotlight of media attention on what amount to theatrical scenarios, caused particular comment. I detected no concern that the police were intervening too quickly: indeed their reticence to do so seemed of greater concern this year than accusations of heavy-handedness.
78. No-one took issue with the focus on criminal justice strategies in which offenders are identified quickly and arrested, charged and brought to court. Nor was concern expressed about the use of water cannon. By contrast, there was more adverse comment this year than last about the use of Attenuated Energy Projectiles (AEPs), which are seen by many as a huge step backwards.
79. No-one doubted the risks that scenes of disorder are open to exploitation by dissident groups, using them as cover to attempt to murder police officers. Events in Ardoyne on 12 July were well understood in this respect.

Comments on continuation of the powers

80. The narrative of progress towards normalisation rightly remains a concern for many people, to complete the work of the Good Friday, St Andrew's and Hillsborough agreements. For some, the continuation of the JSA powers is still a stumbling block. But the focus this year has been more on the quality of the police response than on the continuation of the powers as such.
81. I have reflected carefully on what people said to me about the potentially harmful effects of the existence of the JSA powers, especially if there is no obvious move to abolish them.
82. The evidence is not conclusive. Some people have said to me, in terms which I respect, that the existence of these powers has a potentially radicalising effect lending credence to the long-held narrative about the intrusive, arbitrary and discriminatory nature of police activity in Northern Ireland which, to the extent that it was ever reformed, is now sliding back to its default mode of a paramilitary force.
83. There is limited evidence to reinforce these assertions, powerful though they are. Perceptions are important, but they lack weight in the absence of specific information.
84. Equally powerful are the views of those who believe that nothing should be done to limit police effectiveness at a time of severe threat.
85. My conclusion is that the greater danger, for the policing project as a whole, lies less in how these powers are perceived in the abstract than in their direct impact in everyday situations. Hence the focus in much of what follows on their operational effectiveness and the safeguards governing their use.

National perspectives

86. Some of those offering comments reflected on the relative balance of local and national accountability. This was expressed in two particular respects: that the police should remain in charge of local intelligence operations and that structural changes to policing should not undermine the primacy of local policing. Several people emphasised that while the devolution of justice and policing was proving to be a success, Westminster should remain vigilant and retain authority over sensitive security-related powers.

Part 4: The Security Background

Preliminary

87. The meetings which I have held 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

88. The formal assessment by the Security Service of the threat in Northern Ireland has remained at “Severe”, the second highest in the tiered level of threats, throughout the period under review. The position is thus unchanged from 2011.
89. I have set out below statements by public bodies and others which provide the context for my assessment of the security position and the response to it, in particular the part played by powers in the Justice and Security Act.

Post-legislative scrutiny

90. In July 2012 the Secretary of State presented to Parliament a Memorandum to the Northern Ireland Affairs Committee (Cm 8400) “Post-Legislative Scrutiny: Northern Ireland (St Andrews Agreement) Act 2007 and Justice and Security (Northern Ireland) Act 2007”.

91. In this document, the Secretary of State said:

“The Government considers that these powers [the JSA powers] are important tools for the police in dealing with security related incidents. The operation of the powers is reviewed on an annual basis by the Independent Reviewer who in his latest report concluded that the powers should continue to be available for at least a further year”.

Statements by the Secretary of State

92. With the demise of the Independent Monitoring Commission there is the potential for something of a gap in the information available to the public about the security situation in Northern Ireland. I referred to this issue in paragraph 85 of my report last year.
93. The Secretary of State responded by means of a commitment to provide bi-annual updates to the House of Commons on the security situation in Northern Ireland. The first of these was on 27 February

2012 and the second on 17 July 2012, towards the close of the reporting year. I have included the July statement in full in [Appendix E](#).

94. In his February statement, the Secretary of State said:

“During the past six months all the dissident republican groups have remained active in Northern Ireland, and the threat level in Northern Ireland remains at SEVERE meaning an attack is highly likely.

“The threat level in Great Britain is substantial, meaning that an attack is a strong possibility”.

95. In his July statement, the Secretary of State said that the threat was still “SEVERE” in Northern Ireland; that named dissident republican groups continued to be very active, as did a number of “unaffiliated”, but no less dangerous, individuals. Terrorists were continuing to seek access to funding and weaponry.

96. On 31 October, the new Secretary of State confirmed that the threat from dissident republicans remained “SEVERE”. Although their threat and potency were on the whole lower, the intent and capability of the dissident republicans remained significant, as was their potential to carry out potentially lethal attacks. The truth of those words was borne out by the murder of a prison officer, David Black, on 1 November.

Minister of Justice

97. In November 2011 the Minister of Justice told the Northern Ireland Assembly that there had been 25 attacks carried out by dissident Republicans in the calendar year 2011 up to then, a fall from the figure of 40 for 2010. Mr Ford confirmed the threat as “severe,” said that the principal targets were police officers, and referred also to attacks on commercial and cultural premises in Londonderry. He went on to say that those responsible *“have demonstrated disregard for those serving our community and for public safety. They have no regard for the harm they cause whether to people, or business, or, indeed, our image abroad”.*

Lord Carlile

98. On 19 December 2011, the then Secretary of State published a Written Ministerial Statement saying that he had received and welcomed a report from Lord Carlile on the operation of arrangements for handling national security matters in Northern Ireland for the year to date.

99. The Secretary of State continued:

“Lord Carlile commends the engagement he received in producing this report which recognises that the context in which National Security activities are performed in Northern Ireland is changing and challenging.

“The report points out that there have been serious incidents during 2011, including the murder of PC Ronan Kerr in Omagh in April and states that the overall picture is of a very dangerous, unpredictable terrorist threat. The situation is faced with additional challenges due to the many connections which terrorists appear to have with organised crime. Lord Carlile points out that organised crime is an area which helps fund their politically motivated activities.

“Lord Carlile believes that, compared with last year, this year has seen more success in containing and stabilising the threat, and notes that there have been fewer incidents and fewer major attacks. He is also satisfied that there are no difficulties of any significance in the inter-operability between the PSNI and the Security Service and identifies this is a sound working partnership and one that is to be commended”.

David Anderson QC

100. In his second report as Independent Reviewer of legislation against terrorism, published in June 2012, Mr David Anderson QC said at paragraph 2.16:

*“In **Northern Ireland**, terrorism continued to pose a serious threat in 2011, with multiple attacks on national security targets and the killing of PSNI Constable Ronan Kerr. Northern Ireland-related terrorism however operates on a tiny scale by historic standards; and of the 49 deaths attributed to the security situation in the 10 years to March 2012, only 10 were in the second half of that period.”*

101. Mr Anderson continued at paragraph 2.22:

“It is encouraging that in 2011 the security forces were able to contain within its previous limits and even modestly to reduce the impact of terrorism in Northern Ireland. That threat remains high by Western standards, however, and no-one I have spoken to on my five visits to Northern Ireland in 2011/12 believes that it is likely to diminish of its own accord. The community policing model adopted by the Chief Constable may have helped to improve popular perceptions of the PSNI: but the dissident republicans who perpetrate the great majority of the terrorist violence remain quick to exploit any weakness or inattention on the part of the devolved authorities (including the PSNI) and MI5.”

The Chief Constable

102. The Chief Constable of the PSNI, in his introduction to the annual report for the financial year 2011-2, said:

“The security situation continues to provide a dangerous environment for officers as they work to make Northern Ireland safer for all. In last year’s report I wrote about the provision of £245m by the Treasury and the Northern Ireland Executive. This financial support has been an

essential part of our operational response to the security threat and a readjustment following the downsizing of the PSNI in the expectation that terrorism would cease. There is no doubt that it remains the murderous intent of some to take Northern Ireland back towards a dark past to which the vast majority have no wish to go. This will not dissuade us from being a highly visible presence supporting the most vulnerable neighbourhoods across the country”.

Superintendents’ Association and Police Federation

103. I have discussed the security position with The Superintendents’ Association of Northern Ireland and the Police Federation for Northern Ireland. Naturally, a focal point in these discussions has been the attacks on police officers to which the Secretary of State referred in his statement on 17 July and on which I will comment later on in this report.
104. It is my sad duty again this year to offer my sympathy to those police officers who have been injured in violence and those of their families who have been subject to or caught up in threats and intimidation, about which I have been given detailed information.
105. As in the past, both the Superintendents’ Association and the Police Federation have not restricted their remarks to the effects on their members but have also sought to describe and analyse the effects of security attacks on the general public in Northern Ireland as a whole and offered comment on how policing strategies might best be developed.

Northern Ireland Community Relations Council

106. The Northern Ireland Community Relations Council published *“the first major stock-taking of the Northern Ireland peace process”* in February 2012 in the approach to the 14th anniversary of the Good Friday agreement. The Northern Ireland Peace Monitoring Report No 1, authored by Paul Nolan and independently funded and supported by the Joseph Rowntree Charitable Trust and the Joseph Rowntree Foundation, included the following at point 3 of its ten key points:

“Paramilitary campaigns are not likely to fade away in the foreseeable future; on the contrary they seem set to continue. The operational capacity of the dissident republicans is lower than that of the Provisional IRA at any stage of its campaign, but they have not allowed themselves any possibility of a political exit and will therefore maintain their efforts to destabilise the political arrangements.

“But these have to date resulted in an outcome opposite to that intended: instead of disrupting the political accord, the violence has served to consolidate the consensus. The funeral of the PSNI officer, Ronan Kerr, killed by dissidents in April 2011, marked a rallying point,

bringing together the political, security, religious and sporting elites together in a symbolic show of unity.

“Loyalist paramilitaries have sought a post-conflict role but failed to find one that can accommodate all their members... The loose command structures within loyalist paramilitaries leave scope for rogue adventurism of this kind (a large-scale invasion of a Catholic enclave in east Belfast in June 2011) and a younger generation of recruits may wish to see more violent assertions of the loyalist presence.”

107. In discussing indicators of security, the report included at paragraph 4 point 1 on page 16:

“The simplest measure of how peaceful any society is comes from the sense of security experienced by the individual citizen... The decline in violence following the ceasefires provides useful evidence of the journey out of conflict, and we have therefore collated data on bombings, shootings, beatings, hijackings, arson attacks, and other forms of injury to person or property. Trends which show decline in the security-related category of the PSNI crime statistics cannot, however, of themselves be taken as evidence that the threat of sectarian violence has been left behind. While the figures for 2011 provided encouragement in that the murder rate has fallen to pre-1969 levels, the Chief Constable has warned that the dissident threat was at its highest since the Omagh bomb in 1998. The sense of latent violence therefore has to be part of the equation, as any account based simply on crime statistics would fail to capture life under its shadow”.

Reported statement by residual terrorist groups

108. On Thursday 26 July 2012 the Guardian newspaper published an article headed “New IRA: full statement by the dissident “Army Council”.” The article began by referring to “the full statement released by the new dissident republican group in Northern Ireland on Thursday, attributed to “the IRA Army Council”.”
109. Extracts from this “full statement” included:

“Following extensive consultations, Irish republicans and a number of organisations involved in armed actions against the armed forces of the British crown have come together within a unified structure, under a single leadership, subservient to the constitution of the Irish Republican Army.

“Non-conformist republicans are being subjected to harassment, arrest and violence by the forces of the British crown; others have been interned on the direction of an English overlord. It is Britain, not the IRA, which has chosen provocation and conflict.

“The IRA’s mandate for armed struggle derives from Britain’s denial of the fundamental right of the Irish people to national self-determination

and sovereignty – so long as Britain persists in its denial of national and democratic rights in Ireland the IRA will continue to assert those rights.

“The necessity of armed struggle in pursuit of Irish freedom can be avoided through the removal of the British military presence in our country, the dismantling of their armed militias and the declaration of an internationally observed timescale that details the dismantling of British political interference in our country.”

110. The Guardian newspaper also published on 26 July an article by Henry McDonald, Ireland correspondent, under the heading *“How the republican dissidents delivered their statement of unity”* which included the following:

“The new organisation is planning to intensify terror attacks on the security forces and other targets related to what it regards as symbols of the British presence, according to the source.

“Such targets could include police stations, regional headquarters of the Ulster Bank, and the UK City of Culture 2013 celebration in Derry – which the dissidents have dubbed “normalising British rule”.

“It is understood that among the republicans who have joined the new organisation are those responsible for the murder in April 2011 of Ronan Kerr, a Catholic recruit to the Police Service of Northern Ireland, and the terrorists who targeted Peadar Heffron, another Catholic police officer, who was seriously injured in January 2010 by a bomb which exploded inside his car as he was driving to his police station.

“The recruitment of the Republican Action Against Drugs activists in Derry marks a big step up in the terror campaign in the city. Dozens of former Provisional IRA members have been involved in shooting and intimidating mainly young Catholic men whom they accuse of drug dealing in Derry”.

111. I have discussed these two Guardian articles with the police and the Security Service and have taken their comments into account in my assessment later in this report about the intentions and capability of residual terrorist groups.

Significant security incidents

112. I should record here with sadness the murder of a prison officer, David Black, on 1 November. This came after the end of the reporting year, but it is right to mention it here. I offer his family my sympathy and condolences at their tragic loss.
113. As before, 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 one major incident and how the police response to it was

developed, together with an assessment by the police of the results of their operations this year under the Justice and Security Act.

114. Attacks on police officers and state institutions are classified by the Government as “national security” attacks. There were 26 such attacks in the calendar year 2011 and 22 up to the 21 November 2012. They have thus continued at about the same level this year as last.
115. The published PSNI statistics *Police Recorded Security Situation 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.
116. To complete the picture of activity connected either directly or indirectly with the security context we should add the public disorder associated with attacks on the police or arising from marches and parades. Finally there is continuing sectarian activity, for example defacing of Orange halls, or churches, both Catholic and Protestant, with cans of paint or by antisocial behaviour.
117. Whether the targets are members of the public, police officers, prison officers, official buildings and infrastructure or community facilities 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.

Response to terrorist activity

118. Analysis of the available information and discussion with the police, the Security Service and military Explosive Ordnance Disposal (EOD) officers confirms the pattern of terrorist activity and threats. This year there have been fewer major explosive devices, with more activity in pipe bombs and smaller devices. Some people characterise terrorist activity as having reached a plateau after the rise during the period 2007 to 2010. But the major incidents this year have been potentially deadly in their effect and comparable in sophistication of manufacture and deployment to those of previous years.
119. Each incident entails a major police response, with technical support from the military authorities, drawing on a wide range of operational powers and techniques, using powers in the Act such as those permitting EOD officers to move onto private land.
120. In looking to immediate and future needs, I have asked those involved to advise me on terrorist capability and intent as two separate issues and then to calibrate the two to give an overall picture of the threat. A major attack may take months to plan and be preceded by a period of inactivity from a particular group. Meanwhile other groups will be

carrying out and planning their own attacks. The extent to which groups co-ordinate their activities varies over time and area.

121. The picture is rarely static and requires vigilance and continuous readiness to intervene, for example when a bomb is found, with its implicit direct threat to the lives of members of the public or to police officers and others. I shall reflect further on this when I come to examine how the Justice and Security Act powers have operated over the past year.

The public order situation

122. 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. Up to the end of August the picture was less violent than in previous years, the most serious incidents coming during the 12 July parades when there were attempts to murder police officers in Belfast. But it then took a decided turn for the worse.

Parades Commission

123. The Parades Commission has the central role in the supervision of the parading process in Northern Ireland. The determinations of the Parades Commission have the force of law. The Parades Commission's website says: "*A Parades Commission determination is a legally binding document and defines the legality of a parade. Any action which breaks the law is a matter for the PSNI*".

Role of the police

124. The role of the police is to give effect to the determinations of the Parades Commission. Police neutrality in determinations about parades is a precious dimension of the current decision-making structure, all the more apparent to those of us who recall how parading issues were resolved in different times years ago. The Chairman of the Parades Commission has told me that the Commission has close regard to police assessments about the likelihood of disorder before the Commission make their determinations.
125. The powers in the Justice and Security Act were always envisaged by the Government as directed towards public order. That was a large part of the Parliamentary focus when they were introduced. It remains a major part of the review task, although it is right to consider police strategies as a whole, including comprehensive operational orders, strategic and tactical management, assessment of risk, visibility of all the human rights aspects, and community engagement. All these matters need to be correctly in place if a police operation is to be successful.
126. The principal focus of my review has been on the interplay between public disorder and serious violence, which may arise in those parades

(a very small proportion of the whole) which are regarded as contentious. I am not directly concerned with the process by which determinations are made or with public debate or comment on them: my concern is with policing strategies, their effectiveness and their impact. My focus is thus mainly on determinations about contentious parades and police strategies to give effect to them.

Parades in 2012

127. Disorder and violence associated with the main contentious parades during the main parading season was markedly less than last year. As before, the main problems came in the Ardoyne area of Belfast on the 12 July but also on 11 August, linked with the feeder parade for the Apprentice Boys of Derry events. Their local impact is seriously unpleasant for local communities, both in its physical impact and because of its effects on community tensions beforehand and the rebuilding of relationships afterwards. I discuss this in more detail in Part 5.
128. The progress made over the period under review is to be welcomed. Unfortunately that was not maintained in late August and September when there was extensive disorder over several nights in the area of the Carlisle Circus, towards the centre of the city from North and West Belfast. Crowds, several hundred in number, threw missiles and petrol bombs at the police, causing injuries to over 60 police officers and entailing response from water cannon and AEPs.

Consequences of disorder

129. It remains the case that disorder and violence come at a high price in terms of damage to communities, neighbourhoods and property, injuries to police officers, heavy policing costs (all the more prominent at a time of intensifying pressures on public finances) and serious adverse publicity for Northern Ireland.

The activities of organised criminals

Linkages between terrorism and organised criminality

130. The link with serious criminality has been within the scope of the Justice and Security Act from the beginning, as the Secretary of State (Peter Hain) made clear at the Second Reading of the Justice and Security Bill on 13 December 2006 (Hansard column 899).
131. David Anderson drew out the connections at paragraph 2.17 (e) of his 2012 report in these terms:

“Northern Ireland Related Terrorism is not self-standing but shades into both public disorder (which is sometimes used as a cloak for terrorist activity) and organised crime (which is often the main business of the terrorist, on the republican as well as the loyalist side, and where gang

rivalry results in bombings and shootings which are not politically motivated).”

Organised Crime Task Force

132. The 2012 Annual Report and Threat Assessment from the Organised Crime Task Force says on page 22:

“In the past in Northern Ireland paramilitary groups carried out organised criminal activities in order to fundraise, for personal gain, and also to exert control over the communities in which they operate. Whilst the political landscape has changed dramatically, there are still some who refuse to engage with the peace process that the rest of the community are committed to, and who remain intent on the use of violence. These groups remain a threat to national security and are also heavily engaged in organised crime.

“Despite publicly denouncing organised criminality, dissident republican groups remain largely dependent on organised crime to fund their terrorist activities. Some dissident republicans are generating significant sums of money from fuel laundering and tobacco smuggling. In addition, there has been suspected dissident republican involvement in a range of other criminality in the past year, including armed robbery, fuel and cigarette smuggling, extortion, money laundering, drugs supply, burglary, tiger kidnaps and counterfeit currency. Dissident republican groups also remain heavily involved in “civil administration” and extortion against those they suspect of being involved in organised crime, in particular drugs supply.

“There also remains involvement in organised crime by some members of loyalist paramilitary groups. It is often unclear how much of this activity has been sanctioned by leadership however it is clear that some members are involved in extortion, money lending, robbery, contraband, kidnap, drugs and money laundering for extensive personal gain.”

Organised crime and firearms

133. The range of criminal activity reported above is extensive. Not all of it will overtly involve the use of firearms. But paramilitary groups turn readily to violence to combat rival gangs, coerce members of their own communities or attack the police and the use of firearms is second nature to them.
134. The police may use powers under PACE and the Serious Organised Crime and Police Act 2005 and the Justice and Security Act, either on their own or as part of a co-ordinated use of powers. 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 with firearms.

135. 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. However well-prepared the police planning for a particular operation, the reality is that events may move quickly and unexpectedly.

The Justice and Security Act and organised crime

136. I received comment from one correspondent about my reference to the use of the powers in relation to organised crime last year (paragraph 112) in these terms:

“The proposition that the powers in the Justice and Security Act can be used in connection with organised crime is wrong in law. It is a concern that this suggestion has been repeated. Much of the Serious Organised Crime and Police Act 2005 applies to Northern Ireland. If it (sic) inadequate, the Independent Reviewer (in conjunction with the OCTF) should explain in what respects.”

137. Since this letter raises an issue of fundamental importance, I have sought comments on it from a lawyer at the Government Legal Service. I referred them to the sequence of events which began with the Parliamentary proceedings from 2006-7 reported in Hansard, which I mentioned above.

138. The government lawyer says that:

“The existence of one statutory power (the Serious Organised Crime and Police Act 2005 - SOCPA) does not invalidate any other statutory or common law powers that may be available to the police when dealing with organised crime. SOCPA does not purport to set out the full range of police powers that can be used to deal with organised crime, but rather makes certain amendments and supplements to the existing powers in PACE and elsewhere. As a matter of fact, police powers are found in a wide range of statutes and in the common law.

“It is also the case that the dividing line between organised crime and terrorist activity is not at all clear, and in fact they are often linked. In the same way, the dividing line between organised crime and individual crime is not always clear (and certainly to a policeman at the beginning of an investigation) and it is not the case that all police powers divide neatly and exclusively into those that can only be used for organised crime, only for individual crime, only for terrorist crime etc.

*“As for the JSA, the statement quoted from Hansard is very strong support for the proposition that Parliament intended that the JSA powers could be used for dealing with organised crime. If Hansard statements revealed something very different, such as Government statements that they should **not** be used for organised crime, then there would be support for the argument put forward. But the position is the opposite. Hansard is the official record, and if statements like Peter*

Hain's are made to Parliament, and the Bill is approved, then we can take it that Parliament intended the Act to operate in that way."

Comments from others

139. I have also noted the comments of Lord Carlile, published by the Secretary of State on 19 December 2011 above, of the many connections which terrorists appear to have with organised crime, and that organised crime is an area which helps fund their politically motivated activities.
140. I have similarly noted the comments from David Anderson QC at paragraph 2.17 (e) of his report for 2012 set out above.
141. I have raised the use of the JSA powers specifically with the Organised Crime Task Force. They say that they regard the use of the JSA powers as important in the fight against organised crime. They give as an example the case where an organised criminal will have a firearm at his disposal which he might produce, to threaten or use, in the course of committing a serious crime. They believe the context in such a case is that the JSA powers might be necessary to search for a firearm.

Conclusion on the use of JSA powers against organised crime

142. It is obviously important that the police should at all times follow the instructions in their own guidance and training that they should use the Justice and Security Act powers only when no others will suffice. These other powers should equally obviously include SOCPA. But the advice from the Government Legal Service quoted above is unequivocal, in terms both of Parliamentary intent and of current requirements and usage.
143. Such advice of course does not have the force of law, and a definitive position could only be determined if the issue were tested out in the courts. For the present I am satisfied that the JSA powers may be used, if necessary and appropriate on every specific occasion, in police activity against organised crime.
144. Close working between different agencies is of course essential and happens every day throughout the United Kingdom. Otherwise there would be limited need for the Organised Crime Task Force and no role for HM Revenue and Customs.

Police primacy

145. The reality of policing in Northern Ireland is currently different from the rest of the United Kingdom, illuminated as it is by the historical legacy of the recent political settlement which confirmed the primacy of the PSNI in the maintenance and enforcement of law and order. Police primacy in Northern Ireland is not a token phrase: it is a vivid necessity.

If it came to be blurred, or if a perception to that effect gained ground, many of the hard-won gains of recent years might be put in jeopardy.

146. The operational context is also different. No other UK police force is required to handle public order events with such acute sensitivity to rapidly changing political nuance, or to deal with serious organised crime with a paramilitary dimension. Nor does any other UK police force have to contend with armed conspiracies to murder its officers.

