

**REPORT OF THE INDEPENDENT REVIEWER**

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

**SIXTH REPORT: 1 August 2012 – 31 July 2013**

**Robert Whalley CB**

**December 2013**



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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.*

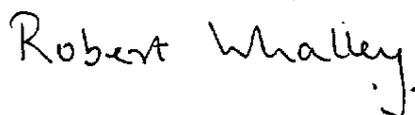
- *The Reviewer may make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act”.*

My reports for 2008 to 2012 are available on the Parliamentary website:  
[www.nio.gov.uk](http://www.nio.gov.uk)

I indicated to you earlier this year that this would be my last report. It is time to bring to a close my association with security matters in Northern Ireland, which began some 43 years ago.

I now have pleasure in submitting to you my sixth report, which covers the period from 1 August 2012 to 31 July 2013.

**My conclusions are set out in Part 7, with a forward view in paragraphs 751 - 775.**



**ROBERT WHALLEY CB**

November 2013



## CONTENTS

Part 1: <b><u>The Role of the Reviewer</u></b>	2
Part 2: <b><u>The Review Process</u></b>	5
Part 3: <b><u>Comment and Opinion</u></b>	13
Part 4: <b><u>The Security Background</u></b>	16
Part 5: <b><u>The Operation of Police and Military Powers</u></b>	30
<ul style="list-style-type: none"><li>• Summary of police powers against the residual terrorist threat</li><li>• Changes made by the Protection of Freedoms Act 2012</li><li>• Completion of the Code of Practice May 2013</li><li>• Judicial comment and subsequent events</li><li>• The authorisation regime</li><li>• Assessment of authorisations 2012-2013</li><li>• Police operational activity 2012-2013</li><li>• Military operations in support of the police</li><li>• Case study: Letterkenny Road, Londonderry 3 March 2013</li><li>• Statistics on the use of the Justice and Security Act powers</li><li>• Road closures and land requisitions</li><li>• Planning for public order situations</li></ul>	
Part 6: <b><u>Military Complaints Procedures</u></b>	100
Part 7: <b><u>Conclusions</u></b>	110
Appendix A: <b><u>Summary of Police Powers in the Justice and Security (Northern Ireland) Act 2007</u></b>	128
Appendix B: <b><u>Statistics</u></b>	131
Appendix C: <b><u>Organisations and Individuals Consulted</u></b>	139
Appendix D: <b><u>Review of Completion of Code of Practice: May 2013</u></b>	140
Appendix E: <b><u>Statement by the Secretary of State: 17 July 2013</u></b>	155
Appendix F: <b><u>Comment and opinion: the social and political context</u></b>	160

## **Part 1: The Role of the Reviewer**

### ***The scope of this review***

1. **This is my sixth report, which covers the period from 1 August 2012 to 31 July 2013. For consistency and ease of reference, the sixth 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. There are minor changes to the sequencing of subjects for review**
5. **Part 6 examines complaints against the armed forces.**
6. **My conclusions are set out in Part 7, which includes some reflections after the completion of six reports on the Justice and Security Act. Part 7 is freestanding and can if desired be read without reference to the preceding text.**

### ***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**.

### ***Functions of the reviewer***

9. 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 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.
10. 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.
11. 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**

12. A summary of the main powers is in Appendix A, including the changes made in the Protection of Freedoms Act 2012:

- **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**

13. 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**

14. 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***

15. There are now three review procedures about security in Northern Ireland which are reported to the Westminster Parliament.
16. 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.
17. Mr David Anderson QC is the independent reviewer of the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. He published his third report, relating to the calendar year 2012, in July 2013. 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.
18. 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.
19. 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.
20. 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.
21. 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.

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

22. Police powers in Northern Ireland can be found in at least three 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).
23. 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.

24. 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 maintained ready contact with him.
25. Similarly, we have together met the Northern Ireland Policing Board's Performance Committee, formerly the Human Rights and Professional Standards Committee, and the Board's Human Rights Adviser, who has kindly kept us informed about the preparation of the Board's Thematic Review on stop and search, published on 24 October 2013.
26. Our meetings with the Minister of Justice and the Northern Ireland Policing Board enable us 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 helpful contact and co-operation with the devolved institutions.
27. We have also held joint meetings with senior PSNI officers and with staff of the Security Service, also known as MI5. We have made some observational visits around Belfast accompanied by civilian staff of the Northern Ireland Office.
28. We also jointly met the Lord Chief Justice of Northern Ireland.
29. Mr Anderson has referred to the overlap of his review with mine in paragraph 2.66 of his third report in July 2013. He has recorded in a footnote to that paragraph 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.
30. In Part 9 of his third report, Mr Anderson has placed the Northern Ireland dimension to Terrorism Act stop and search powers within the context of the United Kingdom as a whole. He has also commented on general security trends in Northern Ireland.

### ***Timescale***

31. This report covers the year 1 August 2012 to 31 July 2013. Where appropriate I have referred to events occurring before the reporting year and since it ended.

### ***Terminology***

32. 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.

33. 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, threats, hoaxes and public order events, together with trends in organised crime with a paramilitary aspect.

### ***Review activity***

34. As before, I have kept in constant touch with developments in Northern Ireland throughout the year. I have made twelve 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*

35. 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 February 2013) covered detailed presentations from all three organisations about their operations.
36. 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 October this year.
37. 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 this important point is recognised.
38. It falls to those using the JSA powers to account for the use they have made of them, so that others can make judgments as to whether the powers should continue for a further year.
39. 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 George Hamilton and Mr Will Kerr, and have maintained contact with District Commanders. I have met Representatives of the Superintendents’ Association of Northern Ireland and the Police Federation for Northern Ireland.
40. In the course of my discussions with senior PSNI officers, I have been told about the excellent co-operation between the PSNI and An Garda Síochána. The murder of Garda Adrian Donohoe near Dundalk on 25 January 2013 is a sad reminder of the way in which terrorism and

criminality have no regard to land borders. I understand that there is close co-operation between An Garda Síochána and the PSNI in relation to the investigation into this murder.