Part 5: The Operation of Police and Military Powers

Introduction

147. 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 2011 to 31 July 2012 and what this shows about any continuing need for them.
148. I shall look at this in eight respects:
- ***Summary of police powers against the residual terrorist threat***
 - ***Changes made by the Protection of Freedoms Act 2012***
 - ***Police operational activity 2011-2012***
 - ***Statistics on the use of the Justice and Security Act powers***
 - ***Road closures and land requisitions***
 - ***Military operations in support of the police***
 - ***Case studies: Fathom Line, Newry, 26 April 2012***
Results of searches carried out under the JSA
 - ***Planning for public order situations***

Summary of police powers against the residual terrorist threat

149. Twice a year I ask the police and the military authorities to provide me with detailed presentations on 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 police activity to control the scene, prevent any or further danger to the public and enable forensic science enquiries to be made.
150. These presentations demonstrate 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.
151. 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. David Anderson QC, the Independent Reviewer of the Terrorism Act, and I have therefore agreed that my review should cover these powers together in so far as they cover “stop and question” and “stop and search”.
152. The starting point for my review is the security profile set out in Part 4, set out in detail so as to capture the views of those making official assessments and statements. 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. Mr Anderson, as the Independent Reviewer of the Terrorism Acts, has examined the conditions of detention and any charges and subsequent legal proceedings.

Changes made by the Protection of Freedoms Act 2012

Introduction: major and complex changes

153. There have been major changes to the powers this year. These have been brought about by the Protection of Freedoms Act which received Royal Assent on 1 May 2012. They affect both the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007.
154. Since the legal regime has changed at various points throughout the reporting year, I will deal with the changes in sequence. I shall try to bring out the main points of this rather complex and lengthy narrative. For the sake of clarity, I have broken all this down into discrete elements and also concentrated on what is new and likely to affect the current year.
155. Unless there are major changes again next year the present regime will apply for the foreseeable future.
156. I conclude this section with an account of the most recent judicial comment on the Justice and Security Act.

Withdrawal of Section 44 of the Terrorism Act 2000 and its interim replacement

157. I reported in 2010 and 2011 on the withdrawal of section 44 of the Terrorism Act 2000 consequent upon the Strasbourg decision in the *Gillan and Quinton* case and its interim replacement by a new section 47A. This was done by a remedial order under section 10 of the Human Rights Act 1998. I set out the effect of that change in Northern Ireland in paragraphs 126 to 129 in my last report.
158. The change was accompanied by the introduction of Codes of Practice. The Northern Ireland Code came into effect in March 2011. I commented on its implications in paragraphs 133 to 135 of my report last year. With the enactment of a permanent replacement power in section 47A of the Terrorism Act, brought in by the Protection of Freedoms Act 2012, a new Code came into effect in July 2012.
159. David Anderson QC has commented extensively on the new section 47A and its corresponding Code of Practice for England, Scotland and Wales in his report of June 2012 on the Terrorism Acts in 2011. He has assessed the regime established under section 47A in paragraphs 8.1 to 8.19 of his report. Everything which he has said there is relevant to

any usage of section 47A in Northern Ireland. In fact there has so far been no usage of section 47A, either in Great Britain or in Northern Ireland.

Permanent replacement of section 44 by means of the Protection of Freedoms Act 2012

160. The permanent replacement of section 44 was done by section 61 of the Protection of Freedoms Act which inserted the new section 47A into the Terrorism Act 2000. Section 62 of the Act made changes to the arrangements for Codes of Practice in relation to section 47A.
161. Since the new section 47A power has not been used in Northern Ireland in the year under review, any discussion of it is probably of little present value, especially since David Anderson has fully analysed its potential operation. The threshold for the use of section 47A may however be relevant to police operational decisions in the face of potential or developing threats, for example if terrorist methods were to change.

Amendments to the Justice and Security Act by means of the Protection of Freedoms Act and the new Code of Practice

162. Section 63 of the Protection of Freedoms Act also made major changes to the JSA stop and search powers in Northern Ireland. These changes are now set out in detail in Schedule 6 to the Protection of Freedoms Act, reproduced for convenience at Appendix D.
163. It amends Schedule 3 to the Justice and Security Act, in particular the powers governing stopping and searching persons in relation to unlawful munitions and wireless apparatus.
164. The main change is the introduction of an authorisation procedure for the exercise by the police of these stop and search powers. This requires the authorising officer (a senior police officer) to have a reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. But it does not require reasonable suspicion in relation to each person who is stopped.
165. There is also a new power in new sub-paragraph 4(4) of Schedule 3, which empowers a police officer to search a person, whether or not they are in a public place, whom the police officer reasonably suspects to have unlawful munitions or wireless apparatus with them. This power is specific to the police, with powers for the armed forces found separately in sub-paragraphs (1) to (3) of paragraph 4. It does not require a prior authorisation process.

Power of armed forces to search without reasonable suspicion

166. The power to search a person in a public place without reasonable suspicion without the need for prior authorisation is retained for the armed forces, the rationale presumably being that if it were necessary in extreme circumstances it would need to be used at very short notice. As I have said before, there is a case for dropping this power, which has not been used recently. The Government presumably took the view that the time was not yet right to drop it.

Draft Code of Practice

167. A related change, made in response to the changes set out above, has been the preparation of a draft Code of Practice under section 34(1) (a) and 34(2) of the Justice and Security Act. This is the first time that this code-making power has been used. It is a welcome development. The draft Code is currently out for public consultation, and will need to be laid before Parliament and an Order made before it comes into effect.
168. The new Code governs the exercise by police officers of statutory powers set out at sections 21, 23, 24/Schedule 3 and 26 of the 2007 Act, which relate to stop and question, entry of premises and stop and search for munitions and wireless apparatus. Annex C of the draft Code relates to use of the 2007 Act powers by the armed forces.
169. Paragraphs 5(2) and 5(3) of Schedule 3 give police the power to seize and retain any munitions or wireless apparatus found during search of premises and vehicles unless it appears that these have been and will be used only lawfully. The draft Code does not provide guidance on seizure or retention.
170. The draft Code gives guidance (in paragraphs 7 to 7.14, 8.5 to 8.15 and 9.1 to 9.14) on the powers in the Justice and Security Act to enter and search premises and vehicles. Vehicles are included in the definition of “premises” by section 42. Sections 23, 26 and Schedule 3 make provision for searching premises and vehicles. There have been no changes to these particular powers this year.

Effects of these changes

171. All this activity amounts to major changes in the way the stop and question and stop and search powers in the Justice and Security Act are expected to operate. They complete the journey which began with the judgment of the European Court of Human Rights on 12 January 2010 in *Gillan and Quinton v. United Kingdom*, announced in a press release issued by the Registrar under the heading “*Police stop and search powers under anti-terrorism legislation too wide and not adequately safeguarded by domestic law against abuse*”.
172. I summarised the early stages of this narrative in my reports for 2010 (paragraphs 107 to 119) and 2011 (paragraphs 122 to 148).

173. Now that these legislative changes are complete it may be helpful to attempt some assessment of them and how they might work out in practice. I shall therefore comment on five aspects, following things in sequence.

- The new authorisation regime
- The draft Code of Practice
- The role of the Secretary of State
- Analysis of authorisations
- Actions of individual police officers.

The new authorisation regime

Background history

174. This is the most significant of the changes. It reflects the impact of the European Court judgment in *Gillan and Quinton*. Although that judgment related only to the Terrorism Act 2000 and not to the Justice and Security Act, the then Secretary of State made clear in his Written Ministerial statement of 9 February 2011 that he had decided to make changes to the 2007 Act, which had the effect of bringing the 2007 Act into line with the thinking of the European Court.

175. Despite the distinctive circumstances in Northern Ireland, which I set out in paragraph 108 of my report in 2010, I believe it was right to make an alignment of this kind. I am thus confirmed in the view I expressed last year (at paragraph 138) that the judgments in *Gillan and Quinton* were so significant and far-reaching that it was right that the powers in the Justice and Security Act should be scrutinised carefully in the light of them.

Reasonable suspicion necessary?

176. The heart of the matter is the extent to which reasonable suspicion is necessary for the stop powers to be used.

177. From my observation of police activity over the past four years, it has become clear to me that when individual police officers are dealing with the residual terrorist threat, action may be required in circumstances which fall short of reasonable suspicion. The PSNI have said so explicitly (see below) and I think they are correct to do so.

Random searches?

178. I do not think that this implies – to take the argument to its logical but not necessarily rational extreme - that the case for a “no reasonable suspicion” power justifies actions taken purely at random. David

Anderson set out the objections to random activity in paragraph 8.16 (a) of his 2012 report on the Terrorism Acts in the United Kingdom as a whole. These objections apply with just as much vigour in Northern Ireland as they do in Great Britain.

179. Quite apart from issues of principle, the risks that individual members of the public or communities will be affronted or alienated by random actions seem to me to be compelling reasons not to proceed in this way.
180. Some people have said to me that random stops, for example on the main routes into Belfast, were commonplace in the past and would not be out of place even now. But the present policy imperative is surely to move away from tactics associated with the past and to find methods which deal with current problems effectively but also meet reasonable expectations, especially among the younger generation thankfully inexperienced about those troubled times. That confirms me in the view that there needs to be a basis for every stop, as I said in paragraph 181 of my report last year.
181. These comments reflect my judgment of how the police should conduct operations in Northern Ireland so as to meet their duty to protect the public in a way which best meets the current operational context. I make no comment on the legality of operations, random or otherwise, since I have no *locus* to do so: that is a matter for the courts.

The new legislative regime in Northern Ireland

182. In the Northern Ireland context, how then is the balance to be struck? There are potentially conflicting requirements of reasonable suspicion on the one hand and effective and timely response to events on the ground on the other. The Government's answer has been to place the reasonable suspicion test at the strategic level, thus enabling individual officers on the ground to respond to events in the knowledge that the strategic context has been considered and an authorisation made as appropriate.
183. This has major implications for the authorisation process, the training of officers, briefing before officers go out on operations, recording the basis for the stop and communication with the public. I will deal with all of these issues as this report proceeds.

The draft Code of Practice under section 34 of the Justice and Security Act.

Summary of the Code

184. How the new power is to be given effect is set out in the draft Code of Practice under section 34 of the Justice and Security Act, on which the Secretary of State has consulted stakeholders. I have thought for some time that the introduction of a Code would meet a gap in

guidance and accountability and last year made a specific recommendation to that effect (recommendation 1).

185. The Northern Ireland Office have kept me in touch with the preparation of this draft Code. Its publication in draft followed an extensive stakeholder consultation, the results of which have been provided to me. This is to be followed by public consultation.
186. One person suggested that it would be helpful, especially for operational officers, to have one code which covers all potential powers. That would certainly emphasise the need for the individual police officer to decide which is the most suitable power in a given situation.
187. For the present, I believe the priority is to bring the new JSA Code into effective use and to make sure that all its provisions are fully and properly applied in the authorisation process.

Relationship between authorising officer, the Secretary of State and the constable exercising the power

188. The core of the process is the relationship between the senior officer making the authorisation (a PSNI officer of at least Assistant Chief Constable rank), the Secretary of State (who has the role of confirming, varying or cancelling the authorisation) and the constable (who is exercising the power).
189. This process is a familiar one, since it is based on the authorisation process followed extensively between 2000 and 2010 in the case of authorisations under the now defunct section 44, both in Great Britain and in Northern Ireland. But there are significant differences in the authorisation test under the Justice and Security Act.

Justification for an authorisation

190. The most significant is the initial justification for the authorisation. Under section 47A of the Terrorism Act, which applies throughout the United Kingdom, the senior police officer must reasonably suspect that an act of terrorism will take place and must reasonably consider that the authorisation is necessary, for the minimum necessary area or place and duration, to prevent it.
191. Under the new Schedule 3 paragraph 4A power in Northern Ireland, the senior officer must reasonably suspect (whether in relation to a particular case, a description of case or generally) that the safety of persons might be endangered by the use of munitions or wireless apparatus, and must reasonably consider that the authorisation is necessary, again for the minimum necessary area or place and duration to prevent that danger.

192. The new authorisation power under Schedule 3 is therefore tightly limited – and rightly so – to the dangers presented by munitions or wireless apparatus. The range of activity to be prevented is much narrower than the corresponding provision in section 47A, and is closely related to the activities of residual terrorist groups in Northern Ireland, with their customary reliance on munitions (which means weapons and explosives) and wireless apparatus.
193. On the other hand, the authorisation under Schedule 3 does not need to relate to a specific act as under section 47A. Rather the reference is to the safety of any person who might be endangered by the use of munitions or wireless apparatus. That again - correctly in my view - reflects the circumstances of the activities of residual terrorist groups engaged in planning and carrying out acts of violence over longer periods of time rather than a single act of terrorism.

Scope of authorisations

194. The nature of the danger to be prevented therefore opens up in Northern Ireland the prospect of authorisations which might be more extensive in geographical area or duration than for terrorist activity of the kind which section 47A is designed to deal with. Indeed, the draft Code of Practice governing the new power deals with this explicitly:
- “8.20 An authorisation may relate to a single suspected act of a person endangering life by having unlawful munitions or wireless apparatus, but where there are multiple suspected acts it may be appropriate for these to be considered together and a single authorisation made that takes into account all relevant information. Such an authorisation could relate to multiple threats:*
- by different individuals or groups in the same or different areas;*
 - by a single individual or group in the same or different areas;*
 - occurring at the same time, or over a short period of time; and/or*
 - that are linked in some way (for example, all relating to a particular event)”.*
195. It is an unfortunate reality in Northern Ireland that residual terrorist groups move about freely and carry out attacks widely across Northern Ireland, and that attack planning (such as grinding ammonium nitrate fertiliser to enhance its explosive potential, or stealing a car and substituting its number plates) may take place some distance from the intended target.
196. Reconnaissance of the movements and private addresses of police and prison officers also ranges over wide areas. Attacks may be planned over months or weeks and activated, aborted, postponed or abandoned entirely as circumstances develop. A wide-ranging

authorisation power may be unattractive in some respects but a limited one is unlikely to be effective in current circumstances.

197. Paragraphs 8.24 to 8.26 give further guidance covering the nature of the tactics of residual terrorist individuals and groups, recent activity posing a danger to the public, the geographical extent to be covered (which may in carefully defined circumstances cover the whole of Northern Ireland) and the time envisaged, up to a maximum of 14 days in the first instance.

Need for safeguards

198. Such a comprehensive power raises the need for safeguards. Paragraph 8.21 says:

*“8.21 The powers should therefore **not** be authorised solely on the basis that there is general endangerment from unlawfully held munitions or wireless apparatus. However, this may be taken into account when deciding whether to make an authorisation, especially where intelligence about endangerment 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”.*

199. In other words, there has to be some specific set of circumstances in mind. It is not enough to rely on general endangerment from unlawfully held munitions or wireless apparatus. Nor should an authorisation be given to provide public reassurance, deterrence or intelligence gathering. The principal justification for the authorisation must relate to an identifiable or recognisable danger.

200. The Code also requires tests to be made against necessity, proportionality, limitation of purpose, suitability of alternative powers and general safety:

“8.22 The authorising police officer must also be satisfied that the powers are necessary to prevent such endangerment and that the use of these powers is required to help deal with the perceived threat. He or she should also consider whether the paragraph 4A(1) power is the most appropriate to use in the circumstances. In determining whether or not the use of the powers is necessary the senior police officer must take into account not just available information on the endangerment from munitions or wireless apparatus, but also:

- *the proportionality of the use of without reasonable suspicion search powers;*
- *that searches (if authorised) may be exercised only for the purpose of discovering unlawfully held munitions or wireless apparatus;*
- *the suitability of other search powers including those that require reasonable suspicion; and*

- *the safety of the public and the safety of officers”.*

201. The authorisation request will also include legal advice from the PSNI Human Rights Legal Adviser as to compliance of the authorisation with the law.

How authorisations work in practice

202. I have described the new authorisation procedure in some detail because, although it is modelled on the old section 44 and the new section 47A, it is a new power in Northern Ireland this year. Its structure, operation and impact therefore require close scrutiny.

The role of the Secretary of State

203. There is an extensive role for the Secretary of State in the operation of the new power. He (or she) may confirm, vary or cancel the police authorisation. The details of these arrangements are set out in the new Schedule 6 to the Protection of Freedoms Act, which inserts new paragraphs 4A to 4I into Schedule 3 to the Justice and Security Act. Paragraph 4D(2) sets a limit of 48 hours on the duration of an authorisation unless it is confirmed by the Secretary of State. Paragraph 4D(4) and 4E set out the powers of the Secretary of State to confirm an authorisation, confirm it but vary its duration or geographical extent, or cancel it from a specified time.

204. The draft Code sets out in detail the relationship between the authorising officer and the Secretary of State. Paragraphs 8.32 to 8.41 deal with the intelligence picture, the geographical extent, the duration and the briefing provided for officers.

Detailed requirements: intelligence, geographical extent, duration and briefing provided

205. These provisions in the draft Code give a clear indication of how the powers are intended to be used.

206. Paragraph 8.32 says:
“Intelligence Picture: *The authorising officer should provide a detailed account of the intelligence which has given rise to reasonable suspicion that the safety of any person may be endangered by munitions or wireless apparatus. This should include classified material where it exists”.*

207. Paragraph 8.34 says:
“Geographical Extent: *Detailed information should be provided to identify the geographical area(s) of place(s) covered by the authorisation and why it is no wider than necessary. If helpful in describing the area covered by the authorisation, maps may be included”.*

208. Paragraph 8.35 says:
*“Duration: The **maximum** period for an authorisation is 14 days, and authorisations should not be made for the maximum period unless it is necessary to do so, on the basis of the intelligence about the particular threat”.*
209. Paragraph 8.36 makes the link between geographic extent and duration and the justification for the authorisation, following on from paragraph 4A(1)(b) of Schedule 3 to the JSA:
“The duration and the geographical extent should not be greater than is necessary or justified to prevent the endangerment of the public which rendered the authorisation necessary”.
210. The Secretary of State must be given information about how the police will use the power on the ground. Paragraph 8.37 says:
“Briefing provided: Information should be provided which demonstrates that all officers involved in exercising stop and search powers receive appropriate briefing on the use of the powers, including the provisions of this Code and the basis for the use of the powers”.
211. The draft Code gives detailed instructions to the police about how the briefings for officers are to be carried out. Paragraphs 8.49 to 8.58 of the Code are intended to leave the officer in no doubt as to why an authorisation has been made, its purpose, the intelligence and threat context, the need to consider other powers, the need to record the actions taken, the importance of communicating with the public and requirements to use the power appropriately and proportionately. Above all, the officer must understand the basis for the use of the power.

Role of intelligence

212. From this brief synopsis we have a clear picture of how this new power is intended to work. The early emphasis in the text on the role of intelligence makes explicit that there have to be real grounds for seeking an authorisation. It is not enough to rely on speculative or imprecise reporting. Furthermore, the intelligence picture is critical in determining also the proposed limits on geographical extent and duration. The intelligence must precede the authorisation: it should not be the intended product of it. The basis for the authorisation must be the danger to the public.

The police and Ministers

213. The separation of functions under which Ministers do not become involved in detailed police operations is a longstanding principle of policing in this country. Section 44 was always an exception to that principle because dealing with terrorism can never be entirely a police matter, and that is also the case here. The interplay between the roles of the police and Ministers in counter-terrorist strategies and operations is subtle and sensitive, reflecting the need to maintain mutual

coherence between police operations and their wider impact, whether in the community or politically.

214. Crucial to this is the assurance which must be provided to the Secretary of State that the briefing for police officers has covered all the necessary background, of which the basis for the use of the powers is probably the most important, because the individual officer is being empowered to act in the absence of reasonable suspicion. This has implications for police training, decision making on the spot, and recording of actions taken. I will consider these implications later on.
215. I have examined carefully the developing relationship between the PSNI and the Northern Ireland Office about the preparation of the authorisation cases. The police have made clear that a significant amount of intelligence material is included in each application for authorisation, some of which is not directly relevant to a stop and search power being applied. The material provided is exactly the same as the material that the ACCs and District Commanders receive in advance of making deployment decisions based upon threat, risk and harm each day. The police believe that it is important that a consistent narrative is provided to the Minister who is considering the request for authorisation.
216. There are two important points here. The first is the clear recognition that the case for authorisation must be supported by specific intelligence directly linked to the operational need. It would not be sufficient to base the case solely on circumstantial intelligence such as generalised assessments which were not linked to specific activity, for example reports about movement of firearms and explosives which lacked detail or specific information. If that were the case, the police would not be justified in making an authorisation and the Secretary of State would not be justified in confirming it.
217. But it is equally important that the Secretary of State should be aware of the context of police operations: as we shall see later from judicial comment, context is important. When decisions of senior police officers and the Secretary of State are based on “*a consistent narrative*” the integrity of the process is safeguarded. I do not believe there to be any blurring of roles and functions in this approach: on the contrary, the process would be weaker if decisions by the Secretary of State were based only on limited intelligence material which was deficient in recognition of the wider context.
218. The PSNI have also explained to the Secretary of State in what circumstances they would need to use the JSA powers. They have provided the Secretary of State with scenarios on the use of the “reasonable suspicion” and “without reasonable suspicion” powers.
219. I have discussed with both senior police officers and the Secretary of State’s officials how these new powers might operate, in particular the legal scrutiny to which they have been subject. I am satisfied that the

current procedures deal comprehensively with the detailed requirements introduced into the JSA by the Protection of Freedoms Act and the new draft JSA Code of Practice.

220. I believe it is in the public interest to comment in detail on the procedures which the police and the Northern Ireland Office have established to handle requests for authorisations. That is a proper role for an independent reviewer. There is a new process this year. It has at its heart the relationship between the police and the Secretary of State in a sensitive area of public policy whose impact is felt directly by members of the public.

Validation and scrutiny

221. The process was tested out before it came into effect on 10 July 2012 so as to validate the procedures. I have seen the papers for this validation exercise. These papers show that legal advisers, within both the PSNI and the Northern Ireland Office, judged that it met the legal requirements and furthermore met the expectations of all those involved. It was a correct safeguard - and indeed a necessary one – to test out the new process several times before it went live.
222. Preparatory work of this kind, however effective, is of course no guarantee that the arrangements will work as they should. I said last year (paragraph 149 of my report for 2011) that I had indicated to the Secretary of State and the PSNI that, in my view, there would be value in my scrutinising *post hoc* any authorisations made under Schedule 3 as amended by the Protection of Freedoms Act. The precedent for this was Lord Carlile's practice of scrutinising *post hoc* any authorisations under section 44 of the Terrorism Act.

Analysis of authorisations

223. With the agreement of the Secretary of State, I have therefore arranged to see the new authorisations. The power came into effect on 10 July 2012 and two authorisations were made up to the conclusion of the reporting year on 31 July, covering the period 10 July to 23 July and 23 July to 3 August. I also looked at the succeeding authorisation, covering the period 3 August to 16 August.

Format

224. The format for these authorisations is very detailed – they come to some 28 pages, including detailed PSNI Explanatory Notes to guide the authorising officer. The text of the JSA, as amended by the Protection of Freedoms Act, and the draft Code are woven into the format so that there is a constant reminder to all concerned of both the requirements to be met and the significance of what is being done. This is welcome recognition that this is a serious process which has an equally serious impact on the rights of those affected by it.

225. The core of it is the personal judgment by the authorising officer – at Assistant Chief Constable rank or above – that the use of the power is justified. This judgment needs to show above all why the power is considered necessary and proportionate and why other powers may not be sufficient. In more detail this is exemplified in the need to prevent endangerment to persons, to prevent and detect any terrorist or violent incidents, to protect the life of police personnel and to protect the lives of the wider community. It must further demonstrate that the authorising officer is fully aware of all the other requirements in the draft Code discussed above.
226. Although an initialled signature by the authorising officer of each page of the application is not required, it would be helpful in enabling the Secretary of State to be satisfied that the authorising officer has fully considered every requirement. Each of the authorisation sections which I saw was written in manuscript by the Assistant Chief Constable concerned. It is clear that this was no *pro forma* exercise. Each officer expressed the requirements in his own way, reflecting his view of the material put before him. The police are aware of the Secretary of State's expectations of a high level of detailed scrutiny.

Making the case for an authorisation

227. To meet the need that the authorisation sought must be justified for the geographical area to which it applies and the duration, each authorisation includes references to the security incidents which have occurred recently and, more important, the intelligence which prompts the need for the power over the succeeding period (up to 14 days). It also includes references to the level of threat (classed as SEVERE for all three authorisations that I have seen to date), the number of terrorist attacks in the year to date, the underlying methods of the terrorists and their attack planning, and the targeting of police and prison officers.
228. I have scrutinised these sections of the authorisation in particular detail, looking to see whether the information given supports the requirements about which the authorising officer must be satisfied. I am satisfied in all the three authorisations which I have examined that this is so. The intelligence information for each application was entirely new material: nothing was repeated, though there would be no reason to exclude it if it were still relevant. The draft Code is quite explicit in its requirements, in paragraph 8.33: *"if an authorisation is one which covers a similar geographical area to one which immediately preceded it, an authorisation must be based on a fresh assessment of the available information"*.
229. The cumulative impact of all this information is compelling in all three authorisations which I have seen and leaves no doubt about the seriousness of the terrorist and general criminal threat both in particular detail and in overall impact.

230. Setting out the threat in graphic detail is not, of course, the same as making the case for the use of the Justice and Security Act powers and I have looked with equal detail at how the threat picture as set out matches up to the need for the powers. I have examined in particular the description of the weapons and explosives to which the terrorists and other criminals have access, their movement of materials across Northern Ireland and the way in which they plan attacks. This linkage is necessary to show the potential need for the rapid intervention by police officers on the ground. In all three authorisations the linkage was satisfactorily made.

Geographical extent

231. One of the major criticisms of the old section 44 power was that it was applied, apparently indiscriminately, to wide geographical areas. This arose especially when a section 44 application covered the whole of the Metropolitan Police District, or the whole of Northern Ireland. Certainly there has been an expectation that the successor power, whether section 47A of the Terrorism Act in respect of the United Kingdom as a whole, or Section 24 of/Schedule 3 to the Justice and Security Act in Northern Ireland, would have a much more limited geographical application.
232. That must remain an aspiration if the policy changes underlying the amendments made by the Protection of Freedoms Act are to be fully realised over time. But in Northern Ireland it unfortunately does not match the current reality on the ground. This is clear from the evidence in three respects. The first is the wealth of material from each of the eight police Districts, set out in full in the authorisation application. I concluded above that this material is both detailed and up to date.
233. The second point is that a pattern of terrorist/criminal activity or threat reporting in one District might look quite different two weeks later or might have shifted to another District. Attack planning in one District might relate to future activity in another District.
234. The third is the operational need arising from co-ordinated and simultaneous police operations in several police districts: I was told in detail about such operations this year.
235. Nevertheless it is right that in each application there is a record that each District Commander has been specifically asked whether he wishes the authorisation to apply to his District. The draft Code says specifically at paragraph 8.26 *“Endangerment of the public, based on a number of threats relating to munitions and wireless apparatus, may not in itself be sufficient to justify extension throughout Northern Ireland.”* The Explanatory Notes say *“Authorisations which cover all of Northern Ireland should **not** be made unless there are exceptional reasons for doing so, and they can be shown to be necessary”*.

236. To meet the thresholds underlying these words in the draft Code we must look for other material, in particular the known tactics and capabilities of the terrorists and other criminals, as centrally assessed by PSNI. The views of District Commanders are an additional important input to such assessments.

Community Engagement and Impact

237. Assessment of the community impact of the use of the Justice and Security Act powers is not specifically required under the draft Code, although there is a strong case for including it. But it is good to see that the authorisation application requires the applicant *“to provide a detailed account of the steps taken to engage those communities which will be affected by the authorisation”*. Those listed include the Northern Ireland Policing Board, the new Police and Community Safety Partnerships, the Police Ombudsman, and the Independent Reviewer.
238. Statements in the authorisation that *“assessments have been conducted locally and these will be reviewed as required”* meet this minimum test but there is probably scope for more detail and explanation, as the process develops, about the extent and pattern of community engagement.

Briefing for officers

239. I have noted elsewhere how important it is for officers exercising a power without reasonable suspicion to be fully aware of the reasonable suspicion test which the authorising officer, at a very senior rank, must first meet. The draft Code is very detailed and specific about this. I have therefore looked for detailed information about this in the new authorisations. Since it has implications for police training and police records I have discussed it more fully elsewhere. The authorisation includes, as evidence of all this activity, a short aide-memoire for individual officers as they are about to stop a member of the public.

Practical implementation of the powers

240. The PSNI Explanatory Notes: *“require the authorising officer to provide information about how the powers will be used and why. This may include the use of Vehicle Check Points and stop and search in areas of residence of security force members or establishments or other recognised targets of terrorist attack, depending on the nature of the threat. Authorising officers should also provide information as to whether stop and search will be carried out on the basis of objective indicators supported by intelligence (eg behavioural indicators, appearance, items being carried etc) or whether they will be carried out more “randomly”.*”
241. The PSNI Explanatory Notes continue: *“The use of stop and search powers by the PSNI can arise for a number of reasons. It may be the result of a specific briefing about an individual or intelligence about a*

specific threat within a geographic area in a given timeframe. The intention is that the power is not used on either a purely random or blanket basis, but rather on the basis of threat. It is unlikely that a person will be the subject of a JSA search unless there is an intelligence-led basis for the use of the power in the prevailing circumstances. Officers frequently exercise section 21 powers, the answers to which may reduce the likelihood of recourse to the use of Paragraph 4 Schedule 3 powers”.

242. This is valuable guidance in its emphasis that the use of the power should be led by intelligence rather than done at random. I have indicated elsewhere that, even though random searches are not ruled out by the legislation, the intelligence-led basis should be the preferred approach, for a variety of reasons.
243. Furthermore, the reference to the link with section 21 shows not only the value of a coherent and co-ordinated use of the powers but also the possibility that the use of one may reduce the need for the use of another. This is important in view of judicial rulings to the effect that both powers amount to interference with rights under Article 8 of the ECHR (see below).

Comment on the authorisation process.

244. I have analysed the new authorisation process in some detail, because it establishes the ground rules which those involved will be following throughout the present year. It also seems to me important that something as significant as this should be clearly described in a report such as mine, for the benefit of a wide readership, so as to give transparency to a major new piece of the machinery.
245. I am not part of the authorisation process. If I were, it would impinge on my independence and inhibit me from commenting objectively on it. I have not sought to be part of it, nor have I been invited to become so.
246. The new arrangements came into effect for only the final 22 days of the reporting year. It is unlikely that they will have had much impact on the statistics on the use of the Justice and Security Act which I have analysed separately.
247. I am however satisfied that the new process is exhaustive and comprehensive, that it fully reflects the requirements in the JSA as amended by the Protection of Freedoms Act, and the draft Code of Practice under section 34, and that the authorising officers have exercised their function scrupulously and in full recognition of the magnitude of the decisions they are taking.

Actions of individual police officers

248. So far I have described how the authorisation process and the role of the Secretary of State relate to each other. These are strategic

decisions on which the authorising officer must focus and which the Secretary of State must consider.

249. The third element of the process is the individual police officer. This is dealt with in detail in the draft Code (paragraphs 8.59 to 8.78) rather than in the authorisation process. It is of course the part which concerns delivery on the ground, with direct impact on members of the public.
250. The briefing process set out above will, if followed fully and accurately, enable the new power to be used properly. The draft Code sets out in paragraphs 8.59 to 8.78 how preparations for searches must be made, how they should be conducted and how records should be kept. There are obvious implications for training, building up good practice and recording of the actions taken, including electronic recording, on which I will comment further later on. It prompts a question about the action the PSNI have taken to comply with the requirements of the new draft Code and whether this has been thorough, comprehensive and effective. I assess this below.

Judicial comment on Justice and Security Act powers

High Court Judgment by Mr Justice Treacy 9 July 2012

251. I mentioned last year (paragraphs 150 and 151 and 437(25)) that the operation of the powers in the Justice and Security Act was subject to the judicial process and that in four cases challenges had been brought in the High Court in Belfast. These took the form of applications for judicial review seeking *“declarations that the powers to stop and question pursuant to section 21 and the power to stop and search pursuant to section 24 and paragraph 4(1) of Schedule 3 of the Justice and Security (NI) Act 2007 (“the JSA”) are incompatible with Articles 5 and 8 of the European Convention on Human Rights.”* This judicial review considered the JSA stop and search power prior to its amendment by the Protection of Freedoms Act.

Details of the judgment

252. Judgment was delivered in the High Court, Queen’s Bench Division (Judicial Review) by Mr Justice Treacy on 9 July 2012 (reference TRE8556). The judge found, at paragraph 119 of his judgment, that:
- “the exercise of the power to stop and question a person about their identity and movements, when failure to stop and answer is a criminal offence, constitutes an interference (with rights under Article 8 of the Convention - the right to respect for private and family life, home and correspondence). Similarly, the exercise of the power to stop and search on pain of criminal sanction under s24 and para 4(1) of Schedule 3 of the JSA constitutes an interference which must be justified.”*

253. The judge recalled the basis of the *Gillan* case and its significance for the Justice and Security Act. He said:

“(122) Gillan involved a challenge to the blanket authorisation regime which was operated under section 44 of the Terrorism Act 2000 but did not address the compatibility of either s21 or para4(1) of Schedule 3 of the JSA.

“(123) In law context is everything, as Lord Steyn famously observed. The contextual factors which apply in Northern Ireland are markedly different from those that applied in Gillan. It is simply not sustainable to try to read across the decision in Gillan to the impugned statutory powers the subject of the present proceedings”.

254. The judge continued further in paragraph (123) of his judgement:

“In the present case the context includes:

(i) the ongoing undisputed and manifestly high level of threat to life and security by dissident republicans;

(ii) that the impugned powers are “vital tools” in the efforts by the PSNI to reduce the level of threat to police personnel and the public from dissident republican terrorism;

(iv) that the powers are directed to the discharge of the PSNI obligations under Art2 ECHR to ensure that reasonable operational steps are taken to avert a real and immediate risk to life (see para19 of (the PSNI) affidavit, 29 September 2011);

(v) that the impugned powers are not used on a random or blanket basis but rather are intelligence led on the basis of threat;

(vi) the presence of the safeguards referred to at para 33 above namely:

(a) the Terrorism and Security Powers User Group scrutinises the use of such powers on a quarterly basis

(b) the Terrorism and Security Powers User Group reports to the Serious Harm Programme Board; and

(c) as and when necessary issues can be elevated to the Service Executive Board of the PSNI.

(vii) these safeguards are in addition to the fact that the powers are subject to regular review by the independent reviewer, the existence of judicial review and the possibility of bringing civil claims for damages in the event that the powers are misused;

(viii) the absence of evidence of abuse. On the contrary the Court is satisfied on the evidence presented that the totality of safeguards has

been demonstrated to constitute a real curb on the powers afforded to the PSNI under these provisions and that there is no evidence of systemic misuse or discriminatory use of the powers.”

255. Continuing, at paragraph 124 the judge said:

“(124) For these reasons I reject the contention that the impugned powers are neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. I accordingly conclude that the impugned powers are “in accordance with the law” and that no violation of Art 8 has been established.

“2. As far as the Art5 claim is concerned I accept the respondent’s arguments that the case of all the applicants involves restriction of movement rather than deprivation of liberty and that Art5 is not engaged. In any event, even if Art5 was engaged I am satisfied per Austin that the use of targeted s21 and s24 powers in the interests of protecting lives and security cannot properly be considered as the kind of arbitrary detention which Art5 proscribes.

“(125) Accordingly, for the above reasons, the applications are dismissed”.

Analysis of Mr Justice Treacy’s judgment

256. This is the first judicial intervention on the status of the Justice and Security Act powers under the European Convention on Human Rights and the nature of safeguards against abuse. I draw the following conclusions from it:

- The ongoing terrorist threat is described as “*undisputed and manifestly high*”, confirming the assessments made by others which I have set in Part 4 above
- the judge is satisfied with the PSNI’s assessment of the value of these powers, as set out in Part 4 above
- the reference to “*real and immediate risk to life*” can be used by the police and the Secretary of State as a benchmark against which to judge the merits of an authorisation application
- the powers should not be used on a random or blanket basis but as intelligence-led on the basis of threat
- the totality of the safeguards cited meets the required test of “*within the law*”
- the absence of evidence of systemic abuse or discriminatory use of the powers shows the effectiveness of the safeguards already in place, on the evidence before the court. But it also confirms the necessity for these safeguards to remain robustly in force.

257. An appeal was lodged in the Court of Appeal in Northern Ireland on 25 July 2012 against the judgment of Mr Justice Treacy. While it is under consideration the powers may continue to be used.

Police operational activity 2011-2012

Nature and extent of residual terrorist activity

258. The formal presentations which the police, the Security Service and the armed forces give me twice a year cover the nature and extent of the residual terrorist and paramilitary activity with which they have had to deal, the full range of which is summarised below.
259. The most serious are the “national security” attacks. The number of such attacks in 2012 (up to the middle of November) was 22¹. This compares with 26 in the calendar year 2011, 40 in 2010 and 22 in 2009. Attacks this calendar year are therefore running at about the same level as last year.
260. 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, other attacks which are sectarian in nature, or hoax devices. We should remember that all of this activity threatens lives, damages communities and individuals and disrupts normal life.
261. Much information is available in the regular bulletins on the Northern Ireland Statistics and Research Agency’s website under the heading “Police Recorded Security Situation Statistics”. Annual reports cover financial years, and monthly updates give a cumulative picture of information, both for Northern Ireland as a whole and for each of the eight police districts and 29 police areas.
262. The monthly update published on 14 September 2012 gives statistics for the period 1 April 2012 to 31 August 2012. In that period there were 30 shooting incidents and 19 bombing incidents. There were 20 casualties as a result of paramilitary-style attacks: of these, 10 were shootings and 10 assaults. The police recovered 24 firearms, 961 rounds of ammunition and 4.64 kgs of explosives in this period. There were 76 arrests under section 41 of the Terrorism Act, of which 27 were subsequently charged.
263. Major incidents in the reporting year, August 2011 to July 2012 have included:

¹ Number of National Security attacks as at 21 November 2012

August to October 2011

- improvised explosive devices at the homes of a police officer and a doctor near Londonderry on 14 September
- petrol bombs thrown at police officers attending a security alert in Lurgan on 19 September, when the railway line in and out of Lurgan had to be closed
- a bomb found in a car in Londonderry on 26 September, which led to the arrest of three men who were subsequently charged with possession of explosives with intent to endanger life
- a bomb found in Belfast city centre on 30 September and rendered safe by Ammunition Technical Officers (ATOs). The incident caused major disruption to traffic and businesses, with people being evacuated from their homes and commercial premises overnight
- a bomb explosion outside the City of Culture offices in Londonderry on 12 October
- two viable bombs discovered by police searches in south Belfast on 14 October which were defused by ATOs.

November 2011 to January 2012

- on 9 November, a masked gang attempted to shoot a man at a house in North Belfast. The attack was subsequently claimed by dissident Republicans
- several controlled explosions were carried out by ATOs in Londonderry on 9 December
- a bomb was found in Keady on 11 December, following a telephoned warning, which led to the evacuation of a number of homes in the village
- a bomb found in the car of a serving soldier in north Belfast on 5 January, causing 60 residents to be moved from their homes, before the viable device was rendered safe, and followed by the arrest of four people
- a pipe bomb found in Dungannon on 7 January, causing the evacuation of several homes
- two explosions in Londonderry on 15 January near the DHSS office in Strand Road and at the tourist centre in Foyle Street.
- Four pipe bombs found in a box in Portadown on 31 January

February to April 2012

- Ammunition and suspected firearms seized from a house in Ballymena on 4 February
- A bomb found in Londonderry on 15 April near the family home of a serving police officer
- A bomb containing over 600 lbs of explosive left in a white van at Fathom Line in Newry on 26 April (described in more detail below)
- Guns and ammunition found during a search in north Belfast on 27 April entailing the evacuation of residents from their homes

May to July 2012

- A pipe bomb, firearm and ammunition found in west Belfast on 12 May
- Bombs left in a residential road in Londonderry on 21 May and made safe by ATOs after the evacuation of residents from their homes
- Seven pipe bombs found in Dungannon on 28 May which led to the arrest of two men
- A hand held explosive device thrown at a police vehicle during a PSNI operation into serious crime in Londonderry on 2 June, subsequently claimed by Republican Action Against Drugs, a dissident republican group
- A hoax call in Craigavon on 9 June which led to police being attacked with blast bombs
- Shots fired at police in Ardoyne on 12 July
- Seizure of 5 replica assault rifles, a firearm, balaclavas and camouflage clothing intended for use in a paramilitary show of strength in Londonderry on 12-13 July
- A shot fired at a PSNI vehicle in Glen Road, Belfast, on 27 July, described by the police as an attempt to murder a police officer.

264. I should also record the murder of a prison officer, David Black, on 1 November. This fell outside the reporting year but it is right to mention it here.

265. The account above shows a similar pattern of activity to 2010-11. The list of incidents above shows the range of terrorist and other criminal activity using firearms and explosives against which the JSA powers may be used. Some facts stand out. The most obvious are the attacks on police officers and military personnel, bombs left in urban locations, disruption to families and communities by explosive devices being planted, and similar disruption caused by hoaxes.

Police strategic response

266. My range of contacts with police officers covers formal and informal discussions about their strategic and tactical response to the pattern of activity described above.

267. The police also present to me their detailed response to my recommendations from the previous year. This again is a helpful indicator of progress.

268. I reported last year on the way in which the police were dealing with security threats. My comments related to the detail of police operational planning. Much of that work has been continued this year, and my judgment is that it is bringing results. This is important in demonstrating how the police are trying to match their efforts to emerging patterns of security threats. These are mainly from the dissident republicans. But they also involve awareness of the activities

of loyalist paramilitary groups. There is a close link between terrorist and paramilitary activity and organised crime.

269. I commented last year on the importance of close operational liaison, across the whole range of criminal activity, with An Garda Síochána. That has continued, again with excellent results, which have been reported to me. It is a relationship of great value to the PSNI and, I understand, to An Garda Síochána also.
270. This year, of course, much of the focus of senior PSNI officers has been on preparation for the new authorisation regime and the training commitment flowing from it. Since intelligence plays such a large part in making the case for authorisations, and since its role is explicitly recognised in the new Code of Practice under the Justice and Security Act, the need for clear understanding of the intelligence function becomes even more important under the new regime than it was before. In following through the intelligence picture, close liaison between the police and the Security Service is vital.
271. There has been no change this year in the relationships between the PSNI and the Security Service which continue to follow the structures announced by the then Secretary of State on 24 February 2005, the St Andrew's agreement of October 2006, and the Prime Minister's statement of 10 January 2007.
272. The Government have taken the opportunity of the introduction of the draft Code of Practice for the exercise of the JSA powers to explain the arrangements for military support in Northern Ireland. Annex C to the draft Code sets out the background, the principles for the use of the powers by the armed forces and the oversight and accountability in respect of them. This initiative is welcome.

Community engagement

Police community engagement strategies

273. Just as the police may need support from the Security Service and the armed services, so also do they need the support of the community. That has been made clear on many occasions publicly by the Chief Constable. It is now formally delivered by a PSNI community engagement strategy, and a senior police officer gave me a detailed presentation about it in September this year.
274. There is a sharp reality to all this work, and whether it has been done effectively or not will soon become apparent when civil order comes under strain, possibly in the aftermath of a police search operation or a parade which has been followed by disorder.
275. At senior levels, the police now recognise that this is mainstream police activity. Some commentators said that some traction may be lost at middle management levels, rather like encountering a "permafrost".

That syndrome will be easily recognisable to anyone who has worked for a long time in a large corporate organisation. It is an understandable recognition that different levels of responsibility carry their own perspectives and requirements.

276. But there are ways of drilling through the permafrost which should form part of senior management strategies, and there must be no barriers standing in the way of enthusiastic delivery of community engagement work. Officers on the ground need to feel that they are part of a bigger picture which is endorsed and supported at all levels.

The test: is it visible to those who will notice the difference?

277. This work is the visible manifestation of professional policing, explicitly required by the Chief Constable of all his officers. Its presence (or absence) will be noticed on every street corner or village community. It is crucial to the efforts to bring policing to communities long denied effective policing and still wary about trusting the police.
278. It is also vital in efforts to prevent vulnerable individuals from becoming sucked into the terrorist or paramilitary narrative, to deny terrorists credibility in local areas, especially where they seek to exploit a vacuum in authority, and to reassure communities and individuals worried about their security or personal safety.
279. Without this work, police operations against serious terrorists or criminals, which are at the centre of use of the Justice and Security Act, stand much less chance of success. There must be no gap, either in conceptual thinking or in tactical planning, between active police operations and local community engagement.
280. Simple measures of effectiveness, mentioned to me by many of those with whom I shared coffee and tea in community centres and church halls, include whether they can call their community police officer by their first name, whether he or she will be in post long enough to gain familiarity and confidence, and whether the officer will be able to help them when things get difficult.
281. Community engagement must therefore form part of police strategies at every level. It is different from the system of community impact assessments which are an equally necessary part of police planning. Community engagement goes beyond that, and involves interaction between police and public. It crosses formal boundaries, demands flexible and imaginative approaches, and requires proper focus and resourcing at the highest levels.

Police training and operational orders

Police training for the amendments introduced by the Protection of Freedoms Act

282. It has been a consistent theme of my reports that work to refine and improve operational orders and training programmes for officers using the Justice and Security Act powers must be pursued relentlessly. In anticipation of the new authorisation regime, the police tell me that training has been delivered to operational officers. They summarise what they have done in these terms:
- “Within PSNI we understand that this can be a complex issue. During this year to prepare for the implementation of the Protection of Freedoms Act 2012, we have embarked upon a comprehensive training package for every frontline officer on the use of the powers and how they operate within a community based policing context”.*

This meets the needs I set out at recommendation 4 last year.

283. I observed senior level training at PSNI at Lisnasharragh. Also, at the invitation of the District Commander in E District, I spent a day observing the training at Mahon Road Police Station in Portadown, in the company of the Human Rights Adviser to the Policing Board. The E District training covered both formal teaching sessions and practical exercises in stopping individuals and searching their cars. It can be backed up as necessary with an e-learning package to refresh and deepen knowledge.

Central PSNI guidance on Code of Practice

284. The link between this training and the new authorisation process has been set out in internal police documents in this way:
- “The (Assistant Chief Constable) must be able to confirm that all PSNI officers are trained to execute statutory powers in support of human rights considerations and the PSNI Code of Ethics, that there is an “ethos” of proportionality reflecting the principle of the minimal necessary exercise of the powers. All PSNI officers using these powers have undertaken a new Counter Terrorism Training programme in 2012. This complies with the draft Code of Practice and reinforces the need to use the powers in a sensitive and targeted way. Training is provided by district training staff and information on the powers is available online. All officers are briefed on the “basis” for use and the “basis” will be given to members of the public as an explanation of why they are to be stopped and searched. The basis reflects the current threat and is “Due to the current threat in this area and to protect public safety a stop and search has been authorised”.*”
285. Bringing all that necessary but formal text to life, the police have told me that the training is intended to remind officers of the need to think carefully and critically before using the powers, to be clear about the basis for their use and also to consider the context. An example would

be recognition of the negative impact of stopping an adult at a predictable time of the day, such as when collecting a child from school, while accepting that it might be necessary in extreme cases.

286. The emphasis by the Deputy Chief Constable on the “*strategic importance of the routine encounter with police*”, in terms of its impact on an individual member of the public, is a central part of the training. Of course, this message needs to go much wider than use of the JSA powers, but is of crucial significance in a sensitive area replete with dangers and pitfalls.

Oversight by senior officers

287. With an even more complex legislative regime in place, the requirement I noted last year (recommendation 8) for senior police officers to scrutinise the use of JSA powers will remain. The four briefing and training sessions for senior officers are a good start.
288. Within the PSNI, there exists a Terrorism and Security Powers user group, chaired at Assistant Chief Constable level. This is the group referred to by Mr Justice Treacy at paragraph 123 of his judgment of 9 July. It is the responsibility of this group to oversee the use of the powers on a service-wide basis (across the PSNI as a whole).
289. At district level, District Commanders, who have considerable autonomy over tactical operations and management of staff, are tasked with oversight of the use of the powers within their area of responsibility.
290. As an example, in one district the JSA powers are specifically covered in performance interviews. I have been shown a typical performance review for July 2012 (seven pages of detailed records and statistics). Six officers are selected at random for interview each month by each of the District’s Chief Superintendents and Superintendents.
291. I have also been provided with a summary sheet for all the stops in this District for August 2012, broken down into the statistics for each Area, and showing for comparison the statistics for Northern Ireland as a whole.