41. Police use of stop and search and stop and question powers is at the heart of this review. These issues have received greater prominence in the wider Great Britain dimension this year with the publication of a report by Her Majesty's Inspector of Constabulary (HMIC) on which I comment. Central to full analysis of the impact of stop and search are my assessment of police training, record-keeping and community impact and engagement.
42. In May I observed training at PSNI Garnerville for officers in Tactical Support Groups (TSGs). 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, but have not found it necessary to enquire further into the Blackberry system for electronic recording, since it has now passed the development stage and has been deployed across the PSNI.

#### *Police Ombudsman for Northern Ireland*

43. I have met the Police Ombudsman for Northern Ireland, Dr Michael Maguire, and his Acting Senior Director of Investigations, Mr Pete O'Sullivan, and discussed with them complaints about stop and search which the Police Ombudsman has received and wider issues surrounding their investigation. As envisaged in paragraph 49 of the Fifth Report, this has included discussion about a report published in November 2012 by the Committee on the Administration of Justice (CAJ) "*Still part of life here? – a report on the use and misuse of stop and search/question powers in Northern Ireland*". I have also discussed this report with senior PSNI officers.
44. In the final stages of this review I received a letter from the Police Ombudsman in which he said that: "*As a result of an increase in the number of complaints received relating to the use of powers under the 2007 Act, I have made a number of recommendations to the PSNI with regards specifically to the use of their powers under section 24 of, and paragraph 4A of Schedule 3 to, the 2007 Act.*" I refer briefly to this in my discussion of police record keeping in Part 5 below. I anticipate that the PSNI will wish to respond to this in due course. I have drawn the matter to the attention of my successor. I am very grateful to Dr Maguire for writing to me about this.

#### *Criminal Justice Inspection Northern Ireland*

45. This has been a new dimension to my review this year. Following on from Dr Maguire's helpful advice, I met the Chief Inspector of Criminal Justice in Northern Ireland, Mr Brendan McGuigan, together with Mr

Derek Williamson. Their perspectives on public order policing, especially their “*Review of the Criminal Justice System’s preparedness for exceptional or prolonged public disorder*”, have contributed significantly to current debates about public order policing.

#### *Public order*

46. 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.
47. In a year which has seen many public order challenges, I once more observed the parades and associated police crowd management strategies on the Twelfth of July parades in Belfast and the 10 August parades in Londonderry. I have also spent much time informally – indeed an increased amount of time this year - with local community and church leaders in Belfast and Londonderry to hear their views about parades and policing. I reflect these conversations in my comments on police operational strategies and community impact.
48. This year several other elements were added. The decision to hold the G8 international meeting in Lough Erne in Co. Fermanagh in June 2013 entailed substantial planning across a wide spectrum of public operations. I am grateful to ACC Alistair Finlay, Chief Superintendent Pauline Shields and the staff of HQ 38 (Irish) Brigade for their comprehensive briefings in the run-up to the G8 meeting and subsequently. The huge success of this event is a tribute to the hard work of many people in Northern Ireland.
49. The dominant factor in public order this year has been the prolonged disorder associated with the “flags protest” from December to February. This issue has had a profound and painful impact on community cohesion. I have assessed some of the implications of the flags protest for police operations.

#### *Road closures and land requisitions*

50. The powers to close roads and waterways and requisition land under sections 29, 30 and 32 have been used again this year. I have made enquiries about the circumstances and discussed them with staff in the Northern Ireland Office and the Department of Justice. I report on this in Part 5.

#### *Role of the armed forces*

51. I have made frequent visits to HQ 38 (Irish) Brigade for discussions with the Brigade Commander throughout this period, Brigadier Rob Thomson. 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.

52. 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*

53. 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. This template has served well to enable people to focus primarily on police operations but also to place their comments in a wider Northern Ireland context.
54. I invited all the political parties in Northern Ireland to meet me and have met the DUP, Sinn Féin, the SDLP, the UUP, and the PUP, and also received written comments from some of them. The Alliance Party referred me to my discussions with Mr David Ford MLA. I have also met the then Shadow Secretary of State for Northern Ireland, Mr Vernon Coaker MP.
55. I have met the British Ambassador in Dublin, Mr Dominick Chilcott CMG, who has shared with me perspectives on Northern Ireland security issues apparent to him in the Republic of Ireland. Her Majesty's Inspector of Constabulary, Stephen Otter QPM, has helpfully shared with me on-going work by HM Inspectorate into public order and stop and search activity.
56. Assistant Commissioner Cressida Dick QPM of the Metropolitan Police Service offered me comment on behalf of the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO). ACPO's comments are important, not only because the Chief Constable of the PSNI is a member of ACPO but also because of the unprecedented degree of mutual aid with police forces in Great Britain in support of the G8 meeting in June and the July parades.

#### *Community contacts, human rights groups and academic insights*

57. The Northern Ireland Human Rights Commission, the Committee on the Administration of Justice and Rights Watch UK (formerly British Irish Rights Watch) have once again very helpfully shared their views with me, and given me access to several of their recent reports relevant to my review.