Police records

Current practice

292. I have once again this year been assisted by officers in Antrim Road PSNI station in Belfast who are able to present me with records about the use of the JSA powers in A District (North and West Belfast). I have also been shown the stop and search records for E District for August 2012. The officers concerned have responded to my search for evidence of how records are being kept and changes in practice. In the time available, I can only inspect a sample of police records: more

detailed scrutiny might fall to be done locally, for example by the Policing Board.

293. The starting point for recording of police activity is the aide-memoire provided to each officer about the available stop and search powers in the Terrorism Act and the Justice and Security Act. It begins with a clear instruction to "*Be polite and professional*" and concludes with a reminder that "*Information is important*" and that "*a reporting form must be completed and submitted in appropriate cases*" (every case where JSA powers are used).
294. Last year I said (recommendation 2) that there should be a reporting requirement when the police use the stop and question power (section 21). This is less intrusive than a search but may be unwelcome to an individual member of the public. It has been police practice to make records of section 21 stops but it is now explicitly required of them (paragraph 6.12 of the draft Code). I welcome this change.
295. Also last year I discussed in detail some of the relevant considerations when officers complete reporting forms. I drew a direct line between the implications of the Strasbourg Grand Chamber judgment in *Gillan and Quinton* at one end of the process and, at the other, the actions of the individual PSNI officer on patrol. An important link in this chain is the police recording system.

Police records: electronic capture

296. This year, there has been a major development with the move to standard use of electronic recording on Blackberrys, with effect from 1 February 2012, of the PACE/1TA forms. So my inspection of the records in Antrim Road police station concentrated on how this new process is working and how the resulting database is being managed. The early results are encouraging, meeting the expectations I set out at recommendation 6 last year.
297. The core of the process is the drop down menu on the Blackberry which makes the direct link between the authorisation at Assistant Chief Constable level and the basis for the stop by the individual officer. If the context as described by the authorising officer changes, the drop down menu through which the officer must proceed can be changed by remote central action across PSNI as a whole.
298. The sequencing of actions when completing the form will not allow the officer to proceed through it without noting the power used and the basis for it. There is a reminder that the officer must tell the member of the public how they can obtain a copy of the record of the stop. A six digit PIN number gives a unique reference for each police officer. This is valuable information for the member of the public concerned.
299. I reported last year that the functionality deployed includes the capability to perform person and vehicle searches, update crime

incidents and complete stop and search records. This year, the police have given me demonstrations of these capabilities in more detail.

300. The stop and search functionality includes the ability to clone a record, which means that if more than one person is stopped the time to complete records can be significantly reduced because repeated material (for example about the date and time of the stop) can be copied by a simple action on the Blackberry. Safeguards exist to ensure that information is not copied in error.

Scope of the Blackberry system

301. The new Blackberry system is not being used by part-time officers whose recording systems are still paper based, and who are required to make a paper record of the stop before the termination of their duty. To meet their needs, an aide-memoire has been prepared for recording stops and searches in a notebook. This applies also should "Blackberry STOPS" become unavailable (for example if internet connections fail or signal is weak). Technological developments should reduce the risks of this over the course of time. Officers are instructed in such cases to transfer details to "Blackberry STOPS" when it becomes available. Comprehensive direct data capture is the ambition.

Benefits for members of the public

302. 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.
303. Other benefits include ready access to information about whether the member of the public has been stopped before (which can be in doubt in a case of complaint) and safeguards for the officer concerned against unjustified complaints.

Efficiency gains

304. It is not part of my terms of reference to become involved in resource questions. But I should record that the police have told me that the standard use of the Blackberry system has led to a 75% reduction in radio traffic transactions, with an estimated gain of 90 minutes patrol time of each police officer's shift.

Conclusions on record keeping

305. Record keeping has advanced well this year. The full change to electronic recording was made mid-way through the reporting year (from 1 February 2012). Next year it will be important to examine in depth the effect of the migration to full electronic capture on the experience of members of the public and police practice.

Specific use of the 2007 Act powers

306. 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 2011 to 31 July 2012. 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 ensure that records are made of each exercise by a constable of the powers under sections 21 to 26.
307. The statistics set out below have been provided by the Central Statistics Unit of the PSNI. They show the statistics for each month of the reporting year (1 August 2011 to 31 July 2012). 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.
308. 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. No formal records are provided about the age of those subject to stop and search.
309. There have again this year been 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. As before, I shall make comparison with those statistics given in previous years, but these may also vary slightly for similar reasons of late reporting and adjustment. This year the comparisons are more straightforward because there is less overlap with the regime which involved stop and search under the Terrorism Act.
310. 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. I have explained this position to both the Policing Board and the Police Ombudsman.

Section 21

311. 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 2011 to July 2012) was 282, giving a total of 3,382. For the comparable period last year there was a monthly average of 362 with a total of 4,349. So there has been a reduction of 22% on last year.
312. The section 21 power is used to establish identity and movements. It may be used in conjunction with other powers, of which the most likely

is section 24 of and schedule 3 to the JSA, or new powers within the Terrorism Act. The total reduction in the usage of section 21 over the past two years, from 6,722 to 3,382, stands at 50%.

313. There have been fewer “spikes” in the use of section 21 this year. The monthly range was from 326 to 199. The largest use on any one day was 30 cases, with 29 on two other days. The daily average was 9 cases.
314. There was no usage by the armed forces of the stop and question power under section 21(2).

Section 22

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

Section 23

316. 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. The power is generally used in pre-planned operations for which the authority is given in writing by a superintendent. There is provision, where for example an immediate response is needed to events as they arise, for oral authorisation to be given by an inspector, who must make a written record as soon as practicable.
317. Section 23 has been used on 77 occasions this year in total compared with 59 last year. The Central Statistical Branch do not regard this increase as significant since it reflects specific operations on a limited number of days rather than a general trend. There was for example no use of section 23 at all in the months October, November and December, but 21 (27% of the total) occurred in May. 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

318. Section 24 gives effect to the powers in schedule 3 in relation to search and 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, articles seized and the number of occasions when police were accompanied by other people.
319. So far as searches of people are concerned (Table 2C, schedule 3 paragraph 4), there has been a significant fall this year in searches both in public places and on private property. A total of 10,661 people were stopped and searched, 10,320 in public places and 341 on private

property. This compares with figures of 16,030 (15,635 and 395) last year. The overall reduction from last year to this is 33%.

320. The total of 10,661 represents a monthly statistic of 888 persons stopped and searched under section 24, with a monthly range of 1,239 (November 2011) to 627 (June 2012). This gives a daily average of 32, with a peak of 164 on 14 November. Where searches of people are carried out on private property, a reasonable suspicion has been required, linked to a specific basis or reasoning, probably about the possession or movement of explosives, firearms or ammunition.
321. The power to enter and search premises for munitions or wireless transmitters is found in paragraph 2 of Schedule 3 (set out in Table 2D). There has been a significant fall this year in the use of this power, on 211 occasions compared with 368 last year, a reduction of 43%. Most of the searches this year were in private houses – 177 out of the total of 211, with 34 in other premises.
322. 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: 73 compared with 80 last year.
323. 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 less this year – 48 occasions, compared with 95 last year. The monthly range was from 10 in July 2012 to none at all in November and December. The use of this power is linked to particular operational needs rather than a direct interaction with the public.
324. The powers in schedule 3 may also be used by the armed forces in support of police operations, although some of the powers are primarily for use by the PSNI.

Section 25

325. 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

326. The powers of premises search in section 24/schedule 3 and section 25 may also, by virtue of sections 26 and 42, be used to stop and 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 fall this year: 16,860 vehicles were stopped and searched compared with

18,893 last year, a reduction of 11%. The monthly range was from 2001 in May 2012 to 984 in August 2011, with a monthly average of 1,405.

327. There is also a power to remove a vehicle for search. This was used two times this year, compared with 13 times the previous year. It is needed when a more thorough search of a vehicle is needed.
328. As with the powers to search people and premises, the schedule 3 powers to search vehicles may also be used by the armed forces in support of police operations.

Sections 27 and 28

329. 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

330. These statistics give a reasonably clear indication of the trends in the use of the JSA powers. This year they are free from the complicated overlap with the use of the now defunct section 44 so that the comparisons with the previous year enable me to make objective judgments.
331. The JSA powers are used for specific purposes, all of which have a security dimension, including serious criminality which may have a paramilitary connection. They sit alongside other police powers, mainly in the Police and Criminal Evidence Order (PACE) and the Terrorism Act (now limited to the power of arrest in section 41, although the amended stop and search power in s.47A could be used if an authorisation were made). There is an overlap in the latter case with the review work of David Anderson QC, which he and I have both acknowledged in our reports.
332. The statistics for all three powers provide both an actual comparison of the powers used and an indication of trends. As last year, Table 3 shows the comparative use of powers over the exact reporting period.
333. Over the period 1 August 2011 to 31 July 2012, there were 35,129 uses of PACE, Terrorism Act and Justice and Security Act stop and search powers compared with 41,957 uses of these powers for the previous year:
- The number under PACE was 20,902 compared with 21,143 the previous year
 - Under the Terrorism Act the number was 184 compared with 433 the previous year

- For the Justice and Security Act the number was 14,043 compared with 20,379 the previous year
- **The numbers of stops in absolute terms in all three categories were therefore lower by 16%, with the numbers dealt with under PACE falling by 1%, those under the Terrorism Act falling by 57%, and those under the Justice and Security Act falling by 31%.**

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

- The proportion dealt with under PACE was 59% compared with 50% last year
- For the Terrorism Act the proportion was 0.5% compared with 1% last year
- For the Justice and Security Act the proportion was 40% compared with 49% last year
- **This year there were three stops under PACE for every two under the Justice and Security Act.**

335. 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 ie section 21 and section 24 in sequence. 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 (all the changes are in single digits and do not affect the percentages).

336. 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 demise of section 44, has been reversed
- The use of Terrorism Act powers has remained a tiny proportion of police activity (under 1%)
- The use of PACE powers has continued at broadly the same level (a fall of 1%) but has grown in proportion to use of the JSA powers.
- Non-PACE stops have therefore declined overall as a proportion of stop activity (falling from 50% to 41%)
- Use of the stop and question power (section 21) has fallen by 22%.

- Use of the stop and search powers for persons, property and vehicles (sections 24 and 26) has fallen by 21%
- **Overall, PACE stops fell by 1% and non-PAVE stops fell by 32%.**
- **Total stops fell by 16%.**

Arrests and charges

337. The number of people arrested under section 41 of the Terrorism Act for the period 1 April 2011 to 31 March 2012 was 159 of whom 39 were subsequently charged. That compares with 195 arrests and 41 subsequently charged in the comparable period the previous year.
338. I have agreed with David Anderson QC, the Independent Reviewer of terrorism legislation that he will comment on arrests and charges under the Terrorism Act, since they involve cases which have passed beyond operational policing and into the formal criminal justice process. This he has done in paragraphs 7.25 to 7.34 of his report for last year, published in June 2012.

Conclusions on use of Justice and Security Act stop and search powers

339. Comparison year on year is more valid this year because of the removal of the displacement effect of section 44 of the Terrorism Act. There has been a significant decline in the use of the Justice and Security Act powers. That has been achieved at a time when the threat from residual terrorists has continued at “SEVERE” and terrorist activity has continued at a high level.
340. In many cases where operations are planned over time, it may be possible to obtain search warrants under other powers. That is a preferable option. It does not however mean that as events progress the sequence of events will be entirely met by the warranted activity.
341. I have asked the police why they have used the JSA powers less this year than last in spite of the operational requirement staying at a high level.
342. They attribute this in part to the major training programme for all PSNI officers likely to use these powers. That has been done partly in response to the need to refresh officers’ knowledge and skills following the changes brought about by the Protection of Freedoms Act and partly in response to the recognition of the value of ensuring that officers have the greatest possible familiarity with the range of powers available to them, and their most appropriate sequencing, when individual officers are in contact with the public.
343. It also reflects greater use of the powers in planned operations in response to available intelligence. That factor will be significant in the

present year if the police continue to seek authorisations under the new regime described at length above, given the enhanced role which intelligence will play in such operations. Intelligence is a vital tool for the protection of the public and it will continue to be important to maintain a strong link between intelligence collection and analysis and police operations.

344. Since the link between terrorist planning and activity on the one hand and the use of these powers on the other is so direct and explicit, it is difficult to predict what the use of the powers over the next few months might be. That point bears directly, of course, on the likely continued need for these powers.
345. Public policy and police operations in Northern Ireland have as their objective the reduction of terrorist and other violent activity. Progress has been made this year but the dreadful murder of David Black on 1 November 2012 is a stark reminder that there is still some way to go. Police activity must therefore reflect the present position, both as the intelligence picture develops and in response to incidents. The police must plan for explicit attempts at murder, whether from shootings, pipe bomb attacks and major incidents such as that at Fathom Line outside Newry in April, or from exploitation of public order disturbances.

Views of senior police officers

346. Senior PSNI officers have told me, when I have asked them formally, that in their view the use of these powers has continued to have a significant preventative and disruptive effect on residual terrorist groups and contributed to their overall strategy to protect the public, confirming the view which they took last year.
347. Protection of police officers who are being explicitly targeted, and other public officials such as the judiciary and prison officers, is an equally valid consideration: all of these people enjoy the same right to life as does every member of the public in Northern Ireland.
348. The PSNI thus see a continuing need for the powers in the Justice and Security Act throughout the current year. That is also the view of the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO) as expressed to me on their behalf by Assistant Commissioner Cressida Dick of the Metropolitan Police Service in October this year. Major international and public events in Northern Ireland in 2013 will present fresh challenges.

Road Closures and Land Requisitions

349. These are public order powers enabling roads to be closed and land to be requisitioned 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 or indefinite period.

Agency arrangements

350. I reported last year that there had 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 and then be reviewed.
351. 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.
352. 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

353. **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

354. On 12 June 2012 the Minister of Justice, acting under the agency arrangements, made a Requisition Order. He wrote to the Secretary of State advising him of his intended course of action on 8 June 2012.
355. In his letter, the Minister said that he was issuing a requisition authorisation under section 29 for a small section of land within the Forthriver Business Park, Springfield Road, Belfast, to allow the landowner, Invest NI, to erect CCTV on the site to assist the PSNI in the preservation of peace and maintenance of order.
356. The Minister went on to say that the PSNI believed that remote monitoring of the site via CCTV would assist in reassuring the local residents, might act as a deterrent, would reduce the impact on police resources and should assist in prosecutions. It should also help to reduce community tensions through faster action when trouble was developing.

357. The Requisition Order came into effect immediately before midnight on 14 June 2012 and is still in place.
358. On 27 June 2012, the Minister made another Requisition Order, having written to the Secretary of State of his intended course of action on 25 June 2012. In his letter, the Minister said that the PSNI had requested that the site be held under section 29 to enable effective policing in the area in the lead up to, and for a short period of time after, the Whiterock parade. The Minister went on to state that the PSNI required the land as a forward operational base for police personnel, and that this would assist them in reducing the visible police presence on the Springfield Road.
359. The Requisition Order came into effect at 15.00 hours on Thursday 28 June 2012 until 18.00 hours on Friday 13 July 2012.
360. Both these orders relate to a site on the Springfield Road which is sensitive during the parades. I have visited the site and consider that the orders are justified to provide community reassurance, to assist prosecutions, and to give the police flexibility in calibrating their response to unfolding disorder.

Section 32

361. **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 in 2009-10 and on two further occasions in 2010-11.
362. It has been used on one further occasion this year, in combination with section 29, in East Belfast, as below. Since this closure was new this year I will consider it before examining existing closures.

East Belfast

363. On 23 December 2011, the Minister of Justice, acting under the agency arrangement described above, made a Requisition Order and Road Closure Order. He wrote to the Secretary of State about this on 4 January 2012.
364. In his letter, the Minister said that following serious disturbances in East Belfast in 2011, he had instructed officials to engage with police, community representatives, and local residents, to look at the suitability of the protective measures in the area. As a result of those discussions, and with the support of the community, church officials and taking account of police recommendations, he had agreed to the installation of a fence along the perimeter of St Matthew's church. This would require the requisition of land within the grounds, and adjacent to the perimeter, of St Matthew's church.

365. Additionally, he said, he had agreed to the installation of six alley gates behind Clandeboye Drive/Cluan Place and Mountpottinger Road to prevent youths gathering and engaging in antisocial behaviour affecting the community on both sides of the interface at Cluan Place. The erection of these gates would, he said, assist the police in the preservation of peace and maintenance of order. This move required him to make Orders closing the alleyways. His officials were exploring with Belfast City Council whether they would wish to adopt the alley gates as part of their city wide initiative: if this approach were agreed he would take steps to revoke the Orders.
366. With all this in mind, I arranged to tour the entire area in August in the company of an official from the Department of Justice who also helpfully told me about the background and the discussions which had given rise to these Orders. I walked around the location of all the new works which had been carried out and then through Short Strand to its entrance by the main road into Belfast city centre.
367. The Orders concerned two sites, quite close to each other. St Matthew's church, Ballymacarrett, is located in Bryson Street on the southern side of the Newtownards Road leading from the centre of Belfast eastwards. It is in the nationalist Short Strand area, largely surrounded by loyalist housing estates in East Belfast. It was visible on news footage of the parade along the Newtownards Road to Stormont on the occasion of the Ulster Covenant centenary on 29 September. The fencing which has been installed is of robust construction and shaded in part by shrubs. From the comments I have received it is meeting its purpose and has brought welcome relief and security to the church.
368. The second Order relates to the closely interwoven residential areas south of Bryson Street, north of Mountpottinger Road and Albertbridge Road. Loyalist and nationalist areas lie cheek by jowl. The peace lines here crowd in on back gardens and yards, and the streets are connected by narrow alley ways. Missiles, including stones and glass bottles, are frequently thrown over the peace lines into adjacent areas. The difficulties of trying to live a normal life in these conditions are immediately apparent to a visitor, but they are sadly replicated across many areas of Northern Ireland.
369. I was told about the many discussions involving Belfast City Council and local residents which had led to the plan to install the six alley gates. Sectarian trouble and anti-social behaviour tend to merge in areas such as these. If the new gates bring a greater sense of security to the residents in these areas then they are justified. It remains to be seen whether community work, led by Belfast City Council, can over time bring about sufficient mitigation of the local problems to justify rescinding the Order.

Chichester Street

370. On 29 April 2010, the Secretary of State made an order directing the closure to vehicle traffic of Chichester Street, Belfast, from the bottom of the junction of Oxford Street and Chichester Street to the junction of Victoria Street and Chichester Street. The closure was made at the request of the Northern Ireland Court Service. It 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.
371. 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 and public transport.

Review and amendment

372. The Northern Ireland Office reviewed this closure in December 2011. Their decision was to keep the closure in place, on the basis of the threat level.
373. The closure order was amended in May 2012 to allow the Olympic Torch Convoy to pass along Lower Chichester Street. It was expressed in terms allowing access for *“any person who has been given permission to enter by a member of the Police Service of Northern Ireland of at least the rank of Chief Superintendent who is on duty”*. The Olympic Torch Convoy duly passed along Lower Chichester Street on 6 June.

Consultation with local interests

374. I have consulted local interests about their views on the security reasoning for the closure and its impact on the general public and others. I consulted the General Secretary of the Bar Council for Northern Ireland, as I have done in the past. I also consulted the Director, Access to Justice, at the Department of Justice, the Road Service, Translink, and a local firm of solicitors. I am grateful to all these organisations for their helpful responses.
375. The General Council of the Bar say that the closure continues to cause significant inconvenience to members of the Bar Library and its administrators. It has been necessary to make alternative arrangements which the Bar Council describe as very expensive. The Bar Council have sought compensation and have so far received a small interim payment from the Compensation Agency. Further claims are outstanding, on which the Bar Council say that progress is slow. The Bar Council feel dissatisfied with the lack of information made available to them. Since claims will continue to be submitted (on a six monthly basis) it is clearly desirable that some resolution of these claims should be agreed sooner rather than later.

376. The Director, Access to Justice, has based his comments in part on the threat level. He believes it is vital that adequate protective measures remain in place to protect the court estate and court users including the staff and judiciary. He has consulted the Lord Chief Justice who remains of the view that the continuance of this road closure is justified and does not expect it to be opened. The Director does not believe that the road closure has had any negative impact on Courts and Tribunals Service operations or the general public - if anything; it has made the area safer for pedestrians.
377. The Roads Service say that this part of Chichester Street was reopened in 2007 and formed a useful bus priority route for bus services from the city centre to East Belfast. Since its closure in 2010, these buses have had to use Victoria Street, Queen's Square, Donegall Quay and Oxford Street. The Department for Regional Development has now introduced additional bus priority measures on this route to compensate the additional journey length.
378. The local firm of solicitors say that their business continues to be inconvenienced by the road closure, particularly early and late in the day and at weekends. On-street parking or alternative facilities have incurred substantial additional costs to the firm. Overrunning meetings, court attendances and time constraints have led to overruns on the time paid for parking and hence numerous parking fines.

Conclusion about this road closure

379. It has been worthwhile, after two years experience of this closure, to review it in this way, independently from the Northern Ireland Office. The main inconvenience and cost has fallen on the Bar Council and the solicitors' firm. The public transport delays (about which a member of the public wrote to me) have to some extent been alleviated. There is strong advice from the Director, Access to Justice, in favour of keeping the road closure in place.
380. In view of what I have said elsewhere in this report, I judge that the security dimension should remain the overriding factor and that the road closure in Lower Chichester Street should continue. But it should be regularly reviewed and the views of those affected should be sought and taken account. Swifter progress in settling compensation claims would help to make the closure more palatable.

Ballykinler

381. 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 PSNI 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 past experience in the area of the camp.

382. Soon after the Order was made I visited the site and asked the police to explain the risks as they saw them. I also arranged to meet local residents.
383. I noted then 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.

Review of closure

384. I reported last year that I had seen the documents prepared in July 2011 for the annual review of this closure. Their review involved consultations with the Ministry of Defence, the PSNI, two local political representatives (the MLA and Councillor), the Ballykinler Community Association and local farmers and residents. In the meantime the bollards closing the road had been repositioned, easing access for residents and their acceptability overall.
385. The overall finding of the review, on which recommendations were made to the Secretary of State, was that it was necessary to keep the closure in place but that changes should be considered to the physical measures themselves. I agreed with both those conclusions.
386. The Northern Ireland Office told me in October 2011 that the review process was complete and that the decision had been taken that the closure should remain in place for the time being. The NIO said that the decision was based primarily on the fact that the generic threat to PSNI officers in Northern Ireland remained at SEVERE, with future attacks highly likely. That has proved to be the case across Northern Ireland, as we have seen. The NIO said that the closure was viewed as a temporary arrangement and a further review would be carried out in a year's time, or sooner if the security situation allowed (it has not).

Continuation of closure

387. The decision that the closure should stay in place is correct in my judgment.

Mitigation

388. Two issues were outstanding from this review and from my earlier comments: mitigating the effect of unsightly concrete bollards and providing signage at the closure, to the benefit of the public. I understand that consideration of an alternative means of closing the road (using moveable barriers as in the past) and the question of signage has not yet been completed. It is unfortunate that this is taking

so long. Not much progress has been made in 12 months. This is regrettable.

389. I understand that other agencies are involved, including the Roads Service and the Centre for the Protection of National Infrastructure (CPNI). They too are busy people and resources are stretched. But all these matters need to be resolved as soon as possible. If they depend on the completion of mechanisms for local consultation, that also should be sorted out without much more delay. It is good to note the amount of consultation that has now taken place at Ballykinler, sounding out local opinion as well as large public bodies with an interest.

Brompton Park, Belfast

390. Under the new agency arrangements, the Minister of Justice made an order on 8 July 2011 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.
391. The rationale of the order in 2011 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 in 2010, where trouble was caused by youths climbing onto the roofs, it was obviously sensible to deny them that space again.
392. The closure has remained in place this year. While visiting Ardoyne in early July, I looked at this closure. Unfortunately some of the disorder in Ardoyne on 12 July took place in the Brompton Park area, mainly on the ground rather than on the roofs of the shop fronts. With that experience in mind, there seems little prospect of removing this closure in the near future.

Alleyway running from Crumlin Road through to Balholm Drive, Belfast

393. On 11 July 2012 the Minister of Justice, acting under the agency arrangements described above, made a Requisition Order. He wrote to the Secretary of State advising him of his intended course of action. The Requisition Order came into effect at 00.01 hours on Thursday 12 July 2012 until 23.59 hours on Monday 16 July.
394. In his letter, the Minister said that the police had requested that the alleyway be closed under section 29 to enable an effective policing operation in the area. The Minister went on to say that the police wished to restrict access to the alleyway, which was described as a strategic point as it is often used to gain access to the shop roofs and was the seat of significant and sustained rioting in 2011.
395. This order was made after my visit to Ardoyne so it will fall to be considered in detail as part of next year's review. But since the

reasoning behind it is the same as for the closure at Brompton Park I consider it to be justified.

Asylum Road, Londonderry

396. 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.
397. I commented in some detail last year on this closure. In May 2012 the Northern Ireland Office completed their first annual review of it. I walked round it on a visit to Londonderry shortly after that.

Case for closure

398. 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. Last year I set out in some detail the arguments put forward in support of the closure, having studied the technical specifications, a community impact assessment, photographs and diagrams.
399. The essence of the case was the security threat assessment and the reduction in blast impact if there were a greater distance ("stand-off") between the VBIED and the perimeter wall of the police station. The technical reports indicated 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.

Impact of closure

400. 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. Locally, the closure had most impact on the residents of Bayview Terrace in Asylum Road, with greatest impact being felt by a Medical Practice in Bayview Terrace, in particular the loss of parking for people coming to Practice, and on professional firms nearby. In my report last year (paragraphs 260 to 277) I set out these effects in some detail and the enquiries I made of people affected by the closure. I will not repeat that analysis here but it still holds good.

Review

401. In their review the NIO consulted the PSNI and the local interests whom they had consulted originally. The PSNI were of the firm view

that the partial closure of Asylum Road continued to be fully justified. In their view, the circumstances giving rise to the initial closure had if anything deteriorated.

402. The NIO showed me a letter which had been received from the Medical Practice. This said that the closure had had a major impact on patients' ability to access the surgery. Disabled patients had a greatly reduced chance of being able to find a parking space close to the surgery, increasing the need for home visits, to the disadvantage of patients since they no longer had access to medical equipment in the Practice. The closure had also placed a strain on practice resources of time.
403. In addition to reading the results of the NIO review I consulted Derry City Council and the Roads Service (Northern Division). The Roads Service told me that the closure had not impacted on traffic management in the area. They said that the biggest impact had been on users of the Medical Practice and other businesses in the immediate area with the removal of a significant number of free time-limited parking spaces. However, up to September the Roads Service had not received any complaints about the removal of the parking spaces at Asylum Road.

Continuation justified

404. My conclusion from the NIO review and my own enquiries is that the continued closure is justified, and that the security of Strand Road police station is a major consideration with present threats. The effect on traffic flow has not been significant. But I remain concerned about the effects of the loss of parking spaces on the Medical Practice. There is not much they can do to ameliorate their situation. They seem to have had precious little help from anyone. Walking along Bayview Terrace, it is clear that with a little imagination some extra provision for parking for patients could be provided outside the Medical Practice, at limited cost.

Physical appearance

405. I also commented last year on the unattractive visual impact of large brown painted metal barriers. I am told that for reasons of cost and logistics it would be difficult to remove and replace the barriers. Of course, when they are no longer needed they can and should be removed, with logistical difficulties then being overcome and costs incurred. Otherwise they would stay there for ever.
406. But if they need to stay for the present on security grounds, which are not in doubt, and if they cannot be replaced with something more aesthetically pleasing, I believe that efforts should be made to improve their appearance. Black paint would match the permanent metal bollards round the corner in Strand Road. Even some shrubbery would soften the impact. I am not convinced that this need be a lengthy, expensive or difficult task.

407. I understand that a further review of the Order will be undertaken in December 2012 on its second anniversary. I hope there will then be some progress to report on the parking problems outside the Medical Practice and the physical appearance of the barriers.

General comments on road closures

408. I conclude this section with some general comments on road closures. On a wider view, the power has so far been used sparingly in the light of the threat profile and I expect to see continued restraint.
409. Matched against the current threats, especially to public buildings and the police, those closures in place need to be maintained as long as the threat remains at its current level. Where they represent problems relating to disorder or antisocial behaviour they are no substitute for continued efforts to tackle these problems in other ways and I have no reason to doubt that these will continue.
410. There remain two issues. The first is the need to consult as fully as possible when it is proposed to close a road, even at short notice, and to renew that consultation, as is now the practice. People can be both inconvenienced and unsettled by a road closure and will worry if they are thought to be more at risk. They need explanations, reassurance about their concerns and convincing they will not be abandoned by the system. This should be built into preparations from the outset.
411. Second is the need to do everything possible to soften the impact, in terms of local movement, access and parking and of physical appearance. In that way there is less risk that people will feel that they are being taken back to a past which they felt they had left behind. Outstanding compensation claims need resolution.

Military operations in support of the police

Nature of police and military activity

412. When a suspect object is found or reported, the police and the armed forces have to make complex assessments quickly.
413. This means, above all else, assessing the potential area of casualties and damage from blast effects, requiring immediate decisions about whether to evacuate people from their homes and workplaces.
414. Assessments have also to be made about the potential for a booby trap or secondary device and the means of detonation. This may be a “command wire” extending across open ground, or the use of a mobile telephone or radio controlled device at some distance, so as to detonate the bomb when a police officer or member of the armed forces is seen close to it. That is why the powers in the Justice and Security Act relate to “transmitters” as well as to firearms and explosives.

415. Not much of this is likely to be clear from quick visual inspection. Hence the need for what are called “advanced search” operations and Explosive Ordnance Disposal (EOD) activity, the latter being conducted by Ammunition Technical Officers (ATOs). All these people are members of the armed forces acting in support of the police and, where necessary, using powers in the Justice and Security Act.
416. The military authorities have provided me with detailed schedules showing the extent of their response to call outs from the police for military support. Some of these operations have this year, as in the past, extended over several days and have involved extensive access to private land using the powers under sections 23 and 24 and schedule 3.
417. **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 2011 to 31 July 2012.**

Extent of activity

418. Following the format first used last year, Table 4 gives statistics for each month of the reporting year. These are shown separately for live devices, explosions, hoax calls, false alarms, incendiary devices and finds of explosive materials. The totals for each month are shown in bold in the column on the right.
419. The number of call outs this year was 327 compared with 444 the previous year, a reduction of 26%. But the number of finds of firearms and explosives is slightly higher this year, at 144 compared with 142 last year. The number of explosions is also broadly unchanged – 16 as against 17 last year.
420. The major falls in the statistics have been in responses to hoax calls (down from 132 to 70, a fall of 47%) and false calls (genuine calls but not revealing a device, down from 81 to 44, a fall of 46%). So the falls in call outs relate to reports and calls from the public, either hoax or genuine, rather than in actual terrorist activity.
421. The monthly range of call outs was from 16 in December 2011 to 39 in May 2012. The pattern of activity has been broadly even across the year, with a peak of hoax calls in March 2012 and false calls in January 2012.
422. The numbers of EOD call outs are of a different order from police stops. This is to be expected, since the activity concerned is different in nature, but all the EOD calls out are requested by the police, who have the operational control of the incident.

Schedules of Army activity

423. 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.
424. For some of the most serious incidents, the armed forces have provided me with full dossiers, including photographs of the incident scene and of the device itself. The dossiers show additional information about how the EOD operation developed, the timetable of events and the liaison with the police, both at the time and in terms of the ensuing criminal investigation.
425. I have read these EOD schedules in full detail. They make sober reading. What they show is that large amounts of dangerous materials are being found across Northern Ireland. Some of this material, including long-barrelled firearms and pipe bombs, has been left in public spaces where children might play.
426. The range and sophistication of the underlying planning revealed in these documents is also significant. These schedules are about actual terrorist activity, not intelligence. The geographical spread covers all eight police districts, with implications for the new authorisation process.

Nature of the military response

427. 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. I have received fewer adverse comments about the speed of response this year.
428. 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).

Need for military response

429. The police do not have the resources to deal with bomb incidents and are reliant on the armed forces for this specialist technical support. 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 reporting year and is likely to remain so throughout the

current year. I see no scope for any change in the profile, pattern or scale of this activity.

Case study: Fathom Line, Newry 26 April 2012

430. Fathom Line is a residential road running alongside a waterway from Newry to Carlingford Lough. The surrounding area is forested. Where the waterway narrows the road crosses the border into the Republic of Ireland. Fathom Line's pleasant amenity makes it a popular recreation area for walkers.
431. At about 2 pm on 26 April 2012, a member of the public was walking along Fathom Line when he came across a white Citroen Berlingo van parked at the side of the road, about 200 metres north of the border with the Republic. Its engine was running. On returning along the road at about 5 pm he saw the van in the same place, still with its engine running. He looked into the van, became suspicious from what he saw in the front of the van and decided to call the police.
432. When the police arrived they were able to confirm that these suspicions were well-founded. They therefore evacuated houses nearby and tried to contact local councillors and community representatives. In liaison with An Garda Siochana they closed the road at the border. They cordoned off the scene to prevent access through the forest, contacted the EOD team and arranged for them to examine the vehicle at first light next day. The powers in the Justice and Security Act were used to gain access to private land.
433. The vehicle was found on inspection by EOD to contain some 600 lbs of explosive and was fully primed. The police have estimated that if detonated it would have killed anyone within 50 metres and seriously injured anyone within 100 metres. It was twice as big as the bomb which exploded outside Newry courthouse on 22 February 2010. A senior police officer said: *"This was a sophisticated device. A lot of thought had gone into its construction. Clearly, it had been worked at for some time by people with murderous intent"*.

Case study: results of searches carried out under the JSA

434. The PSNI have this year produced, for the purpose of my review, a summary of the main results of search activity carried out under the Justice and Security Act. This is a welcome initiative and links operational activity with outcomes. I have set it out below. It does not mention specific dates, operations or arrests because of ongoing criminal investigations and forthcoming prosecutions. The PSNI report is as follows:

"PSNI have actively used the search powers under the Act, resulting in the seizure of hand held IEDs, a large pipe bomb style device, both viable and replica firearms and various component parts of explosive devices, including not only explosive compounds but also timer units,

pipes and end caps. During these searches radios and mobile phones were also recovered. DPM (Disrupted Pattern Material) clothing (ie camouflage clothing) and other related items were also recovered during the use of the powers and seized under other legislation. These recoveries are now part of ongoing investigations”.

Planning for public order situations

The profile of public order incidents in 2012

Policy and legislative context

435. Governments have regarded public order as a central focus of the Justice and Security Act. 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. The police 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.
436. 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.
437. Examples would be the need to stop and question people moving around in the vicinity of a parade. If there is the possibility that firearms may be used in the course of disorder, whether associated with a parade or in some other context, the powers to search for weapons may be needed. These could apply to individuals, premises or vehicles. Under the Act, these powers may also be used in conjunction with military support, if the police consider that to be necessary.
438. My comments are based upon my observation of significant parading events during the summer months and discussion with many interested parties. I have commented in the past that significant parades, and the intricate and elaborate discussions which precede them, 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.
439. Unfortunately, ordinary members of the public and police officers are caught in the middle of these competing pressures. All these factors have been in play again this year, with regrettable results in late August and September.

Requirements on the police

440. Police strategies for parades and marches are designed to meet two objectives. The first is to ensure compliance with determinations of the Parades Commission. The Parades Commission's website says: "*A Parades Commission determination is a legally binding document and defines the legality of a parade. Any action which breaks the law is a matter for the PSNI*".
441. The second objective of police strategies is to plan to preserve public order both as a parade takes place and in the aftermath of a parade, either immediately after it has taken place or in the hours and days following. During a contentious parade, the police have to assume that crowds may gather, intent on creating violent attacks either on other crowds or on the police themselves. Experience has shown that these crowds may provide the cover for firearms attacks. In a fast-flowing situation, the Justice and Security Act powers may be required to search for firearms and explosives.

Drumcree

442. I observed the Drumcree parade in Portadown on 8 July. I listened to the police briefing in the Silver command suite at Mahon Road PSNI station in Portadown and toured the area with police officers. I watched the parade as it went past the Catholic chapel on the Garvaghy Road, where I talked to members of the public gathered on the footpath outside the chapel, in the company of the priest.
443. Thereafter I observed the parade leave the Church of Ireland church on Drumcree Hill and, in gathering rain, wait at the police cordon restricting them from marching down the Garvaghy Road back into Portadown, until they dispersed at their chosen time. I spoke at length to some of those who had taken part in the parade and am grateful to them for taking the time to share their perceptions about the event, its significance to them in terms of historical tradition, and wider issues to do with parades. I also spoke informally to police officers at the police cordon.
444. The Drumcree parade used to be a focus for intense violence. Local residents told me of the major impact in the area which the parade used to cause, not least the upheaval consequent upon the deployment of large contingents of armed forces and police. This year 35 police officers were deployed in E District to police the parade.
445. The event was dignified and low key, if somewhat formulaic. There was no disorder on the day, although there were isolated incidents of street violence in Portadown over the summer weeks. Even though some issues over the Drumcree parade remain unresolved, the progress made in recent years has been very significant, reflecting credit on all concerned.

Belfast: Twelfth of July

Context

446. The main problems in the Twelfth of July parades in Belfast occur when the parades return up the Crumlin Road, usually 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.
447. 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 armed attacks on the police.

Visit and observations

448. Shortly before the parade this year, I spent a day informally going round North Belfast, spending some time in Ardoyne and inspecting the road closures at Brompton Park to which I referred at paragraphs 258 and 259 of my report last year. I also met community and church leaders, including some who had helpfully offered me views last year. People offered me comments relevant to every aspect of policing strategies, not confined solely to parades or to police powers. It was also clear that many people had spent countless hours since the previous year attempting to bring reconciliation to the area so as to ensure that the parade passed off peacefully with respect for the human rights of all those concerned. Nevertheless it was apparent that there remained unresolved tensions.
449. I spent most of the 12 July itself at PSNI Headquarters, from early morning until the evening, in frequent discussion with the Chief Constable and other senior police officers, including at one point the District Commander for North Belfast, and members of the Policing Board. From a Command suite at PSNI headquarters I observed the return parade, at its earlier time this year, together with protests from various local groups.
450. The Command suites provide a strategic overview for managing large public events and scenarios such as parades. They are configured so that partner agencies (such as Belfast City Council and the Northern Ireland Fire and Rescue Service) can be quickly consulted as necessary about operational decisions, based upon a common information picture. Multi-agency centres of this kind are in my judgment essential to ensure an effectively co-ordinated response, such as the rapid removal of a burning car in close proximity to houses and a crowd in Ardoyne in the early evening.

Sequence of events

451. There was a new sequencing and configuration of events this year, presenting challenges which did not end after the truncated parade had passed through before the 4 pm deadline specified in the Parades Commission's determination. These challenges included the familiar need to keep rival groups apart in the area outside the Ardoyne shop fronts, which had the potential for sectarian violence. In the course of this disorder, water cannon were deployed. Six AEPs were fired in the course of the day.
452. The police came under attack from bricks, bottles, other missiles and petrol bombs from both loyalist and nationalist areas. In the Brompton Park area, where there was significant disorder, metal scaffolding was ripped from a nearby building and a parked car was set on fire and pushed by youths towards the police line. It was moved into the side of the road by a police landrover and made safe by officers of the Northern Ireland Fire and Rescue Service. In the course of the day's disorder 20 police officers were injured.
453. Subsequently, in the evening after the parade had concluded, some 10 shots were fired at police officers, described by the Secretary of State on 16 July as *"nothing less than the attempted murder of police officers"*. On 13 July, there was posted on YouTube a 23 second clip claiming to show footage of a gunman firing towards police lines from within a crowd gathered at Brompton Park. The clip shows the gunman crouching and moving backwards along a footpath as he opened fire. The PSNI indicated that they would be examining the footage.

Assessment of police operation

454. On 13 July, the Chief Constable said that the PSNI *"would be bringing many people to court in the days that follow"*. That has proved to be the case. Some of these people come from outside Ardoyne and from outside Belfast. They are now subject to the judicial process. One person has been charged with the attempted murder of a police officer.
455. The police strategy was to facilitate the parade in accordance with the Parades Commission's determination and to prevent disorder. This involved the deployment of a range of police resources, from community police officers through to officers with full personal protective equipment. This is always a difficult issue, on which many people have offered me comment this year.
456. After much discussion with police officers, I am satisfied that they are well aware of the negative effect which deployment of fully protected officers can have, not least its potential to be used by those fomenting disorder to provoke antagonism and excuses for incitement. That has to be balanced by the risk to the lives of police officers, as shown in the use of firearms in this case, with the potential to engage powers in the Justice and Security Act as operations develop.

457. As an indication of the close interconnection between events in different areas in Northern Ireland (which has implications for the new authorisation regime discussed to earlier) petrol bombs were thrown on 12 July in the Westland Street area in Londonderry and at the city's walls, and cars were set alight in Fahan Street in the city. In Craigavon, a bus was hijacked in the Drumbeg estate.

Other disorder

458. Street disorder over the summer months occurred at other times this year. Nine police officers were injured in disorder near the Broadway roundabout in West Belfast on 26 June. Four police officers were injured when bottles and fireworks were thrown at them in East Belfast following the annual Somme commemoration parade on 2 July. Petrol bombs and missiles were thrown at police in the Galliagh area of Londonderry over several nights in July. There were sporadic disturbances in Lurgan and Portadown.

Londonderry: 11 August

Observation and sequence of events

459. The Apprentice Boys of Derry parades, this year on 11 August, falls outside the reporting year but I shall comment on it here so as to give a fuller picture of the main parades. It attracted over 10,000 marchers and 5,000 supporters and 120 bands. Because these people travel from all over Northern Ireland, the police plan the day as a Province-wide operation. The major co-ordination for the parade in Londonderry is in the Gold Command room in Strand Road police station. I observed preparations from the Gold Command room as the bands assembled, and read through the police Operational Order, a clear and well-prepared document some 195 pages long, governing the activities of the 789 police officers – over 10% of the entire strength of the PSNI – on duty in the city that day. I then toured the city centre in the company of the Gold Commander.
460. As the parades approached the historic centre of the city, The Diamond, I joined senior members of the Parades Commission and the Policing Board on the ground. Crowds of onlookers were smaller than in the past and were well-behaved: the police were able this year to dispense with the high perspex barriers which in previous years have been used to separate spectators and marchers.
461. I then moved onto the walls and looked over to the Bogside, where I saw the peaceful scene of a children's recreational fair, but also groups of youths and children preparing petrol bombs under the direction of adults whom the police believed to be dissident republicans. My walk back to Strand Road PSNI station took me through Guildhall Square, where a large screen was showing the Olympic Games. Throughout the day I spoke informally to police officers at various points in the city.

On return to the Gold Command room, I observed the final stages of the parades.

462. The parades passed through with no disorder. In the evening, after the parades had dispersed, petrol bombs were thrown, but the damage was small and there were no injuries to the public or to police officers. The next evening (12 August) up to 30 young people attacked vehicles with petrol bombs and other objects in the Bogside. No injuries were reported. The police said that they liaised with community representatives and the area was calm around midnight. They also said that there were only a few disturbances over the course of the weekend, which were contained, and that these actions were carried out by a very small minority.
463. There was however linked violence in the Ardoyne area of Belfast earlier in the day, associated with the passage of a feeder parade on its way to Londonderry.

Assessment of police operation

464. The police planning is the culmination of a year's work in which many public, social and community interests have a vital role to play. Direct face to face engagement between senior officers and others with a significant role to play is now well established.
465. Even so, the best of preparations can be damaged if tensions are aroused for any reason, whether related to issues such as a particular prisoner in custody or uncertainty and mistrust arising from a particular operational incident, as was the case this year. But the overall direction of the planning police operation gives rise for confidence about planning for next year.

Community opinion

466. Stepping back from the detail of all this, I should record that I spent some of the afternoon in detailed discussion with local community and church leaders, and with representatives of the commercial community in the city. Again, as in Belfast, these were wide-ranging discussions not confined to police strategies. I am very grateful to these leaders of opinion in Londonderry who have so freely again this year given me of their time, enabling me to hear first hand about issues of concern to both nationalist and loyalist communities. Their optimism and enthusiasm about various cultural events next year, which are significant for all sections of the community, represent an encouraging sign of progress towards normality.

Other parades and incidents after the end of the reporting year

467. On a darker note, there was some disorder following a parade through Rasharkin on 17 August, as a result of which four arrests were made. Incidents included assaults on police and public order offences.

468. Disorder accompanied the Royal Black Institution's parade in Belfast on 25 August, in the course of which seven police officers were injured dealing with street fighting in the area of St Patrick's church, Donegall Street. There was renewed disorder in the area over succeeding days, in which the police fired AEPs and deployed water cannon. Some 60 police officers were injured over the period to 5 September. This was the most serious disorder seen in Belfast this year, requiring substantial police resources and generating much public comment.
469. The parade in Belfast on 29 September to commemorate the centenary of the signing of the Ulster Covenant passed off peacefully, with some minor disturbances. There were no injuries to members of the public or to police officers.

Judicial comment

470. I should record one further significant development which may bear upon future planning for parades. In a recent judgment relating to charges arising from the disorder in July 2011, the Recorder of Belfast indicated the seriousness with which the courts would now deal with violent disorder associated with the parades. In the course of his judgment, the Recorder said:
- "The offences that bring the defendants before the court occurred when widespread violence was occurring in the City...huge amounts of damage were caused; police officers lives put in danger through the use of petrol bombs and other missiles; injuries were caused to police officers, scarce public funds were expended on policing and on clearing up; ordinary citizens were restricted from going about their every day lives; and businesses were adversely affected by closing early."*
471. This judgment has important consequences for police strategies, since it points strongly towards the likely need for evidence, especially about firearms, as in Ardoyne on 12 July, in which the powers in the Justice and Security Act may be required. If, despite best efforts, violence occurs, the criminal justice strategy should be followed, based on arrest, charge and prosecution.

Conclusions from this year about police public order strategies

472. I base these conclusions on my observation of public order operations, from discussion with many parties, and from other independent views such as those quoted above. I have commented in the past on these matters and do so again this year because of the disorder and violence in August and September.

Control over events

473. The police are correctly planning to handle major public events with a light touch where possible while having in mind the possibility of

disorder, whether indicated by intelligence reports or provoked by inflammatory public comments in advance. Comparison of various police strategies for set piece parades this year demonstrates the importance of ensuring that the police keep control at all times.

474. In most cases that has been done effectively but on occasions police operations have not achieved everything expected of them. Some of the comment I have received has been critical of the police in this respect. This has happened when disorder has occurred unexpectedly, usually in response to external factors over which the police have no control or limited information. Where police-community contacts are strong, there is less risk that events will take an unpredictable turn or spiral downwards quickly.
475. The greatest damage, not only to people and property but also to local confidence and sense of security, arises when control is lost and the initiative passes to others whose intentions or motives may be malign. When that happens the legacy of a bad day can blight community engagement for many months, setting back the tireless efforts of many local people.
476. Maintaining control requires a combination of effective strategic and tactical planning over a long period and the deployment of sufficient resources of manpower and equipment on the day (or over a few days). Having sufficient resources available does not imply their deployment. Strategies need to be predicated on the minimum use of force, deployed with discretion as events unfold.