58. 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 reported representations inform me very clearly about the views of those who have had experience of police operations. I once again invited comments from Amnesty International, Justice and Liberty but none of them offered me any.
59. I have again met Dr John Topping of the University of Ulster to discuss his research into paramilitary groups, some of which has been carried out in liaison with the PSNI. I have included comment from a further recent report by the Northern Ireland Community Relations Council which is important in view of the impact of police operations on communities.
60. I have once again met church and community leaders in Belfast and Londonderry, some of whom have been directly affected by public disorder this year. I have also spent time with some of those (including former paramilitaries) now involved in local reconciliation projects. I have extended these contacts to include more groups over a wider geographical area this year. With the help of many people working at local level, I am privileged to have access to many strands of local opinion. This has reinforced to me how subtle, sensitive and complex are some of the local policing issues in Northern Ireland.

*Follow-up to recommendations in 2012 report*

61. As last year, the Secretary of State's officials have compiled for me periodic progress reports on the responses to my recommendations from the previous year. These show recognition of the need for active work throughout the year to ensure that the Justice and Security Act powers are being used properly and effectively. They also reveal where progress has been slow. Compared with a few years ago, there is now a welcome momentum to this effort, especially in the PSNI.

*Preparation of this report*

62. 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.
63. This report is made to the Secretary of State for Northern Ireland 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.
64. 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. I think this is especially important this

year, with the experiences of the flag protests still fresh in people's minds, both in Northern Ireland and at Westminster.

65. 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.
66. This is my final report, before I hand over to a successor next year. Each year's report is free-standing and refers to the year in question. But the reports also provide a narrative showing the development and changes to the Justice and Security Act powers over a six year period and all six reports should be taken together. Although I have for consistency followed the same broad format each year, so that themes can be followed through, I have not always covered the same issues each year but rather have concentrated on the main issues relevant to that year, with cross-referencing as necessary. I have included some final reflections in the conclusions at the end of this report.
67. For the record, 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*

68. 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. This means engaging with the public and wider community as well as with the police. But I have no role in individual complaints against police officers: these are the responsibility of the Police Ombudsman.
69. I hold discussions with all the main political parties, in their role as elected representatives, and with many other groups, official and unofficial. Varied opinion is an essential component of the total picture and would be incomplete without it. Politics and policing are closely intertwined in Northern Ireland, far more than elsewhere in the United Kingdom. That has always been the case, but its characteristics change from year to year as events unfold. A review of police activity in Northern Ireland which left out the political or community dimension, or appeared oblivious of it, would have limited value or impact.
70. I invite those concerned to comment upon police operations, especially the use of the JSA powers, mainly stop and search. That is the “exam question” each year but everyone I have spoken to has preferred to widen out the discussion into policing more generally.
71. Discussions therefore cover the visibility, impact, credibility and reputation of the PSNI, both centrally and locally. I want to hear views about how well or otherwise the police have handled the main security challenges this year. I ask if community engagement strategies are being put into practice and how successful they are. I am also interested in people’s views about military activity and the investigation of complaints against the armed forces.
72. I am grateful to the Minister of Justice for his ready engagement with me, both in formal discussions and informally. He has given me generously of his time this year. My report is prepared for the Westminster Parliament: they are the principal audience. But the Minister of Justice has a central role under the devolution settlement, and also his exercise of the road closure and land requisitioning powers under agency arrangements with the Secretary of State, which are increasingly being done by him.
73. I invited all the political parties in Northern Ireland to meet me for discussion during the summer of 2013. All responded and I am once again grateful to them: the DUP, Sinn Féin, the SDLP, the UUP, and the PUP. The Alliance party once again offered me their comments through the Minister of Justice.
74. The range of other groups offering opinion, shown in Appendix C, reflects not only those with established positions but also the rather more fluid environment accompanying the widespread disorder this

year. The picture has changed and the range of people I have sought out and spoken to has changed as well.

75. As before, there is no attribution of views, so as to preserve confidences and encourage frank speaking.

#### Specific comments on public order: the flags protest

76. Some people told me that the flags decision was invidious and its timing bad, others that it was the logical outcome of political and demographic changes in Belfast.
77. Opinion was divided on police tactics for the flags protest. Some took the view that the police were taken by surprise by the scale of the protests at the City Hall on 3 December, that their tactics were improvised and uncertain, but that they then over-reacted from misjudged concern about the likely numbers of protestors they might have to deal with.
78. Some took the view that the police were too harsh with loyalist protestors from the start, and that their tactics compounded the initial sense of outrage about the decision at City Hall. There was a need for the police to look at their planning in the face of loyalist anger. Others told me that the police were too soft and believed that police officers on the ground had been told not to interfere or to move crowds on.
79. The confusion over the precise nature of the protest marches and whether there was a need to obtain Parades Commission authority clearly worried a number of commentators. Some believed that legislation on public processions was weak and needed review. An equally high priority for some was how to handle contentious parades.
80. Some of those critical of the initial stance of the police took the view that after several weeks the police had improved, with a greater firmness and arrests, which would act as a deterrent. There were no specific comments about tactics such as Attenuated Energy Projectiles (AEPs) or water cannon.
81. But dealing with young protestors needed a careful strategy: some of them might be deterred by clear messages about the life-changing consequences of a criminal conviction, while for others “naked savagery excites the young mind”.
82. Some commentators believed that the fury had gone out of the flags protest, while others thought that lack of resolution over the central issue would lead to renewed instability in public order.

#### Perceptions of the security threat

83. By contrast, few people raised the ongoing terrorist threat with the same degree of intensity. Opinion ranged from regarding it as “on a

plateau” to concern that recruitment and training were continuing in the background, involving older republicans disenchanted with the peace process and younger recruits. The most serious attacks showed a high level of cohesion and planning.