Police strategies: briefing and flexible command

477. Equally important is the comprehensive briefing of all officers deployed (taking particular care to ensure that officers coming from outside the area are fully aware of local sensitivities) and consistent but flexible command at the respective police levels (Gold, Silver and Bronze).
478. Police planning at the top level must facilitate quick interplay between all these levels, including rapid assimilation and assessment of intelligence and comment on the ground, both from police officers and from community contacts. An example would be emerging information about plans to throw pipe or petrol bombs which requires rapid tactical decisions, both at senior levels and by officers on the ground, or the rapid formation of a crowd moving quickly into a position where it could attack other crowds or the police.
479. Police strategies for contentious parades must anticipate disorder, and disorder can be a cover for attacks involving firearms. Senior police officers told me this year that there was a very real prospect of such attacks, and indeed that is what happened in Ardoyne on 12 July.

Police tactics

480. Senior officers have also explained their tactical approach in some detail to me. They see the value of deploying in close formation units which have trained together, and also the value in multi-unit training to ensure that police officers can be deployed quickly and in sufficient strength if trouble looks imminent.
481. Water cannon were regularly deployed to keep crowds apart and back from police lines, thus reducing the danger that missiles from one crowd would reach another or that gunmen would get close to police under cover of the crowd.
482. There was some limited use of AEPs - 6 on 12 July and 6 on 3 September. Their use in particular situations is examined by the Police Ombudsman and I make no comment on individual cases where they have been used. But as a general tactic I judge that AEPs should be deployed only when absolutely necessary, which is the required threshold in police operational orders. Connotations with past scenarios and tragic incidents still resonate. I have no such concerns over the use of water cannon.

Mutual aid from other United Kingdom police forces

483. As in previous years, there was no role this year for the deployment of military assets in public order situations, other than the contingent availability of Ammunition Technical Officers and advanced search officers. I understand that the police intend to keep to that position, which I think is the correct one. As a United Kingdom police force, they have available the potential to draw on mutual aid arrangements with other police forces and the support of Her Majesty's Chief Inspector of Constabulary and the Association of Chief Police Officers (ACPO).

Concluding assessment

484. The calmer atmosphere at some difficult flashpoints this year, and the reduced violence, has to be set against the emergence of new focal points for disorder. Future planning must assume that those provoking them will want to see repeat performances in the future, or provoke similar incidents elsewhere, and will seek to exploit them as opportunities for violence. With some reservations, police tactics have in general been commended, including comments from quarters previously critical of police operations.
485. More broadly, some people have commented to me that for the most part Northern Ireland is now free of the violent disorder which so frequently disrupted ordinary life, frightened communities and disfigured localities. They lay stress on the fact that incidents are isolated and confined to a few predictable locations and that the enormous amount of community working through the year has generated a shared momentum of success.

486. That is largely the case and is greatly to be welcomed. But events in late August and September came as a nasty reminder that much of this hard-won progress is fragile and that the police must remain prepared to anticipate disorder, however unexpected, and to respond as events unfold. The test is whether political and community resilience is now sufficiently robust for matters to be put back on track next year – largely down to other actors, not to the police.

Part 6: Military Complaints Procedures

Introduction

487. 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. It was not affected by changes to the Justice and Security Act made in the Protection of Freedoms Act. 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.
488. 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

489. The role of the armed forces in Northern Ireland now is very different from what it was before 2007. 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, although this year there have been some reminders of difficulties in the past.
490. 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) Brigade 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.

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

491. 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.

492. 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 and Belfast City Airport because of the dual use of the airstrip at Aldergrove. The Air Traffic Control at Belfast International Airport has command of the skies over Aldergrove, and military aircraft must comply with its instructions, just as civilian aircraft have to do.
493. 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”.

494. I have quoted this message in full because not every complainant is able to provide information to this level of detail. This can be a source of difficulty in deciding responsibility for the aircraft or helicopter in question. There was a problem last year about establishing with certainty whether the aircraft or helicopter in question was a military one. This has persisted, although the issues about liaison with other authorities have improved this year. From the complaints this year it is clear that even where the complainant has little specific information he will nevertheless expect his complaint to be followed up. That has implications for record keeping about military flights.

Compensation claims

495. If a claim is made, the complaints procedure stops. The case then passes to the Common Law Claims and Policy Division (CLCPD) in the Ministry of Defence in London, who administer the claims process, dealing with all claims and continuing to use loss adjusters. CLCPD provide a central focus and provide linkage into the reporting of the incident.
496. A full investigation of this kind will involve HQ 38 (Irish) Brigade staff, the Unit concerned, possibly the Civil Representative, Chief of the Air Staff (CAS) and CLCPD, leading to the complaint being resolved. When this happens, the staff concerned in CLCPD copy their reply to HQ 38 (Irish) Brigade for audit purposes. In one case this year HQ 38 (Irish) Brigade staff had to chase CLCPD for their reply, so that there was a delay of three months before action on the case was complete.

497. I have no formal role in this process, but I note for the record the outcome of the single case this year where compensation was paid as an ex-gratia payment (without admission of liability) relating to the death of a mare at horsebreeding stables following a flight of a military Tucano aircraft. The compensation claim process itself worked effectively in this case.

Statistics

498. The number of cases this year has continued at a low level compared with a few years ago. There were 12 cases in the year under review.
499. This total of 12 compares with 8 in 2010-11, 56 in 2009-10 and 124 in 2008-9. An increase of 50% on such a small sample is not statistically significant although I have looked carefully at the reasons for it. Of the 12 complaints this year, 8 were classed as formal and 4 as informal. The number of formal complaints is a higher proportion this year compared with last (67% compared with 38%), representing an increase from 3 to 8 in the number of formal complaints.
500. 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. As with complaints in other fields, it is right to offer informal resolution where this may meet the complainant's wishes, but it should be offered once only and the formal route should be pursued as soon as it is clear that that is what the complainant wishes.
501. Both formal and informal complaints require proper and effective investigation and resolution, even where the initial information is unclear, incomplete or impressionistic. 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. One complaint had the added dimension of a perception by the complainant of incivility on the part of a member of the armed forces who was not connected with the complaints process.
502. Table 5 shows the total of formal aircraft and helicopter complaints from 1 January 2007 to 31 July 2012. Table 6 shows informal aircraft and helicopter complaints for the same period. The major reduction in complaints over this period of five and a half years is clear from these tables.

Analysis of the case files

Origin of complaints

503. HQ 38 (Irish) Brigade provided me with the folders of all 12 aircraft and helicopter complaints from 1 August 2011 to 31 July 2012, which I reviewed in April and September.

504. Two complaints this year came in via a Member of the Westminster Parliament. Four came in direct to HQ 38 (Irish) Brigade HQ staff, either by email or by telephone. Four came in via the Civil Representative and one after contact with the police. One complaint came in via the Ministry of Defence Duty Officer. As before, the Civil Representative has continued to play an important role in the handling and informal resolution of aircraft and helicopter complaints, in particular in advising the complainant on the available avenues for investigation.

Nature of the complaints this year

505. All but two of the complaints this year related to helicopter flying, one concerning a Tucano aircraft from RAF Linton in England on a training flight and the other a flight by two Tornados of 12 Squadron RAF from RAF Lossiemouth in Scotland.
506. Six complaints related to the nuisance arising from noise disturbance, three involved horses (either on farms or being ridden), two others livestock (breeding of game birds) and one alleging dangerously low helicopter flying.
507. One case diversified beyond a complaint about aircraft flying to whether a member of the armed forces had been rude to a member of the public on the telephone. The complainant reported the matter but did not comment on it. It was rightly picked up by the HQ staff and fully investigated by senior staff. There was no telephone record so it is not possible to establish what was said.
508. I make two deductions. The first is a constant reminder of the need for total courtesy in every interaction between officialdom and the citizen. The second is to commend HQ staff for their recognition of the potential damage of ill-considered comments on the telephone, in this case by someone remote from the complaints process, and their prompt attention to the matter.
509. The geographical breakdown this year covers West Belfast, Ahoghill, Antrim, Ballymoney, Banbridge, Carrickfergus, Limavady and Portglenone.

Case recording

510. The procedures for recording a case and keeping track of it are now well established. When a complaint is received by the HQ 38 (Irish) Brigade staff it is formally opened in a file (now headed MoD Form 174D), with a brief indication on the cover of the nature and date of the complaint and the name of the complainant, 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.

511. This checklist includes whether or nor 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 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.
512. The replies which are received are then used by the HQ 38 (Irish) 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 HQ 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. This has been a problem in one or two cases this year, as I comment below.

Case handling

Results on target period for reply on formal cases.

513. The target period of three weeks from the date of receipt for the despatch of a reply was met in six of the eight 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). Two of the six cases therefore did not meet the three week target. I comment on them specifically below.

Cases meeting the 15 day target.

514. In three of the six cases, HQ staff sent off final replies within the 15 day target.

Cases meeting the 15 day target but where completed resolution was delayed.

515. In three of the six cases where HQ staff met the 15 day requirement, delays elsewhere meant that final resolution, in terms of what the complainant was eventually told, took longer than 15 days.
516. The first of these cases was the compensation claim referred to above. It originated on 3 August 2011 and it soon became clear that it was likely to involve a claim. The complainant was therefore told on 8 August that the case was being referred to the Common Law and Complaints Division (CLCPD) at the Ministry of Defence. An offer of

settlement was made by CLCPD on 27 October, the claim was settled on 4 November and a payment was made.

517. But CLCPD did not copy their reply to HQ staff in Northern Ireland, which was only revealed in a file review in February. A final letter was sent by HQ staff to the complainant on 28 February. All the action in relation to the complainant was dealt with satisfactorily, but an administrative oversight in London (for which an apology was offered) led to the three-month delay before the complaint was finally closed off.
518. The second and third of these cases involved correspondence from Members of the Westminster Parliament and were dealt with according to the procedures for such cases.
519. In one case, the letter from the MP was dated 26 January, relating to a complaint from 18 January, and was addressed to the Ministry of Defence at Lisburn and received on 30 January by HQ staff. They started off enquiries the same day from the Flying Station, who in turn liaised with the police. Staff at HQ 38 (Irish) Brigade contacted Army Headquarters on 9 February, well within the 15 day limit, offering a draft reply for the Minister for the Armed Forces, which was sent forward. There is no indication on the file as to what happened after that.
520. In the other case, the letter from an MP was dated 10 May and was sent to the Secretary of State for Northern Ireland. It referred to complaints about low flying military helicopters but was not specific about dates. It was then passed to the Ministry of Defence. On 31 May HQ staff were asked to see if the complaints related to two specific dates (at the end of April) and after contacting the Flying Station at Aldergrove replied that there were no such flights on those dates.
521. The Minister of State for Defence Personnel Welfare and Veterans replied to the MP on 6 June, asking for more details. On 18 July, HQ staff prepared a further letter for the Minister of State to send to the MP. In this case, the HQ staff completed action very quickly, but the involvement of several other players meant that a final reply was not ready until nearly 10 weeks after the date of the MP's letter.

Cases not meeting the 15 day target

522. The two complaints which did not meet the 15 day deadline related to the same incident. They were received at 10.30 on the morning of 20 October, complaining about helicopter noise late the previous evening. HQ staff referred the cases an hour after they received them to the Flying Station Aldergrove. They also sent off an acknowledgment to the complainant the same day.
523. In the absence of a reply from the Flying Station Aldergrove, there then ensued a correspondence between the two units which concerned points of fact (which airfield was involved, the precise timings, and

whether the helicopter had landed at all). The cases had meanwhile come to the attention of a local MLA and had reached the local press. An interim letter was sent to the complainant on 11 November and a final reply on 24 November, some 11 days late.

524. The helicopter in question was an RAF Puma on a training flight from RAF Benson in England. Its departure back to Benson added another link in the chain to establish what had occurred. It also became apparent that the flightcrew concerned were operating on GMT (Greenwich Mean Time) rather than BST (British Summer Time) which raised the question whether they had ceased flying by the specified time of 23.00. Furthermore, we know from the past that the noise of a Puma aircraft is easily recognised in Northern Ireland and can arouse feelings of anxiety or resentment in some quarters. All these factors played a part in this case.
525. Engagement with the complainants showed that their attitude was understanding and reasonable, and the final letter from the Ministry of Defence extended opportunities for further discussion if requested by the complainants.

Files

526. The quality of file-handling this year has again been generally good and I have found no errors. The audit trail has been clear in every case although changes of personnel at the Flying Station, Aldergrove, involving shift patterns, periods of annual leave, and redeployment out of Northern Ireland, together with the involvement of various Ministry of Defence units in Great Britain, mean that the precise sequencing of action has been more complex than last year.
527. In most cases, but not all, the outcome of each complaint has also been clear and the follow-up work has been fully documented. The checklists at the front are well maintained and show quickly and clearly to anyone picking up the file what action has been taken and where the case lies. The HQ staff who “own” the complaints case procedures have maintained vigorous oversight and meticulous attention to detail. Comments on the files show their recognition that the Independent Reviewer will read all the files in detail.

The quality of the complaints process

528. The formal commitment of the Ministry of Defence to an effective complaints system was made clear in the letter of the Minister of State for Defence Personnel Welfare and Veterans of 6 June mentioned above. He said:

“The Ministry of Defence have an established complaints procedure regarding helicopter complaints within Northern Ireland. Each complaint is taken seriously and officially registered in the records that we keep of such occurrences. These are scrutinised by the Independent Reviewer

of the Justice and Security (Northern Ireland) Act 2007 in his capacity of reviewer of military complaints”.

529. My enquiries relate to the “procedures” – a word used five times in section 40 of the Justice and Security Act. Hence my focus is on the quality of the complaints investigation machinery and, in particular, on the quality of the outcome as perceived by the complainant. I am less concerned with the underlying activity giving rise to the complaint but have offered comment on that where I think it appropriate.
530. Part of this concerns case handling, as above. This reveals considerable information about the extent to which all those involved in this work in the Ministry of Defence, for whom the Minister is accountable in the terms quoted, are working to give substance to what the Minister claims in that letter.
531. At their best, these procedures are excellent. The staff at HQ know the importance of maintaining a high standard. They understand that this is significant both for the individual complainant and for the credibility of the armed forces in Northern Ireland, recognising that whereas many people have come a long way in terms of acceptance, not everyone has felt able or been willing to make that journey.

Some comments on files

532. Concerns about the impact of their operations on the ground were exemplary in most cases, shown in several cases this year in comments from flightcrew about their awareness of sensitive locations (such as game-bird rearing establishments in spring and early summer) and careful attempts to avoid them.
533. In some cases, as was made clear this year, the requirements of Air Traffic Control at Belfast International Airport and Belfast City Airport give them little room for physical manoeuvre. And in others, disputes about whether a military aircraft was flying dangerously low, landing where it should not, or flying below a certain height, may not really be capable of finite resolution.
534. Some comments on the files suggest that not everyone involved in the Ministry of Defence, whether at operational or administrative level, fully comprehends the need to complete enquiries quickly to enable a full reply to be sent. This is understandable in one sense: the armed forces have a job to do which has a harder edge to it than most people recognise or some people feel comfortable about, and the core of their task involves skilled professional operations requiring absolute focus.
535. But speed, accuracy, and full information are the basis of an effective complaints system under the arrangements in the Justice and Security Act. I am satisfied that the staff at HQ 38 (Irish) Brigade are fully aware of the importance I attach to this and make best efforts to meet my expectations.

Importance of perceptions

536. What matters above all is the perception on the part of the complainant, both at the start and at the end of the process. That is true of any complaints procedure in the public service: it is doubly necessary in Northern Ireland, where complex history, hostility and suspicion remain intertwined.

Replies to complainants

537. Analysis of the procedures is only half the story. The other half is to look at the outcomes. Is the procedure robust enough to deliver the results expected? How many complaints were substantiated?
538. Much depends on the quality of the flight records held by the Flying Station. These are generally sufficiently detailed to verify or deny claims of a particular flight at a particular time on a particular day in a particular location. It is a commendable practice to give the complainant the benefit of the doubt and cast the net more widely than the specifics of the complaint.
539. Usually an answer one way or the other is forthcoming quite quickly. Where the results contradict the complainant's story it is an equally commendable practice to see whether the two stories can be reconciled, for example by checking the flying records more widely or asking the complainant to check their recollections of the time of the alleged incident.
540. Finally, there is the option of asking the flightcrew for their recollections. This may not always be possible if there is a lapse in time between the event and the lodging of the complaint. In some case the flightcrew had been deployed to Afghanistan in the meantime and were understandably preoccupied with their new operational duties.
541. Formal replies were sent by HQ staff to five of the eight formal complaints. There is no record of the replies (if any) sent from elsewhere in the Ministry of Defence in the other three. 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 case where compensation had already been paid, an apology was also offered.
542. 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. Reference was also made to the assistance of the Civil Representative in cases where the complainant was known to have contacted the Civil Representative in the past.
543. Four 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. Three of

them reflect understanding of the realities of helicopter activity in Northern Ireland which reflects great credit on the complainants, who had good cause to complain.

544. The last case was incapable of resolution because the initial phone call was very vague. Despite repeated attempts, including dialling ingenious variations on the phone number given, the caller could not be traced.

Section 40(6) review

545. Where issues have arisen on the files, I am satisfied that they have been resolved before the case was completed. On the basis therefore of my reading of all the case files, and discussion with staff, both at the HQ 38 (Irish) 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.

546. ***Conclusions about helicopter and aircraft flying***

Notice about flying

547. One complainant this year said that she expected that the Flying Station Aldergrove should have contacted her with detailed information about flying times. The incident related to the arrival of RAF Tornados for Armed Forces Day, the noise of which distressed three horses. The Flying Station Aldergrove said that information about the arrival of the Tornados was given on the Aldergrove website.
548. That was the correct procedure: I do not think it would have been reasonable to expect that a personal contact call should have been made to this particular person. The circumstances did not suggest that there were reasons to do so.
549. It would be technically feasible of course to set up a text messaging system to listed individuals giving precise information of the kind suggested by the complainant. The costs of setting up and maintaining such a system would need to be assessed against the potential demand for it. The pattern of complaints this year does not suggest that lack of notice has been an issue: the complaints have been about the noise itself rather than its sudden or arbitrary nature.
550. But there is a more important difficulty. I judge that the Ministry of Defence would be reluctant, for the reasons set out on the Aldergrove website, to give information about flying times and locations in more detail, in which case there would be little gain over the current website notification. I am therefore not persuaded that the case for a personalised notification system is realistic, but it is an idea which might have merit for the future, depending on what happens to patterns of flying.

551. Sampling the Flying Station website on one occasion, information was given that the flying times for all seven days of the week were 12.00 to 23.59. It at least had the advantage of indicating a clear period in the morning. Unfortunately the information related to the previous week. That was not helpful. I have said in the past that it is important to keep website information up to date.

Communications strategies

552. Last year, I described the information on the website for the Flying Station at Aldergrove. This has changed little this year and there is no further comment I need make on it for now. It needs to be kept up to date, as noted above. Nor do I need to add to what I said last year about the communications strategies of the Ministry of Defence.

Making sure the complaints system remains effective

553. I said last year that the current reduced number of complaints was no reason to let up on investigating them all effectively. That cannot all be done by the HQ staff – they are dependent on others to play a part, both at operational level and elsewhere in the Ministry of Defence.
554. The Minister has said that each complaint is taken seriously. It will be important to keep things that way.

Part 7: Conclusions

Preliminary

555. **These conclusions relate to the fifth full year of the operation of the Justice and Security Act, from 1 August 2011 to 31 July 2012. As before, they are based solely on the review activity described in the text above.**

The security profile

Introduction

556. **The terrible murder of a prison officer, David Black, came after the end of the reporting year but has cast a sombre shadow over my assessment of the security profile.**
557. **Many people had up till then expressed cautious optimism that the terrorist threat was no worse than last year and was being more effectively contained.**
558. **I make that broad judgment on the basis of the extensive comments which I set out in Part 2. These include comments from the two successive Secretaries of State, the Minister of Justice, Lord Carlile, David Anderson QC, and the Chief Constable.**
559. **My judgment also reflects comments from the political parties in Northern Ireland, other public bodies, and a range of community and church leaders and groups. These are recorded in Part 3.**
560. **I assess the security profile in three broad areas of terrorism, public order and organised crime, being the areas identified by the then Government when the Justice and Security Bill was being considered in 2006. I have discussed this extensively in Part 4.**

Terrorism

561. **In terms of terrorism, the murder of David Black brought the number of national security incidents to 22² in 2012, up to the middle of November. This compares with 26 for the whole of 2011. Terrorist activity in terms of serious attacks has thus continued at broadly the same level. The attacks have mostly taken place in Belfast and Londonderry but have been mounted in other towns and locations as well.**
562. **The single most potentially deadly incident during the reporting year was the bomb containing 600 lbs of home-made explosive which was abandoned at Fathom Line in Newry on 26 April.**

² Number of National Security attacks as at 21 November 2012

563. Pipe bombs have been the most frequent method of attack this year. The targets have for the most part been police officers, but other attacks have included civic and commercial offices, and some bombs have been left at random in urban areas. Shots were fired at police in two incidents in July. Bomb incidents and hoaxes have required the evacuation of people from their homes and businesses. Large amounts of weapons and ammunition have been recovered.

Public order

564. For public order, the extent of serious violence in the aftermath of parades, or provoked for other reasons, was less during the reporting year than in recent years. The exception was the aftermath of the 12 July parade in Ardoyne in Belfast, when crowd disorder broke out, property was damaged, and shots were fired at police officers.
565. The picture changed for the worse with serious disorder in North Belfast in late summer, producing some of the worst confrontational scenes for several years. Over 60 police officers were injured over this period, with heavy financial costs and reputational damage to Northern Ireland as a whole.

Organised crime

566. For organised crime, the Organised Crime Task Force report that dissident republicans remain largely dependent on organised crime to fund their terrorist activities. They are involved in many different kinds of illegal activity. There also remains involvement in organised crime by some members of loyalist paramilitary groups.

Police strategic response

Logistics, planning and training

567. Police operational planning has covered the response to all these major security problem areas. The most serious, liable to engage the police in a full scale operational response, have been the 22³ national security attacks. Other attacks and incidents have also required major operational deployment, dealing with finds of weapons and explosives, hoaxes and major public and community disruption.
568. The main logistical support has come from Explosive Ordnance Disposal (EOD) provided by the armed forces. When a suspected bomb is found, or a supply of arms and ammunition, it is dealt with by military Ammunition Technical Officers (ATOs).

³ Number of National Security attacks as at 21 November 2012

569. A big operation, such as at Fathom Line in Newry on 26 April, will involve mobilising EOD assets. It will entail use of the Justice and Security Act powers, for example in entering on to private land. Other police powers, as described in Part 5, will be called into play.
570. Since the Justice and Security Act came into force, the police have steadily been improving their strategic response to all this activity. Comprehensive operational orders and training, involving all those officers likely to use the JSA powers, have been the key. I have observed this training activity in the course of the year. It is bringing results, but the pressure to improve must continue to be relentless.
571. The police have presented to me their detailed response to my recommendations from the previous year. This also is a helpful indicator of progress.

Relationship with An Garda Siochana

572. I commented last year on the importance of close operational liaison, dealing with the whole range of criminal activity, with An Garda Siochana. That has continued again, with excellent results, which have been reported to me. It is a relationship of great value to PSNI and, I understand, to An Garda Siochana also.

The new authorisation regime

573. Much police activity this year has been focused on preparing for the major changes to the Justice and Security Act which came into effect on 10 July 2012. The new authorisation regime requires close alignment of analysis and procedures by an Assistant Chief Constable, by the Secretary of State, and by all front-line PSNI officers. The role of intelligence is significant in detailed operation of the authorisation regime.
574. This has been a massive change and programme of work, which I have described and analysed in detail in Part 5. My first impressions are that the new regime fully meets the requirements set out in the Protection of Freedoms Act and the ongoing draft Code of Practice under the Justice and Security Act.

Community engagement

575. The benefits of all this work, necessary though it is, will be limited unless accompanied by a strong programme of community engagement, which requires support from police officers at all levels. The Chief Constable and the Deputy Chief Constable have explained this requirement in unequivocal terms. It must become

a living reality for every police officer in day-to-day contact with members of the public.

Statistics on the use by the police of their powers

576. The task of analysing police records has been simpler this year because the transitional phase with the demise of section 44 has not been a factor. Nor has the new authorisation regime yet made much impact, since it was in effect for only the last 22 days of the reporting year.
577. Analysis of police activity across the range shows a fall this year of 16% in stop activity. The numbers dealt with under PACE have fallen by 1%, those under the Terrorism Act by 57%, and those under the Justice and Security Act by 31%.
578. Within the statistics for the Justice and Security Act, there has been a 22% fall in the numbers stopped and questioned under section 21. Under schedule 3, the numbers of people stopped and searched have fallen by 33%, and the numbers of stops and searches of vehicles have fallen by 11%.
579. The proportion of stops under security powers (the Terrorism Act and the Justice and Security Act) was 41% compared with 50% last year. On a similar basis, the proportion of stops under non-security powers (PACE) was 59% compared with 50% last year. Looking at PSNI activity overall, there were three stops under PACE for every two under the Justice and Security Act.
580. The use of the JSA powers has therefore continued on the downward trend identified last year. The police attribute this to the major training programme for all PSNI officers likely to use these powers. It also reflects greater use of the powers in planned operations in response to available intelligence. That factor will be significant in the present year if the police continue to seek authorisations under the new regime, given the enhanced role which intelligence will play in such operations.
581. Events are unpredictable, and a serious incident such as a bomb or a murder may be reflected in the statistics.

Police records

582. The JSA places a specific requirement 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.
583. Last year I said (recommendation 2) that there should be a reporting requirement when the police use the stop and question

power (section 21). This is less intrusive than a search but may be unwelcome to an individual member of the public. It has been police practice to make records of section 21 stops but it is now explicitly required of them (paragraph 6.12 of the draft Code). I welcome this change.

584. Record keeping has advanced well this year. The full change to electronic recording was made mid-way through the reporting year (from 1 February 2012). Next year it will be important to examine in depth the effect of the migration to full electronic capture on the experience of members of the public and police practice.

Road Closures and Land Requisitions

585. The powers in the Justice and Security Act to close roads and requisition land have been exercised to deal with disorder or community tensions associated with the marching season and to restrict access to particular sites.
586. Five previous road closures have been maintained, some after review by the Northern Ireland Office. These apply to Chichester Street in Belfast, to the Invest Northern Ireland site in Springfield Road in Belfast, to Brompton Park in Belfast, to Ballykinler camp and to Asylum Road in Londonderry.
587. Additionally, the power has been used this year in two closely adjacent locations in East Belfast, to provide protection for a Catholic church and re-assurance to densely packed loyalist and nationalist communities living cheek by jowl.
588. I have walked round the East Belfast locations, examined the documentation for the existing closures and requisitions and the NIO reviews of them, and discussed them with those closely affected. I am satisfied that the use of the JSA powers is justified in all these cases.
589. The power has also been used this year in the area of Balholm Drive in Ardoyne to restrict access to an alleyway from which access could be gained to shop roofs. This was an area of significant and sustained rioting in 2011. I consider the restriction justified.
590. I remain concerned that not everything possible has yet been done to soften the impact of all these closures and requisitions in terms of local movement, access and parking and physical appearance. Otherwise people will feel that they are being taken back to a past which they felt they had left behind. I hope that this work will be taken forward this year. Outstanding compensation claims need resolution.

The role of the armed forces

591. As last year, the role of the armed forces has continued at the limited level envisaged in the 2007 settlement. The armed forces have continued to provide support for the police when a bomb is suspected or weapons and ammunition are found.
592. This support consists of what are called “advanced search” operations and the deployment of the Explosive Ordnance Disposal (EOD) capability, carried out by Ammunition Technical Officers (ATOs). This is dangerous work, carried out with exceptional skill and courage.
593. The number of call-outs of these forces in this reporting year was 327, compared with 444 the previous year, a fall of 26%. But the number of finds of firearms and explosives was slightly higher this year, at 144 compared with 142 last year. The number of explosions was also broadly unchanged, at 16 as against 17 last year. The major falls in EOD activity concerned hoax calls (down by 47%) and false calls (genuine calls but not revealing a device), which were down by 46%.
594. The first case study in Part 5 (an abandoned bomb in a white van found at Fathom Line, Newry, on 26 April) shows the range and complexity of a major police operation, with military support, drawing on powers in the JSA. The second case study shows the range of weapons and explosives found in police searches made under the JSA, which the ATOs have made safe.
595. The armed forces have shown me detailed schedules for all the 327 call-outs this year, with full dossiers for some of the most serious incidents, including photographs of the incident scene and of the device itself.
596. 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. I have received fewer adverse comments about the speed of response this year.
597. 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 continued throughout the reporting year and is likely to remain so throughout the current year. I see no scope for any change in the profile, pattern or scale of this activity.

598. **The role of the armed forces under the Justice and Security Act is now set out in Annex C to the draft Code of Practice. This will bring added clarity to the role and is therefore to be welcomed.**

Public order

599. **The calmer atmosphere at some difficult flashpoints this year, and the reduced violence, has to be set against the emergence of new focal points for disorder. Future planning must assume that those provoking them will want to see repeat performances in the future, or provoke similar incidents elsewhere, and will seek to exploit them as opportunities for violence, including attempts to murder police officers. With some reservations, police tactics have in general been commended, including comments from quarters previously critical of police operations.**
600. **More broadly, some people have commented to me that for the most part Northern Ireland is now free of the violent disorder which so frequently disrupted ordinary life, frightened communities and disfigured localities. They lay stress on the fact that incidents are isolated and confined to a few predictable locations and that the enormous amount of community working throughout the year has generated a shared momentum of success.**
601. **That is largely the case and is greatly to be welcomed. But events in late August and September came as a nasty reminder that much of this hard-won progress is fragile and that the police must remain prepared to anticipate disorder, however unexpected, and to respond as events unfold. The test is whether political and community resilience is now sufficiently robust for matters to be put back on track next year – largely down to other actors, not to the police.**

Military complaints

602. **The number of complaints cases has continued at the low level set last year. There were 12 cases in the year under review, compared with 8 last year and 56 in 2010. Of these 12 cases, 8 were classed as “formal” and 4 as “informal”.**
603. **There is a target of 15 days to reply to formal complaints. In 6 of the 8 cases, the staff at HQ38 Brigade met the requirement, but in 3 of these cases the reply came from elsewhere in the Ministry of Defence (1 case involved a compensation claim, and 2 cases involved correspondence from the Westminster Parliament and were dealt with according to the procedures for such cases). In 2 cases, delays in response from operational units put back the sending of the reply by 11 days.**

604. All 12 cases related to military aviation – 10 complaints about helicopter flying and 2 about aircraft. They mostly covered areas in an arc north of Aldergrove, with 3 relating to West Belfast.
605. The HQ 38 (Irish) Brigade staff responsible for maintaining the complaints system do a very good job and aim for a high standard and speed of reply.
606. They are dependent on operational and administrative colleagues for detailed information. In a few cases this year that has not been immediately forthcoming. Part of that reflects heavy operational duties, especially with tours to Afghanistan looming large, and involvement of other administrative units within the Ministry of Defence. Some comments on files revealed a lack of awareness of the need to maintain the quality and speed of reply.
607. These are isolated cases in an otherwise creditable performance this year. I have not found it necessary this year to invoke my power to require the Brigade Commander to review a particular case or class of cases.
608. Concerns about the impact of military aviation operations on the ground were generally exemplary, shown in several cases this year in comments from flightcrew about their awareness of sensitive locations.
609. I said last year that the current reduced number of complaints was no reason to let up on investigating them all effectively. That cannot all be done by the HQ staff – they are dependent on others to play a part, both at operational level and elsewhere in the Ministry of Defence, one of whose Ministers said in response to a complainant this year that each complaint is taken seriously. It will be important to keep things that way.
610. What matters above all is the perception on the part of the complainant, at both the start and the end of the process. That is true of any complaints procedure in the public service: it is doubly necessary in Northern Ireland, where complex history, hostility and suspicion remain intertwined.

The future of these powers

611. In his letter of appointment, the then 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”*
612. In my judgment, and in my approach to the task, this issue needs to be asked afresh each year. These are exceptional powers, to be used when no other course is open, and then as sparingly as possible.

Operational need and advice

613. Hence my formal enquiries as to the utility of the JSA powers and any continuing need for them. My conclusions are based solely on the evidence shown in this report. I look at three aspects. The first is the value of these powers in the past year. The second is the threat profile in the current year against which the powers may be needed. The third is the advice from the police.
614. The powers have been used extensively, as Part 5 demonstrates. That of itself does not justify necessity: the old section 44 was used extensively, with limited value. More relevant is any evidence of successful use. Case study 2 in Part 5 shows the results of police searches under the JSA powers, which have disclosed a large amount of dangerous materials of the kind which have been used in the 22⁴ national security attacks this year.
615. The threat profile is a combination of terrorist capability and intent. The Secretary of State confirmed that approach in her statement of 31 October 2012.
616. Capability is shown by the number and nature of national security attacks and other activity shown in Part 4 and manifest most recently by the terrible murder of a prison officer.
617. Intent is assessed by the Security Service and the police, but statements claimed by terrorists themselves are taken into account. That is why I have set out in Part 4 the reported statement of 26 July 2012 from residual terrorist groups.
618. I have asked the police for their advice about whether they think they will continue to need the powers. Their response is unequivocally that they will. The PSNI view was put to me formally by an Assistant Chief Constable at the end-of-year review in September and has been confirmed in my informal discussions with the Chief Constable and senior police officers.
619. The three authorisation requests under the new JSA regime in July and August which I have described in Part 5 seek explicit use of the JSA powers, explained by three Assistant Chief Constables in their own carefully chosen words. The requirement as the police see it was set out formally in their submissions to Mr Justice Treacy described in Part 5. It has been confirmed by the Association of Chief Police Officers of England, Wales and Northern Ireland. Major international and public events due to take place in Northern Ireland in 2013 are undoubtedly reflected in police forward planning.

⁴ Number of National Security attacks as at 21 November 2012

Other views

620. **It has been my practice to consider a wide range of views and not confine myself solely to official comments. My terms of reference explicitly relate not only to those who use the JSA powers but also to those who are affected by them, and the review would therefore be incomplete without them. Hence the description of the review process in Part 2.**
621. **The views of the major political parties are set out in Part 3 and views from independent bodies, groups and individuals are in Part 4. Those contributing are listed in Appendix C.**
622. **At all times in these wider discussions I assess what people are saying against the question whether the JSA powers should be continued, judged mainly on operational factors but not confined to them. Inevitably discussion soon goes much wider than the specific question about JSA powers and broadens out into discussion of police strategies and progress towards normalisation.**
623. **The disorder associated with parades in August and September clearly unsettled many people and did much damage to confidence: it has featured strongly in discussions since then.**
624. **The narrative of progress towards normalisation rightly remains a concern for many people, to complete the work of the Good Friday, St Andrew's and Hillsborough agreements. It is central to the trajectory of the political settlement. For some, the continuation of the JSA powers is still a stumbling block. But the focus this year has been more on the quality of the police response than on the continuation of the powers as such.**
625. **I have reflected carefully on what people said to me about the potentially harmful effects of the existence of the JSA powers, especially if there is no obvious move to abolish them.**
626. **The evidence is not conclusive. Some people have said to me, in terms which I respect, that the existence of these powers has a potentially radicalising effect lending credence to the long-held narrative about the intrusive, arbitrary and discriminatory nature of police activity in Northern Ireland which, to the extent that it was ever reformed, is now sliding back to its default mode of a paramilitary force.**
627. **There is limited evidence to reinforce these assertions, powerful though they are. Perceptions are important, but they lack weight in the absence of specific information.**

628. **Equally powerful are the views of those who believe that nothing should be done to limit police effectiveness at a time of severe threat.**
629. **My conclusion is that the greater danger, for the policing project as a whole, lies less in how these powers are perceived in the abstract than in their direct impact in everyday situations. Hence the focus in much of this report on their operational effectiveness and the safeguards governing their use.**

The new authorisation process

630. **I have analysed the new authorisation process in some detail, because it establishes the ground rules which those involved will be following throughout the present year. It also seems to me important that something as significant as this should be clearly described in a report such as mine, for the benefit of a wide readership, so as to give transparency to a major new piece of machinery.**
631. **I am not part of the authorisation process. If I were, it would impinge on my independence and inhibit me from commenting objectively on it. I have not sought to be part of it, nor have I been invited to become so.**
632. **The new arrangements came into effect for only the final 22 days of the reporting year. It is unlikely that they will have had much impact on the statistics of the use of the Justice and Security Act which I have analysed separately.**
633. **I am however satisfied that the new process is exhaustive and comprehensive, that it fully reflects the requirements in the Protection of Freedoms Act and the ongoing draft Code of Practice under section 34, and that the authorising officers have exercised their function scrupulously and in full recognition of the magnitude of the decisions they are taking.**

Concluding judgments

634. **The operational indicators clearly point towards the continuation of the JSA powers for a further year.**
635. **At the same time, the evidence shows that the police have made less use of them this year than last year (31% less) at a time of severe threat and no reduction in the harm caused by residual terrorist groups. The police attribute that change to fulfilment of training programmes and closer focus in operational orders.**
636. **The new authorisation regime will keep these matters very much in mind.**

637. **Further judicial intervention may affect the picture. Otherwise, my judgment is that the Justice and Security Act powers should continue unchanged for another year.**

Recommendations

638. The recommendations below relate both to continuing work, which I have included because of its importance and the need for further development, and new matters which have arisen out of my review work this year. I recommend that:

Police powers

(1) The draft Code of practice, in preparation under section 34 of the Justice and Security Act, should be completed as soon as possible (*paragraph 167*)

(2) PSNI should then complete their work to incorporate the completed Code in operational orders concerning the powers in the Justice and Security Act to meet the requirements of paragraph 8.37 of the current draft of the Code and reflect it in training (*paragraph 211*)

(3) Now that PSNI have moved to full electronic capture of record keeping under the JSA, the menu of actions to be completed by officers undertaking stops should reflect the basis given by the authorising officer when making the application (*paragraph 297*)

(4) In each record, the officer should state the basis for the stop separately from the statement of the power used (*paragraph 298*)

Authorisations for Justice and Security Act powers

(5) Authorising officers should consider as a matter of good practice initialling in manuscript each page of an authorisation application to the Secretary of State as a record of their review of the documentation (*paragraphs 226*)

(6) The authorisation process should continue as operationally required and should follow the format described in this report in no less detail than at present (*paragraph 247*)

(7) Authorisations should continue to extend to the whole of Northern Ireland if necessary, but where this is done the record should show that each District Commander has been specifically asked whether he wishes the authorisation to apply to his District (*paragraph 235*)

Police operations

(8) At the strategic level, PSNI should continue to carry out security operations commensurate with the extant level of threat (*paragraph 268*)

(9) But strategic planning should continue to recognise the importance of community engagement at all levels (*paragraphs 237 and 281*)

(10) Operational orders in which the JSA powers are likely to be used should continue to include reference to actual community engagement as well as community impact assessments (*paragraphs 238 and 281*)

(11) As part of security 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 272*)

(12) Specialist support in dealing with suspected or actual finds of explosives, weapons and ammunitions 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 429*)

Public order

(13) Police planning for public order should continue to be based on the minimum use of force while retaining sufficient flexibility at the strategic (GOLD) and tactical (SILVER) levels to deploy extra resources rapidly if needed so as to ensure that control is maintained (*paragraph 478*)

(14) All officers deployed in public order operations must continue to be fully briefed about the relevant operational order and officers unfamiliar with the area should be made fully aware of local sensitivities (*paragraph 477*)

(15) PSNI should participate fully in public order planning under the auspices of Her Majesty's Chief Inspector of Constabulary and ACPO both to share expertise and to call upon and contribute to existing mutual aid arrangements as required (*paragraph 483*)

(16) PSNI should continue to plan on the basis that the armed forces will not be called upon to carry out public order duties (*paragraph 483*)

Road closures and land requisitions

(17) The existing road closures and land requisitions should be maintained, subject to regular review (*paragraph 409*)

(18) Outstanding compensation issues arising out of road closures should be resolved as quickly as possible (*paragraph 411*)

(19) The current review of consultation procedures over road closures and land requisitions should be brought to a speedy conclusion (*paragraph 410*)

(20) More work should be done on mitigation measures to soften the impact of road closures in terms of local movement, access and parking and physical appearance (*paragraph 411*)

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 553*)

(22) All Ministry of Defence staff involved in the complaints process in any way should be made aware of the requirements to supply staff at HQ 38 (Irish) Brigade with relevant information to enable full replies to be sent promptly (*paragraph 534*)

(23) To meet reasonable expectations about notice of flying, the Flying Station Aldergrove should ensure that websites are kept up to date (*paragraph 552*)

Future of the Justice and Security Act powers under review

(24) Subject only to further judicial intervention, the powers in sections 21 to 32 of the Justice and Security Act should be continued for a further full year (*paragraph 637*)

ROBERT WHALLEY CB

November 2012

Appendix A: Summary of Police Powers in the Justice and Security (Northern Ireland) Act 2007

This summary sets out the powers in the 2007 Act which are used by the PSNI and which are covered in this Code. For a full description of the powers reference should be made to the relevant section of the 2007 Act. More details on how the powers should be exercised are set out at the relevant sections of this Code.

Section	Power	Overview	Records
21	21(1) A constable may stop a person for so long as is necessary to question him to ascertain his identity and movements.	<p>This power allows a police officer to stop and question a member of the public to establish their identity and movements.</p> <p>People stopped and questioned may be asked for their name, date of birth, and address. They may also be asked for identification. They may be asked to give details of their recent movements.</p> <p>A person commits an offence and may be prosecuted if they fail to stop when required to do so, if they refuse to answer a question addressed to them under this section or if they fail to answer to the best of his ability a question put to him.</p>	<p>A record of each stop and question must be made.</p> <p>The record will include details of the person's name, when they were stopped and questioned, and the officer number of the police officer who conducted the stop and question.</p> <p>Officers should inform those who have been stopped and questioned how they can obtain a copy of the record if required.</p>
23	23(1) A constable may enter any premises if he or she considers it necessary in the course of operations for the preservation of peace and the maintenance of order.	<p>This power allows a police officer to enter premises to keep the peace or maintain order.</p> <p>If the premises is a building (a structure with four walls and a roof), the police officer generally requires prior authorisation, either oral (from a Superintendent or above) or written (from an Inspector or above).</p> <p>However in circumstances where it is not reasonably practicable to obtain an authorisation (for example, where there is an urgent need to enter a building to preserve peace or maintain order) officers can enter a building without prior authorisation.</p>	<p>A record of each entry into a building must be made. Records are not required for any premises other than buildings.</p> <p>Records must be provided as soon as reasonably practicable to the owner or occupier of the building.</p> <p>Otherwise the officer should inform the owner or occupier how to obtain a copy of the record.</p> <p>The record will include the address of the building (if known), its location, the date and time of entry, the purpose of entry, the police number of each officer entering and the rank of the authorising officer (if any).</p>

Section	Power	Overview	Records
24/Schedule 3	<p>Paragraph 2: An officer may enter and search any premises for the purpose of ascertaining whether there are any munitions unlawfully on the premises, or whether there is any wireless apparatus on the premises.</p>	<p>This power allows officers to enter and search any premises for munitions or wireless apparatus.</p> <p>For an officer to enter a dwelling, two conditions must be met: (i) he or she must reasonably suspect that munitions or wireless apparatus are in the dwelling (ii) he or she must have authorisation from an officer at least the rank of Inspector.</p> <p>Officers may be accompanied by other persons during the course of a search.</p> <p>During the course of a search, officers may make requirements of anyone on the premises or anyone who enters the premises to remain on the premises. For example, movement within the premises may be restricted, or entry into the premises not permitted. A person commits an offence and may be prosecuted if they fail to submit to a requirement or wilfully obstruct or seeks to frustrate a search of premises.</p> <p>A requirement may last up to four hours, unless extended for a further four hours if an officer at least the rank of Superintendent considers it necessary.</p>	<p>A written record for each search of premises must be made, unless it is not reasonably practicable to do so. A copy of this record will be given to the person who appears to the officer to be the occupier of the premises.</p> <p>The record will include the address of the premises searched, the date and time of the search, any damage caused during the course of the search and anything seized during the search. The record will also include the name of any person on the premises who appears to the officer to be the occupier of the premises. The record will provide the officer's police number.</p>
24/Schedule 3	<p>Paragraph 4: A constable may search a person (whether or not that person is in a public place) whom the constable reasonably suspects to have munitions unlawfully with him or to have wireless apparatus with him.</p>	<p>This power allows officers to search people who they reasonably suspect to have munitions or wireless apparatus. Searches can take place whether or not someone is in a public place.</p> <p>If searches take place in public, officers can only require someone to remove their headgear, footwear, outer coat, jacket or gloves. The person may be detained for as long as is reasonably required for the search to be carried out. The search may be at or near the place where the person is stopped. Searches may also be conducted of people travelling in vehicles.</p>	<p>A written record of each stop and search must be made.</p> <p>The officer should inform the person how to obtain a copy of the record.</p> <p>The record will include details of the person's name, when they were stopped and searched, and the officer number of the police officer who conducted the stop and search.</p>

Section	Power	Overview	Records
24/Schedule 3	<p>Paragraph 4A(1): A senior officer may give an authorisation under this paragraph in relation to a specified area or place.</p>	<p>This power allows a senior officer to authorise officers to stop and search people for munitions or wireless apparatus in specified locations.</p> <p>A senior officer can only make an authorisation if he or she reasonably suspects that the safety of any person may be endangered by the use of munitions or wireless apparatus. He or she must also reasonably consider that the authorisation is necessary to prevent such danger, and that the specified location and duration of the authorisation is no greater than necessary.</p> <p>The authorisation lasts for 48 hours, unless the Secretary of State confirms it for a period of up to 14 days from when the authorisation was first made. The Secretary of State may also restrict the area and duration of the authorisation or cancel it altogether.</p> <p>Whilst an authorisation is in place, officers may stop and search people for munitions and wireless apparatus whether or not they reasonably suspect that the person has munitions or wireless apparatus.</p> <p>Searches may take place in public. Officers may ask the person being searched to remove their headgear, footwear, outer coat, jacket or gloves. The person may be detained for as long as is reasonably required for the search to be carried out. The search may be at or near the place where the person is stopped. Searches may also be conducted of people travelling in vehicles.</p>	<p>A written record of each stop and search must be made.</p> <p>The officer should inform the person how to obtain a copy of the record.</p> <p>The record will include details of the person's name, when they were stopped and searched, and the officer number of the police officer who conducted the stop and search.</p>
26 and 42	<p>A power under section 24 or 25 to search premises also applies to vehicles, which include aircraft, hovercraft, train or vessel. The power includes the power to stop a vehicle (other than an aircraft which is airborne) and the power to take a vehicle or cause it to be taken, where necessary or expedient, to any place for the purposes of carrying out the search.</p>	<p>Section 42 extends the power to search premises to vehicles. Section 26 also gives officers the power to stop a vehicle (other than an aircraft which is airborne) and to take a vehicle, where necessary or expedient, to any place to carry out the search.</p> <p>A person commits an offence and may be prosecuted if he or she fails to stop a vehicle when required to do so.</p> <p>When an officer is carrying out a vehicle search he may require a person in/on the vehicle to remain with it, or to go to any place the vehicle is taken for a search. An officer may also use reasonable force to ensure compliance with these requirements.</p>	<p>A written record of each stop and search of a vehicle must be made.</p> <p>The officer should inform the person how to obtain a copy of the record.</p> <p>The record will include details of the person's name, when their vehicle was stopped and searched, and the officer number of the police officer who conducted the stop and search.</p>

Appendix B: Statistics

Table 1:

Police Service of Northern Ireland Summary Sheet

Justice and Security Act – 1st August 2011 - 31st July 2012

	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Total
1. JSA Section 21 - Number of persons stopped and questioned	286	309	289	308	276	326	277	244	283	334	251	199	3382
2. JSA Section 23 - Power of Entry	5	12	0	0	0	6	9	6	10	21	3	5	77
3. JSA Section 24 (Schedule 3) - Munitions and Transmitters stop and searches													
No. of persons stopped and searched, public place:	938	948	998	1,209	927	979	727	756	754	833	606	645	10,320
No. of persons stopped and searched, private place:	37	33	27	30	15	27	22	23	36	41	21	29	341
Persons stopped and searched - total	975	981	1,025	1,239	942	1,006	749	779	790	874	627	674	10,661
JSA Section 24 (Schedule 3) - Searches of premises:													
No. of premises searched - Dwellings:	14	14	16	12	7	15	8	14	19	18	8	32	177
No. of premises searched - Other:	5	2	0	3	0	0	1	1	3	2	6	11	34
No. of occasions items seized or retained	7	8	3	4	1	11	2	6	10	7	4	10	73
JSA Section 24 (Schedule 3) Use of Specialists:													
Use of specialists - No. of occasions 'other' persons accompanied police:	2	3	2	0	0	4	5	8	2	6	6	10	48
4. JSA Section 26 (Schedule 3) - Search of Vehicles													
(1) (a) Vehicles stopped and searched under section 24	984	1,102	1,090	1,393	1,401	1,601	1,353	1,689	1,626	2,001	1,611	1,009	16,860
(1) (b) Vehicles taken to another location for search	0	0	0	0	0	0	0	0	0	1	0	0	1

Source: Statistics Branch, Police Service of Northern Ireland, Lisnasharragh

Table 2⁵:**Use of Powers by Police in Northern Ireland under the Justice and Security (Northern Ireland) Act 2007 between 1st August 2011 and 31st July 2012****Table 2A****Section 21 – Stop and Question**

Year	Police Service of Northern Ireland	
	Number of Persons Stopped and Questioned	
2011		
Aug-Sept		595
Oct-Dec		873
2012		
Jan-Mar		847
Apr-Jun		868
Jul		199

Table 2B**Section 23 – Power of Entry**

Year	Police Service of Northern Ireland	
	Number of Premises entered	
2011		
Aug-Sept		17
Oct-Dec		0
2012		
Jan-Mar		21
Apr-Jun		34
Jul		5

⁵ All data in Tables 2A-2E and Table 3A-3B has been provided by the Police Service of Northern Ireland.