84. Planning for the G8 had shown the need for greater resilience in the PSNI. For some the use of mutual aid officers from GB had been a success, for others it confirmed their fears about how thin on the ground PSNI officers now were and how their skills base had been degraded, raising the need for options such as deploying more military helicopters or involvement of private security operators.
85. No-one raised the question of the continuance of the JSA powers as a strategic issue. One commentator said it was simply “not on his radar.” Another pointed to the report by the Committee for the Administration of Justice about the operation of stop and search and said that the issue was “sucking life out of communities”. On the other hand the leader of an independent group concerned with human rights told me that the PSNI were now “a human rights compliant police force”.
86. Several people (more than last year) raised with me in detail the question whether the National Crime Agency should operate in Northern Ireland. I have explained to people that this is not formally part of my terms of reference, but in view of the interest shown I comment on this in my discussion on organised crime.

#### *The social and political context*

87. Many people have offered me interpretations of the widespread public disorder this year, and I decided to capture the range of views and the wealth of valuable opinion so freely offered. This is not specific to the Justice and Security Act and, rather than disrupt the flow of narrative in the main report, I have placed all this separately at Appendix F.

## **Part 4: The Security Background**

### ***Preliminary***

88. 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*

89. The murder on 1 November 2012 of David Black, a prison officer, cast a dark shadow across the year.
90. 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 last year.
91. 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.

#### *Statements by the Secretary of State*

92. On 28 February 2013, the Secretary of State made a Written Statement in the House of Commons recalling her predecessor’s commitment to provide bi-annual updates to the House on the security situation in Northern Ireland following the joint decision by the UK and Irish Governments to wind-up the Independent Monitoring Commission in 2011.
93. In her February statement, the Secretary of State said:
- “Since the statement in July 2012, the threat level in Northern Ireland has remained at “severe”. This means that an attack remains highly likely. There were 24 national security attacks during 2012, compared with 26 attacks in 2011. So far, there have been three national security attacks in 2013. A majority of attacks have involved the use of crude, but potentially lethal, pipe-bomb devices; there were also a number of more sophisticated and serious attacks.”*
94. The Secretary of State made her second statement on 17 July 2013, towards the close of the reporting year. I have included the July statement in full in [Appendix E](#) and extracted below specific references to the security threat.

95. The Secretary of State used the words “terrorism” and “terrorist” twelve times in that statement. She also attributed some incidents to various groups:

*“This statement comes after a very successful G8 summit in Northern Ireland that passed without significant incident. This is an achievement of which we should all be proud. Nevertheless, we remain vigilant in the face of the continuing threat from terrorism in Northern Ireland.*

*“We are currently in the height of the parading season in Northern Ireland. Unfortunately, rioting has once again broken out in connection with Twelfth of July parades. As well as causing damage and injury directly, such disorder also provides opportunities for terrorist attacks on police, as illustrated by the pipe bomb thrown at the police on Monday in Brompton Park in Ardoyne.*

*“Since my last statement to Parliament in February 2013, the threat level in Northern Ireland has remained at “SEVERE”. This means that an attack remains highly likely.*

*“...So far this year there have been ten national security attacks. Some of these involve the use of relatively simple and basic pipe-bomb devices, but these can be lethal. There have also been a number of more sophisticated attacks, including two failed attempts to use mortars against PSNI stations.*

*“...Police officers, soldiers and prison officers continue to be the primary target of the terrorist groups”.*

#### *Minister of Justice*

96. In a speech on 6 February 2013 marking 1000 days since the devolution of justice and policing in Northern Ireland, the Minister of Justice said:

*“Another challenge is the security situation. We owe a huge debt of gratitude to the police for the commitment they are showing in dealing with the threat of terrorism while, vitally, continuing to provide a community policing service.*

*“The seriousness of the threat has been highlighted in recent months by the abhorrent murder of David Black, who as a Prison Officer had dedicated decades of his life to public service; and by the planting of an explosive device under the car of a serving police officer in East Belfast – a device that would have resulted in the death or serious injury of his family were it not for his vigilance”.*

97. When addressing the Northern Ireland Police Federation on 5 June 2013, Mr Ford said:

*“Let me start by acknowledging the debt that society owes to your members and their colleagues in every part of the PSNI. As you have just said, the threat against officers is still severe. It is evident that terrorists are continuing to target police officers, and to plant significant bombs.... You do not need me to list the attacks in recent months on police officers, both on and off duty. But it is also evident that excellent police work is bringing successes, with the finds of viable devices and the disruption of planned attacks.”*

*Lord Carlile*

98. On 4 February 2013, the Secretary of State published a Written Ministerial Statement saying that she had received and welcomed a report from Lord Carlile on the operation of arrangements for handling national security matters in Northern Ireland for the period 22 November 2011 to 11 December 2012.

99. The Secretary of State said:

*“Lord Carlile is briefed by both the Police Service in Northern Ireland and the Security Service for the purpose of his reports; he states that he is satisfied that the briefings he has received have been full and not selective. He states that the Security Service and the PSNI work well together and clearly in the national interest.*

*“Lord Carlile reports that the level of terrorist activity appears broadly similar to that of the previous year; it remains a challenging and variable environment for the PSNI and the Security Service. He notes the very serious incidents which took place in 2012, including the murder of David Black on 1 November, and states that the overall picture is of a very dangerous, unpredictable terrorist threat.*

*“I welcome the content of this report and have made it available to the Home Secretary. Given its sensitive nature I do not however intend to place copies in the Library”.*

*David Anderson QC*

100. In his third report as Independent Reviewer of legislation against terrorism, published in July 2013, Mr David Anderson QC said at paragraph 2.66:

*“The official threat from Northern Ireland-related terrorism in Northern Ireland remained throughout 2012 at SEVERE (an attack is highly likely). The appropriateness of that classification is shown by the substantial number of dissident republican attacks that were actually launched during the year, as well as by the considerably greater number, known to the police and MI5, that were abandoned or thwarted”.*

101. Mr Anderson continued at paragraphs 2.68 and 2.69:

*“Dissident republican activity levels fluctuated throughout the year, and each group was disrupted by security force activity at some point...”*

*“The last few months of 2012 saw an increase in dissident republican activity and in the lethality and sophistication of attack planning. The most significant factor in this was the establishment, announced in August, of a new grouping, formed by a merger between the Real IRA (RIRA), RAAD and a network of unaffiliated dissident republicans. This is the first time that dissident republican groups have merged, and it has enabled a small number of experienced former Provisional IRA (PIRA) members to assume key positions in a large, dissident republican group with a particularly strong presence in Derry/Londonderry”.*

102. After commenting on individual incidents, Mr Anderson continued at paragraph 2.72:

*“In summary, violent dissident republican activity continues to command no mainstream political support, and is greatly reduced in volume since the five years after the Good Friday Agreement of 1998. The unpalatable truth is however that bombings, shootings and killings continue to be a feature of life in Northern Ireland; and that many more would certainly have occurred in 2012 had it not been for good intelligence and policing work”.*

#### *The Chief Constable*

103. The Chief Constable of the PSNI, in his introduction to the annual report for the financial year 2012-13, said:

*“The security situation continues to provide a dangerous environment for officers as they work to make Northern Ireland safer for all. There were two security related deaths recorded during 2012/13, one more than the previous year. There were fewer bombing incidents in 2012/13, and a decrease in the number of shooting incidents. There were 27 casualties resulting from paramilitary style shootings in 2012/13, 6 fewer than in the previous year, and a decrease in the number of casualties resulting from paramilitary style assaults. However, whilst there has been a slight decrease in the number of persons arrested under Section 41 of the Terrorism Act, the number of persons subsequently charged following arrest under the Act has increased from 39 in 2011/12 to 50 in 2012/13”.*

104. The PSNI annual report for 2012-13 includes a comprehensive Governance Statement (at pages 35 to 44) which includes the following under areas of significant concern or risk that could impact on the delivery of policing:

*“Terrorist attack: The terrorist threat level to PSNI remains at “severe”. Government has provided additional funding for this spending period to help with the threat, however it continues to affect conventional policing methods. There is an impact on the level of resources available to other core areas of policing, which could have a negative effect on public confidence.”*

*The Superintendents’ Association and Police Federation*

105. I have discussed the security position with The Superintendents’ Association of Northern Ireland and the Police Federation for Northern Ireland. They commented not only on the activities of dissident republicans but also much more this year on loyalist paramilitaries. Their comments have ranged over the full spectrum of police activity, including the intelligence picture, the flag protests, the reputational damage to Northern Ireland from street disorder, the political response to the problems, and the prospects for the future. Neither organisation sees much scope for changes in the operational profile this year.
106. As representative staff associations, both groups are naturally concerned about the welfare of their members. I believe that senior PSNI officers share these concerns in equal measure, but the staff associations naturally have a specific focus on them.
107. A particular worry is the targeting of police officers as they leave police stations or travel home. Threats and attempts to kill police officers are a prominent part of the picture. Random attacks by pipe bombs against police stations and officers on patrol, or answering calls from the public, occur frequently.
108. Attempts (some spontaneous, some contrived) to intimidate or threaten officers, especially those on stop and search duties, are increasing, I was told, giving rise to anxiety whether young officers in particular can acquire sufficient confidence to handle the situations in which they find themselves.
109. The effect of the extensive disorder this year in terms of injuries to police officers emerges very quickly in any discussion on the profile of events. Staff associations are realistic in their expectation that police officers in Northern Ireland will face a degree of risk of injury and aggressive behaviour, and in that sense service as a police officer in Northern Ireland is no different from elsewhere.
110. But the numbers of police officers in Northern Ireland who have been injured this year, both absolutely and as a percentage of total officer strength, would not, I believe, be regarded as acceptable if occurring elsewhere in the UK. This presents an unavoidable challenge to those involved in political and other discussions about public disorder and street violence.

## *Northern Ireland Community Relations Council*

111. Last year I included comment from the Northern Ireland Community Relations Council, who published *“the first major stock-taking of the Northern Ireland peace process”* in February 2012 in the approach to the 14<sup>th</sup> anniversary of the Good Friday Agreement. This was 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.
112. Mr Nolan produced a second report in 2013. He included the following at point 7 of “ten key points” at the start of his report:

*“Paramilitarism remains a threat, as evidenced by the killing of Prison Officer David Black and the many “punishment” attacks carried out by both republican and loyalist groups...However, while dissident republicans have failed to develop a political profile, loyalist paramilitaries have been granted a degree of recognition by their stewardship of their communities during the flags protest, and have been brought back within the unionist fold by the mainstream unionist parties wishing to build a united front in the face of perceived threats to British culture”.*

113. In discussing “the sense of security” Mr Nolan comments in paragraph 4.2 on page 60:

*“The level of dissident violence is down on past years and is in fact the lowest for violent republicanism since the start of the Troubles. The merger of the three factions in August 2012 to create a single organisation called “the IRA” is a measure of weakness rather than strength, and the knitting together of tightly-knotted small groups increases the possibility of infiltration. The degree of surveillance and infiltration has been obvious in the period since the killing of the Prison Officer David Black at the start of November: there have been a string of thwarted operations and arms finds. The arrests also show evidence of concerted police operations north and south of the border”.*

### *Significant security incidents*

114. I noted last year the terrible murder of a prison officer, David Black, on 1 November. One other murder in 2012-13 (Danny McKay on 25 October 2012) was noted in PSNI assessments of deaths considered to be directly attributable to terrorism.
115. In Part 5, I have included a full analysis of the terrorist activity which the police have had to deal with this year, with specific analysis of a major incident and how the police response to it was developed.