Table 2C**Section 24 (Schedule 3) – Munitions and Transmitters Stop and Searches**

Year	Number of Persons Stopped and Searched by Police		
	Public Place	Private Place	Total
2011			
Aug-Sept	1,886	70	1,956
Oct-Dec	3,134	72	3,206
2012			
Jan-Mar	2,462	72	2,534
Apr-Jun	2,193	98	2,291
Jul	645	29	674

Table 2D**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
2011				
Aug-Sept	28	7	15	5
Oct-Dec	35	3	8	2
2012				
Jan-Mar	37	2	19	17
Apr-Jun	45	11	21	14
Jul	32	11	10	10

Table 2E**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
2011		
Aug-Sept	2,086	0
Oct-Dec	3,884	0
2012		
Jan-Mar	4,643	0
Apr-Jun	5,238	1
Jul	1,009	0

Table 3⁶:

Number of persons stopped and searched/stopped and questioned under PACE, Terrorism Act and Justice and Security Act

Table 3A: 1st August 2011 – 31st July 2012

Persons stopped and searched under:	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug 11 -Jul 12
PACE	1,509	1,625	2,374	1,845	1,613	1,762	1,833	1,893	1,771	1,737	1,396	1,544	20,902
TACT S43	12	14	12	17	11	16	21	14	21	16	13	17	184
JSA Section 21	286	309	289	308	276	326	277	244	283	334	251	199	3,382
JSA Section 24	975	981	1,025	1,239	942	1,006	749	779	790	874	627	674	10,661
Total *	2,782	2,929	3,700	3,409	2,842	3,110	2,880	2,930	2,865	2,961	2,287	2,434	35,129

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

Table 3B: 1st August 2010 – 31st 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	1,700	1,713	1,486	1,393	21,143
TACT S43	73	51	30	33	30	24	29	26	48	26	41	22	433
JSA Section 21	405	276	817	370	237	353	357	338	368	358	236	234	4,349
JSA Section 24	1,560	846	2,879	1,359	829	1,225	1,028	1,301	1,752	1,488	957	806	16,030
Total *	3,850	3,116	6,412	3,354	2,385	3,425	3,109	3,678	3,868	3,585	2,720	2,455	41,957

⁶ 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. JSA S24 and JSAS21

Table 4:

Explosive Ordnance Disposal (E.O.D) Activity in support of the Police
EOD Call Outs: August 2011 – July 2012

	LIVE	EXPLOSION	HOAX	FALSE	INCENDIARY	FINDS	TOTAL
August 2011	3	0	2	3	0	12	20
September 2011	5	2	4	5	0	15	31
October 2011	5	1	2	3	0	9	20
November 2011	0	0	9	4	0	8	21
December 2011	3	0	2	4	0	7	16
January 2012	7	2	6	10	0	12	37
February 2012	0	0	5	3	0	12	20
March 2012	1	4	12	2	0	17	36
April 2012	7	0	6	3	0	7	23
May 2012	10	0	9	2	0	18	39
June 2012	6	4	4	2	0	16	32
July 2012	6	3	9	3	0	11	32
Total	53	16	70	44	0	144	327

Table 5:

Formal Helicopter Complaints: 1 January 2007 – 31 July 2012

	2007	2008	2009	2010	2011	2012
January	1	1	13	1	0	3
February	2	4	8	2	1	1
March	1	3	13	1	0	0
April	5	18	2	2	0	0
May	5	4	10	0	0	0
June	3	9	10	1	0	1
July	5	11	19	0	1	1
August	4	1	13	0	1	-
September	1	24	6	0	0	-
October	2	9	12	0	2	-
November	1	11	6	1	0	-
December	1	0	3	0	0	-
Total	31	95	115	8	5	6⁷

⁷ This total figure represents up to July 2012

Table 6:**Informal Helicopter Complaints: 1 January 2007 – 31 July 2012**

	2007	2008	2009	2010	2011	2012
January	8	3	1	0	0	0
February	12	4	0	0	0	0
March	3	2	0	0	1	0
April	7	1	1	1	0	0
May	9	0	1	0	0	2
June	7	3	1	1	1	0
July	13	4	0	2	0	1
August	4	0	0	2	0	
September	0	4	0	0	0	
October	3	0	0	0	1	
November	0	0	0	1	0	
December	2	1	0	0	0	
Total	68	22	4	7	3	3 ⁸

⁸ This total figure represents up to July 2012

Appendix C: Organisations and Individuals Consulted or Submitting Evidence

ACPO
Alliance Party
Amnesty International
Attorney General for Northern Ireland
Bar Council for Northern Ireland
Bayview Medical Practice, Derry
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
Criminal Justice Inspection Northern Ireland
David Anderson QC
Department of Justice
Derry Chamber of Commerce
Derry City Centre Initiative
Derry City Centre Traders' Forum
Derry City Council
Directorate of Safety and Claims, Ministry of Defence
DUP
HM Ambassador to Ireland
HM Chief Inspector of Constabulary and HM Inspector Stephen Otter QPM
HQ 38 (Irish) Brigade
International Committee of the Red Cross
Jeffrey Dudgeon
Justice
Laurence Robertson MP
Liberty
The Rt Hon Lord Carlile of Berriew QC
Lord Laird
McCartan Turkington Breen, Solicitors, Belfast
Minister of Justice
Northern Ireland Office
Northern Ireland Human Rights Commission
Northern Ireland Policing Board
Northern Ireland Policing Board Human Rights and Professional
Standards Committee
Northern Ireland Roads Service
Organised Crime Task Force
Parades Commission
Police Federation for Northern Ireland
Police Ombudsman of Northern Ireland
Police Service of Northern Ireland
Professor Clive Walker, University of Leeds
PUP
SDLP
Security Service
Sinn Fein
Superintendents' Association of Northern Ireland
Dr John Topping (University of Ulster)
UUP
Vernon Coaker MP

**Appendix D: Powers reviewed under the Protection of Freedoms Act 2012
Schedule 6**

SCHEDULE 3

MUNITIONS AND TRANSMITTERS: SEARCH AND SEIZURE

Section 24

Interpretation

1

(1) In this Schedule "officer" means—

- (a) a member of Her Majesty's forces on duty, and
- (b) a constable.

(2) In this Schedule "authorised officer" means—

- (a) a member of Her Majesty's forces who is on duty and is authorised by a commissioned officer of those forces, and
- (b) a constable who is authorised by an officer of the Police Service of Northern Ireland of at least the rank of inspector.

(3) In this Schedule—

(a) "munitions" means—

- (i) explosives, firearms and ammunition, and
- (ii) anything used or capable of being used in the manufacture of an explosive, a firearm or ammunition,

(b) "explosive" means—

- (i) an article or substance manufactured for the purpose of producing a practical effect by explosion,
- (ii) materials for making an article or substance within sub-paragraph (i),
- (iii) anything used or intended to be used for causing or assisting in causing an explosion, and

(iv) a part of anything within sub-paragraph (i) or (ii),

(c) "firearm" includes an air gun or air pistol,

(d) "scanning receiver" means apparatus (or a part of apparatus) for wireless telegraphy designed or adapted for the purpose of automatically monitoring selected frequencies, or automatically scanning a selected range of frequencies, so as to enable transmissions on any of those frequencies to be detected or intercepted,

(e) "transmitter" means apparatus (or a part of apparatus) for wireless telegraphy designed or adapted for emission, as opposed to reception,

(f) "wireless apparatus" means a scanning receiver or a transmitter, and

(g) "wireless telegraphy" has the same meaning as in section 116 of the Wireless Telegraphy Act 2006 (c 36).

Entering premises

2

(1) An officer may enter and search any premises for the purpose of ascertaining—

(a) whether there are any munitions unlawfully on the premises, or

(b) whether there is any wireless apparatus on the premises.

(2) An officer may not enter a dwelling under this paragraph unless he is an authorised officer and he reasonably suspects that the dwelling—

(a) unlawfully contains munitions, or

(b) contains wireless apparatus.

(3) A constable exercising the power under sub-paragraph (1) may, if necessary, be accompanied by other persons.

3

(1) If the officer carrying out a search of premises under paragraph 2 reasonably believes that it is necessary in order to carry out the search or to prevent it from being frustrated, he may—

(a) require a person who is on the premises when the search begins, or who enters during the search, to remain on the premises;

(b) require a person mentioned in paragraph (a) to remain in a specified part of the premises;

(c) require a person mentioned in paragraph (a) to refrain from entering a specified part of the premises;

(d) require a person mentioned in paragraph (a) to go from one specified part of the premises to another;

(e) require a person who is not a resident of the premises to refrain from entering them.

(2) A requirement imposed under this paragraph shall cease to have effect after the conclusion of the search in relation to which it was imposed.

(3) Subject to sub-paragraphs (4) and (5), no requirement under this paragraph for the purposes of a search shall be imposed or have effect after the end of the period of four hours beginning with the time when the first (or only) requirement is imposed in relation to the search.

(4) In the case of a search by a constable, an officer of the Police Service of Northern Ireland of at least the rank of superintendent may extend the period mentioned in sub-paragraph (3) in relation to a search by a further period of four hours if he reasonably believes that it is necessary to do so in order to carry out

the search or to prevent it from being frustrated.

(5) In the case of a search by a member of Her Majesty's forces, an officer of at least the rank of Major may extend the period mentioned in sub-paragraph (3) in relation to a search by a further period of four hours if he reasonably believes that it is necessary to do so in order to carry out the search or to prevent it from being frustrated.

(6) The power to extend a period conferred by sub-paragraph (4) or (5) may be exercised only once in relation to a particular search.

Stopping and searching persons [: general]

4

(1) [A member of Her Majesty's forces who is on duty] may—

- (a) stop a person in a public place, and
- (b) search him for the purpose of ascertaining whether he has munitions unlawfully with him or wireless apparatus with him.

(2) An [member of Her Majesty's forces who is on duty] may search a person—

- (a) who is not in a public place, and
- (b) whom the [member concerned] reasonably suspects to have munitions unlawfully with him or to have wireless apparatus with him.

(3) A member of Her Majesty's forces may search a person entering or found in a dwelling entered under paragraph 2.

[(4) A constable may search a person (whether or not that person is in a public place) whom the constable reasonably suspects to have munitions unlawfully with him or to have wireless apparatus with him.]

[Stopping and searching persons in specified locations]

4A

(1) A senior officer may give an authorisation under this paragraph in relation to a specified area or place if the officer—

- (a) reasonably suspects (whether in relation to a particular case, a description of case or generally) that the safety of any person might be endangered by the use of munitions or wireless apparatus, and
- (b) reasonably considers that—
 - (i) the authorisation is necessary to prevent such danger,
 - (ii) the specified area or place is no greater than is necessary to prevent such danger, and
 - (iii) the duration of the authorisation is no longer than is necessary to prevent such danger.

(2) An authorisation under this paragraph authorises any constable to stop a person in the specified area or place and to search that person.

(3) A constable may exercise the power conferred by an authorisation under this paragraph only for the purpose of ascertaining whether the person has munitions unlawfully with that person or wireless apparatus with that person.

(4) But the power conferred by such an authorisation may be exercised whether or not the constable reasonably suspects that there are such munitions or wireless apparatus.

(5) A constable exercising the power conferred by an authorisation under this paragraph may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

(6) Where a constable proposes to search a person by virtue of an authorisation under this paragraph, the constable may detain the person for such time as is reasonably required to permit the search to be carried out at or near the place where the person is stopped.

(7) A senior officer who gives an authorisation under this paragraph orally must confirm it in writing as soon as reasonably practicable.

(8) In this paragraph and paragraphs 4B to 4I--
"senior officer" means an officer of the Police Service of Northern Ireland of at least the rank of assistant chief constable, "specified" means specified in an authorisation.

4B

(1) An authorisation under paragraph 4A has effect during the period—

(a) beginning at the time when the authorisation is given, and

(b) ending with the specified date or at the specified time.

(2) This paragraph is subject as follows.

4C

The specified date or time must not occur after the end of the period of 14 days beginning with the day on which the authorisation is given.

4D

(1) The senior officer who gives an authorisation must inform the Secretary of State of it as soon as reasonably practicable.

(2) An authorisation ceases to have effect at the end of the period of 48 hours beginning with the time when it is given unless it is confirmed by the Secretary of State before the end of that period.

(3) An authorisation ceasing to have effect by virtue of sub-paragraph (2) does not affect the lawfulness of anything done in reliance on it before the end of the period concerned.

(4) When confirming an authorisation, the Secretary of State may—

(a) substitute an earlier date or time for the specified date or time;

(b) substitute a more restricted area or place for the specified area or place.

4E

The Secretary of State may cancel an authorisation with effect from a time identified by the Secretary of State.

4F

(1) A senior officer may—

- (a) cancel an authorisation with effect from a time identified by the officer concerned;
- (b) substitute an earlier date or time for the specified date or time;
- (c) substitute a more restricted area or place for the specified area or place.

(2) Any such cancellation or substitution in relation to an authorisation confirmed by the Secretary of State under paragraph 4D does not require confirmation by the Secretary of State.

4G

The existence, expiry or cancellation of an authorisation does not prevent the giving of a new authorisation.

4H

(1) An authorisation under paragraph 4A given by a senior officer may specify—

- (a) the whole or part of Northern Ireland,
- (b) the internal waters or any part of them, or
- (c) any combination of anything falling within paragraph (a) and anything falling within paragraph (b).

(2) In sub-paragraph (1)(b) "internal waters" means waters in the United Kingdom which are adjacent to Northern Ireland.

(3) Where an authorisation specifies more than one area or place—

- (a) the power of a senior officer under paragraph 4B(1)(b) to specify a date or time includes a power to specify different dates or times for different areas or places (and the other references in this Schedule to the specified date or time are to be read accordingly), and
- (b) the power of the Secretary of State under paragraph 4D(4)(b), and of a senior officer under paragraph 4F(1)(c), includes a power to remove areas or places from the authorisation.

4I

(1) Sub-paragraph (2) applies if any decision of—

- (a) a senior officer to give, vary or cancel an authorisation under paragraph 4A, or
- (b) the Secretary of State to confirm, vary or cancel such an authorisation, is challenged on judicial review or in any other legal proceedings.

(2) The Secretary of State may issue a certificate that—

- (a) the interests of national security are relevant to the decision, and
- (b) the decision was justified.

(3) The Secretary of State must notify the person making the challenge ("the claimant") if the Secretary of State intends to rely on a certificate under this paragraph.

(4) Where the claimant is notified of the Secretary of State's intention to rely on a certificate under this paragraph—

- (a) the claimant may appeal against the certificate to the Tribunal established under section 91 of the Northern Ireland Act 1998, and

- (b) sections 90(3) and (4), 91(2) to (9) and 92 of that Act (effect of appeal, procedure and further appeal) apply but subject to sub-paragraph (5).

(5) In its application by virtue of sub-paragraph (4)(b), section 90(3) of the Act of 1998 is to be read as if for the words from "subsection" to "that purpose," there were substituted "paragraph 4I(4)(a) of Schedule 3 to the Justice and Security (Northern Ireland) Act 2007 the Tribunal determines that—

- "(a) the interests of national security are relevant to the decision to which the certificate relates, and

- (b) the decision was justified,".

(6) Rules made under section 91 or 92 of the Act of 1998 which are in force immediately before this paragraph comes into force have effect in relation to a certificate under this paragraph—

- (a) with any necessary modifications, and

- (b) subject to any later rules made by virtue of sub-paragraph (4)(b).]

Seizure

5

(1) This paragraph applies where an officer is empowered by virtue of this Schedule or section 25 or 26 to search premises or a person.

(2) The officer may—

- (a) seize any munitions found in the course of the search (unless it appears to him that the munitions are being, have been and will be used only lawfully), and

- (b) retain and, if necessary, destroy them.

(3) The officer may—

- (a) seize any wireless apparatus found in the course of the search (unless it appears to him that the apparatus is being, has been and will be used only lawfully), and

- (b) retain it.

Records

6

(1) Where an officer carries out a search of premises under this Schedule he shall, unless it is not reasonably practicable, make a written record of the search.

(2) The record shall specify—

- (a) the address of the premises searched,
- (b) the date and time of the search,
- (c) any damage caused in the course of the search, and
- (d) anything seized in the course of the search.

(3) The record shall also include the name (if known) of any person appearing to the officer to be the occupier of the premises searched; but—

- (a) a person may not be detained in order to discover his name, and
- (b) if the officer does not know the name of a person appearing to him to be the occupier of the premises searched, he shall include in the record a note describing him.

(4) The record shall identify the officer—

- (a) in the case of a constable, by reference to his police number, and
- (b) in the case of a member of Her Majesty's forces, by reference to his service number, rank and regiment.

7

(1) Where an officer makes a record of a search in accordance with paragraph 6, he shall supply a copy to any person appearing to him to be the occupier of the premises searched.

(2) The copy shall be supplied immediately or as soon as is reasonably practicable.

Offences

8

(1) A person commits an offence if he—

- (a) knowingly fails to comply with a requirement imposed under paragraph 3, or
- (b) wilfully obstructs, or seeks to frustrate, a search of premises under this Schedule.

(2) A person guilty of an offence under this paragraph shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

9

(1) A person commits an offence if he fails to stop when required to do so under paragraph 4 [or by virtue of paragraph 4A].

(2) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Appendix E: Statement by the Secretary of State: 17 July 2012

The Rt Hon Owen Paterson MP

“Shortly after coming to office the Government reviewed the security situation and developed a new strategic approach to tackling Northern Ireland related terrorism. We agreed in 2011 an exceptional additional £200 million of investment for the PSNI over four years. This is producing results.

“There are still a small number who favour violence and reject democracy. They have no respect for life, no respect for human rights, and no respect for the will of the people in both Northern Ireland and the Republic of Ireland.

“As a result of their activities, the threat level in Northern Ireland remains at SEVERE, meaning that an attack is highly likely.

“The threat level in Great Britain is SUBSTANTIAL, meaning that an attack is a strong possibility.

“While the overall threat levels remain the same, however, progress has been made. The excellent work of the Police Service of Northern Ireland and other partners tackling the current threat has led to some considerable successes in recent months, with some significant arrests, charges and convictions.

“There have been a total of 76 arrests so far this year, including arrests by An Garda Siochana in the Republic of Ireland. There have also been 37 charges against those involved in national security attacks brought since January 2012, including a number of charges for serious terrorism related offences. A number of weapons and improvised explosive devices have been seized. These combined efforts have had a positive impact. Despite this, however, attacks continue and the intent of groups engaged in Northern Ireland related terrorism remains high.

“The Real IRA (RIRA), the Continuity IRA (CIRA), and the group that refers to itself as Oglagh na hEireann (ONH) all continue to be very active, as do a number of “unaffiliated”, but no less dangerous, individuals. In June, the paramilitary organisation Republican Action Against Drugs (RAAD), which regularly conducts brutal shootings against people in Londonderry, attacked the PSNI with a pipe-bomb. The PSNI is pursuing a strategy to tackle the actions of both this group and other reckless vigilante organisations, which command little support from the wider community.

“Terrorists continue to seek access to funding and weaponry. They have been undertaking training as well as targeting. Paramilitary groups also continue to be involved in a range of criminal activity, often at the expense of their own communities – both to fund their activities and their individual lifestyles.

“Since my last statement on 27 February, there have been nine confirmed national security attacks (bringing the total to 14 confirmed attacks so far this year). All but one have been pipe bombs, which have primarily been used to attack the PSNI or their families. These included a device thrown at a property where PSNI were attending a call out and a number of pipe bombs, which were thrown at PSNI officers whilst carrying out a clearance operation of a suspicious object. In the most recent confirmed national security attack, a pipe-bomb was thrown at a PSNI vehicle patrol; the device functioned but did not cause any injuries or damage to the vehicle. The other attack was a large Improvised Explosive Device containing over 600 lbs of home made explosive which was abandoned near the Irish border at Newry. This was successfully defused by Ammunition Technical Officers. It was designed to be an attack on the community in Northern Ireland and would certainly have endangered lives.

“In addition to the attacks outlined above, during rioting in North Belfast on 12th July a number of shots were fired at police officers who were there to ensure compliance with the legal determination of the Parades Commission and to facilitate the rights of both loyalist and nationalist members of the community. This should be considered nothing less than an attempted murder of police officers.

“There have been no serious injuries as a result of national security attacks this year. We cannot, however, be complacent. The devices used have all had the potential to cause death or serious injury. The community in Northern Ireland have had their daily lives disrupted as a result of terrorist activities.

“In addition to direct attacks, terrorist groups seeking to attack the Police in Northern Ireland have continued to use hoax devices, acts of criminal damage or orchestrated disorder to create fear in the community and draw police into areas in order to attack them. This tactic is designed to make it harder for the PSNI to provide a good community policing service and should be roundly condemned by all. Despite that, confidence levels in policing across Northern Ireland have continued to rise. The Chief Constable continues to place community policing at the heart of his policing plan.

“As I noted in my last WMS on the current threat in Northern Ireland, the UDA and UVF leaderships remain committed to their ceasefires, although individuals associated with these groups continue to be engaged in criminal activity.

“Both republican and loyalist paramilitary groups continue to carry out paramilitary style shootings. Republican paramilitary groups also continue to carry out shootings on members of their own community. These attacks are both cowardly and sickening. They show a complete disregard for the human rights of their victims and for their families.

“The overwhelming majority of people in Northern Ireland stand by the principle that Northern Ireland’s future will only ever be determined by democracy and consent, as established by the Belfast Agreement. This is a settlement that requires all those involved in the political process to pursue legitimate goals through exclusively peaceful and democratic means.

“Cross-border co-operation in the area of security is vital. I keep in very close contact with the Northern Ireland Justice Minister, David Ford, and the Irish Minister for Justice and Equality, Alan Shatter TD. The level of co-operation between the PSNI and An Garda Síochána to tackle the threat is unprecedented and has almost certainly saved lives.

“In conclusion the Government remains committed to tackling the terrorist threat in Northern Ireland. It is vital that we continue to do this in pursuit of objectives of a peaceful, stable and prosperous Northern Ireland in which everyone has a genuinely shared future”.