116. Attacks on police officers and state institutions are classified by the Government as “national security” attacks. There were 24 such attacks in the calendar year 2012 and 25 up to the 30 November 2013<sup>1</sup>.
117. 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.
118. The Security Situation Statistics Monthly Update (covering the period 1 October 2012 to 30 September 2013) begins:

*“The security situation in Northern Ireland has improved significantly over the last decade with fewer security related deaths, shootings, bombings and paramilitary style shootings and assaults recorded in 2012-13 than ten years ago in 2003-04. However, a significant threat still remains as evidenced the two security related deaths in 2012-13 and the numerous shootings and bombing incidents as well as the continued use of paramilitary style shootings and assaults.”*

#### *Response to terrorist activity*

119. 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 shown above. I comment on the response to this in detail in Part 5.

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

120. Public disorder arising from protests, marches and parades and leading to attacks on the police has been a major feature of the security profile this year. Indeed it has rarely been out of the news. I have therefore analysed public disorder in some detail below. Providing an effective response to public disorder was one of the main reasons for the enactment of the Justice and Security Act in the first place.
121. Public order issues in Northern Ireland arise principally in the context of contentious parades. Over 4300 parades take place throughout the year, about 5% of which are regarded as contentious. Only a few give rise to violence. In making judgments about the profile of public disorder we should remember that the context of nearly all parades in Northern Ireland, even when accompanied by protest, is entirely peaceful.
122. But the dynamics changed in 2012-13. As I reported in paragraph 128 of last year’s report, disorder associated with parades continued in the Carlisle Circus area of North Belfast throughout August and September 2012, creating a new flashpoint in the Carrick Hill area.

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<sup>1</sup> Date this report was completed.

123. These developments created a fragile atmosphere which could not withstand the violent reactions which broke out after the vote on 3 December 2012 in Belfast City Council to change the policy on flying the Union Flag above Belfast City Hall. Much of the ensuing disorder affected East Belfast.
124. Finally, the scenario in Ardoyne on 12 July was different this year, following the determination of the Parades Commission not to allow return parades along the Crumlin Road through Ardoyne. Disorder involved the loyalist community and its effects were felt in loyalist areas. Attempts have continued since then to “complete the parade” up the Crumlin Road.

#### *Parades Commission*

125. 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 in determinations*

126. The role of the police is to give effect to the determinations of the Parades Commission. That came into sharp focus this year as the disorder continued. Two particular points are relevant.
127. First is the confusion as to whether a particular event falls within the kind of activity for which a Parades Commission determination is required or whether it should be handled as a public order issue.
128. The second point is the increased dispute with which some of the Parades Commission’s determinations have been met, involving acrimonious public comment and recriminations in many quarters.
129. The police have to deal with the consequences of both these developments. Last year I said (paragraph 486) that generating political and community resilience was largely down to others, not the police. Positive activity of that kind has not been forthcoming, resulting in continued and renewed confrontation and disorder.
130. As before, I am not directly concerned with the process by which Parades Commission determinations are made, or with decisions by other bodies, such as Belfast City Council in relation to flags. My concern is with policing strategies in cases of potential disorder, their effectiveness and their impact.

### *Consequences of disorder*

131. More than ever this year, the corrosive impact of disorder and violence has been shown in dreadful clarity in damage to communities, neighbourhoods and property, injuries to police officers and escalating policing costs. The effects on individuals caught up in disorder can be profound. No-one in Northern Ireland can escape the effects of disastrous adverse publicity and the cost to public funds. Like many others, I have followed with dismay the relentless story of reputational damage to Northern Ireland, mercilessly unfolding in the media, and sometimes appearing to drown out the many positive messages this year.

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

#### *Linkages between terrorism and organised criminality*

132. 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).

#### *Recent statement by the Secretary of State*

133. The Statement by the Secretary of State on 17 July 2013 included the following:

##### *“Activity of republican paramilitary groups*

*Groups involved in these terrorist attacks continue to engage in a range of criminal activity including fuel laundering, smuggling, drug dealing, robbery and extortion.*

##### *“Activity of loyalist paramilitary groups*

*As noted in my last statement on the security situation in Northern Ireland, the UDA and UVF leadership remain committed to their ceasefires, although individuals associated with these groups continue to be engaged in criminal activity”.*

#### *Organised Crime Task Force*

134. I was invited to the launch on 26 June of the Organised Crime Task Force (OCTF) Annual Report and Threat Assessment for 2013, at which speeches were given by the Minister of Justice, the Permanent Secretary at the Department of Justice and the Chief Constable.
135. The Threat Assessment says on page 27:

*“Paramilitary groups remain active in Northern Ireland. These groups’ political intent is not always clear, however some remain a threat to*

*national security and are also heavily engaged in organised crime. In the past year dissident republican groups have been responsible for a number of attacks principally against members of the PSNI, Northern Ireland Prison Service (NIPS) and military.*

*“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 (such as cash-in-transit robbery), extortion, money laundering, drugs supply, burglary, insurance fraud, counterfeit currency and intimidation. 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 the loyalist groups – Ulster Defence Association (UDA) and Ulster Volunteer Force (UVF). It is often unclear how much of this activity has been sanctioned by the leadership, it is clear, however, that some members are involved in extortion, money lending, robbery, contraband, drugs, burglary, thefts from the rural community and money laundering for extensive personal gain.”*

#### *Organised crime and firearms*

136. The range of criminal activity reported above is extensive. Not all of it will overtly involve the use of firearms. This year the OCTF Threat Assessment makes no mention of tiger kidnaps, which have been used in the past to raise large amounts of cash to finance terrorist activity. Other activities have however been mentioned this year, including intimidation. 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.
137. 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.
138. 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*

139. Last year, I received comment from one correspondent about my reference in 2011 (paragraph 112) to the use of the powers in relation to organised crime. Having investigated the point with the assistance of a lawyer from the Government Legal Service and the Organised Crime Task Force, I came to the conclusion (in paragraph 143 of the 2012 report) that the JSA powers may be used, if necessary and appropriate on every specific occasion, in police activity against organised crime.

140. My correspondent has returned to the issue in these terms:

*“It is accepted that different legislative sources can produce overlapping legal powers (as confirmed by the legal advice reproduced in the Fifth Report, para 138). But, to explain further, the core of the claim in last year’s submission was that the JSA powers should not be used against organised crime whenever its operation is not reasonably suspected to be an emanation of terrorism – ie when action against organised crime is a distinct objective.”*

141. I have sought further advice from the lawyer at the Government Legal Service on this issue. I have also considered this in the context of the authorisation process for the use of JSA powers from which derives the operational power of each individual officer. The lawyer at the Government Legal Service has offered the further comment that the power is not expressly linked to terrorism (even though in practice terrorism may present the bulk of the threat). In their view, it is available where there is a reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. They say that the power is equally applicable if the threat comes from organised or individual crime, or if it comes from terrorism.

142. The link between paramilitary activity and organised crime is an active problem in Northern Ireland. The 2013 Threat Assessment from the OCTF brings out the link quite clearly. Furthermore, the Secretary of State in her July 2013 statement said, in the context of dissident republican groups:

*“Groups involved in these terrorist attacks continue to engage in a range of criminal activity including fuel laundering, smuggling, drug dealing, robbery and extortion”.*

143. When I discussed the threat assessment with officials of the OCTF, they took the view that they would expect other powers to be used before the JSA, which should be regarded as a last resort. In this respect, their view of how other powers should be considered first is no different from police views of these powers.

144. But they were strongly influenced in their thinking by the close connections between paramilitary groups and organised crime. They offered the opinion that organised criminal gangs might find it difficult to

operate in Northern Ireland independently of paramilitary groups or without attracting their attention.

145. The JSA powers are not limited to the search for weapons or explosives solely in a terrorism context, as the further advice from the lawyer at the Government Legal Service, which I have set out above, makes clear. The Act is silent on motive. It thus accurately reflects circumstances in Northern Ireland. In a fast-moving operation, which is the most likely context for the use of JSA powers, it would be impossible to know all the circumstances in advance, and I doubt whether it would be sensible or practical to impose restrictions based on motive in advance of a specific police operation.
146. As efforts to bring about a programme of security normalisation continue, so I would expect use of the JSA powers to continue to diminish accordingly. There would be less need for the police to authorise use of the powers and for the Secretary of State to confirm them. In particular, if the extent of the paramilitary connection with organised crime were also to decrease, then the threat that the JSA powers are designed to address would be likely to be reduced, and so use of the JSA powers in that context could also be expected to diminish similarly.
147. Judging from the OCTF Threat Assessment and my discussions with senior police officers, that point has not yet been reached. The link between paramilitary activity and organised crime involving firearms is still significant. So the context is not one where the JSA powers have ceased to be relevant in dealing with organised crime. That may change over time.
148. In the present context I remain satisfied that the JSA powers may be used, if necessary and appropriate on every specific occasion, in police activity against organised crime.

#### *The PSNI and the National Crime Agency*

149. I have been asked on several occasions this year, and in various contexts, to examine the debate on whether or not the National Crime Agency (NCA) should be extended to Northern Ireland. All this is current policy debate, in which I would not wish to intervene. But I will offer some comment on the issues as they affect police powers, including the potential use of JSA powers.
150. A helpful introduction to this issue is provided by the OCTF Annual report, on page 56, from which I quote as follows:

*“The NCA was designed to be a UK-wide body but the Justice Minister sought to ensure that it would respect the devolution of policing and justice powers within Northern Ireland. The Department of Justice, therefore, engaged with the Home Office to shape the NCA in terms of its operation in Northern Ireland. Several significant concessions were*

*secured by the Minister of Justice to ensure that the NCA would be an effective organisation for Northern Ireland, and that Northern Ireland issues, such as the primacy of the PSNI and the role of the Northern Ireland Policing Board, would not be compromised. In order for the NCA to extend to Northern Ireland and Scotland the consent of the respective governments was required for the devolved functions. This was passed in Scotland but was not achieved for Northern Ireland. As a result, as things stand, the NCA will not be able to carry out operations against organised criminals or fully support the PSNI in an operational way in Northern Ireland, to the same extent that SOCA can currently. Another concern is that it will not be able to undertake civil recovery of the assets or organised crime groups operating here, save, for example, in taxation cases.*

*“At the time of this Annual Report the Minister of Justice continues to engage with the political parties with a view to reaching agreement to the NCA having a wider role here, subject to appropriate safeguards around issues such as accountability. The Minister’s view is that subject to appropriate structures the NCA needs to be fully empowered to work in full partnership with the police and others so that they have direct access to its range of expertise in specialist areas and international reach in order to protect the people of Northern Ireland”.*

151. The Chief Constable has also commented on this issue in the PSNI Annual Report and Accounts for 2012-13, on page 38, in his Governance Statement:

*“National Crime Agency (NCA). The formation of the NCA on 1 October 2013 and the decision of the Northern Ireland Assembly to not enact enabling legislation allowing the NCA to operate within Northern Ireland, means that PSNI will not be connected to national resources and specialisms relating to sharing intelligence, civil recovery of criminal assets, child exploitation on line, cybercrime and specialist resources for covert policing. This will impact on the PSNI’s ability to protect life under Article 2 of the Human Rights Act (1998), and tackling serious crime, such as drug trafficking and human trafficking. It will also cause pressures on resources as inevitably more PSNI resource will be needed to combat serious crime in an attempt to plug the gap caused by the absence of the NCA. The PSNI Audit and Risk Committee considers this to be a serious risk for PSNI, due to the potential impact for public harm.”*

152. On 7 October 2013, the Minister of Justice raised concerns that the NCA would not operate in Northern Ireland from its operative date of 14 October. Mr Ford said:

*“I haven’t lost hope that we will get full political agreement, that we will be able to see the NCA operational and discussions are ongoing to see if we can get that political agreement.*

*“In the face of pressure from the threat of dissident republicans and loyalist street violence the police do not need extra burdens placed on them when there’s a fully equipped national agency able to carry out those duties”.*

153. Two points strike me very clearly from all these comments, based on my own experience when I worked on police policy issues in the Home Office, and from talking to people about this issue, in Northern Ireland and in Great Britain.
154. First, as I said last year, 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. Especially in the areas of intelligence and covert policing, there are bound to be sensitivities and anxieties from the past which limit the scope people feel they may have to move forward on this.
155. But the OCTF report clearly signals the dangers Northern Ireland would face if it were to be excluded from the wider law enforcement community. The Chief Constable has also accurately diagnosed the potential operational risks, and the Minister of Justice has raised the effects of the unnecessary diversion of resources away from serious security problems. Northern Ireland has enough problems to deal with without advertising itself as the weak link in the chain of international and organised crime. Furthermore, participation in the whole range of NCA activities would support the normalisation agenda, not detract from it.
156. If all these issues were fully recognised, it would not be difficult to draft a framework which recognised and preserved all the necessary equities while, at the same time, closing off the danger of Northern Ireland being left in vulnerable isolation. Gaining acceptance of such a framework, and delivering it effectively, would be a much more difficult challenge.

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

### **Introduction**

157. 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 2012 to 31 July 2013 and what this shows about any continuing need for them.
158. This is the heart of a review process such as this and is inevitably rather long. To make all this easier to read and understand, I shall break it down into twelve subject areas:
- ***Summary of police powers against the residual terrorist threat***
  - ***Changes made by the Protection of Freedoms Act 2012***
  - ***Completion of the Code of Practice May 2013***
  - ***Judicial comment and subsequent events***
  - ***The authorisation regime***
  - ***Assessment of authorisations 2012-13***
  - ***Police operational activity 2012-13***
  - ***Military operations in support of the police***
  - ***Case studies: Letterkenny Road, Londonderry 3 March 2013***
  - ***Statistics on the use of the Justice and Security Act powers***
  - ***Road closures and land requisitions***
  - ***Planning for public order situations***

### **Summary of police powers against the residual terrorist threat**

159. For convenience, I will summarise below, as I have done before, the context of police powers and operations in the security field. This is all about the process, but it helps to explain what has happened this year.
160. I have twice this year asked the police and the military authorities to provide me with detailed presentations on recent cases of suspected terrorist activity. These formal presentations have covered 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.
161. 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.
162. 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 in recent years that my review should cover these powers together in so far as they cover “stop and question” and “stop and search”.

163. The starting point for my review is the security profile described in Part 4, 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.
164. 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**

#### How have these changes worked out in practice and how have the police responded to them?

165. Last year I set out in some detail the changes brought about by the Protection of Freedoms Act which received Royal Assent on 1 May 2012. They affected both the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007. The effects of those changes were felt in the last three months of the reporting year 2011-12. This year (2012-13) is the first full year of the new legal regime. I described the rather complex detail involved in my report last year.
166. My main interest this year has been to try to answer two questions: how have these changes worked out in practice, and how have the police responded to them?

#### Judicial comment

167. There has been significant judicial comment on the Justice and Security Act, with major operational implications. Indeed this is a major focus for review this year.

#### Withdrawal of Section 44 of the Terrorism Act 2000 and replacement by Section 47A

168. I reported last year on the withdrawal of section 44 of the Terrorism Act 2000 consequent upon the Strasbourg decision in the *Gillan and Quinton* case and its replacement by a new section 47A, first under a remedial order under section 10 of the Human Rights Act 1998 and then with the enactment of a permanent replacement power, new section 47A of the Terrorism Act, introduced by section 61 of the Protection of Freedoms Act 2012 (POFA). This was accompanied by a

new Code of Practice requirement in section 47A of the Terrorism Act, introduced by section 62 of POFA, which came into effect in July 2012.

169. Section 47A has not been used in Great Britain, but section 47A powers were authorised for use during a 5 day period in Northern Ireland, in circumstances which I will describe in detail below.
170. To help with understanding all this, we need first to consider the scope of section 47A compared with the power in Schedule 3 paragraph 4A to the Justice and Security Act (which was inserted by Section 63 of and Schedule 6 to the Protection of Freedoms Act).
171. I set this out in paragraphs 190 to 193 of my report last year, but it is worth repeating because of the way the two powers have been used this year in the context of the different statutory tests:
- Section 47A of the Terrorism Act may be appropriate when a senior police officer reasonably suspects that an act of terrorism will take place.
  - Schedule 3 paragraph 4A to the Justice and Security Act may be appropriate when a senior officer 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.
172. The new authorisation power under Schedule 3 is therefore tightly limited – and rightly so – to the circumstances provided elsewhere in the Justice and Security Act for the use of stop and search powers. The range of activity to be prevented is much narrower than the corresponding provision in section 47A, and is closely related to the circumstances in Northern Ireland and the activities of residual terrorist groups, with their customary reliance on munitions<sup>2</sup> and wireless apparatus.
173. 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.
174. When I wrote my report last year I thought it was conceivable that section 47A might have been used this year as part of the preparations for the G8 meeting in June, if for example there had been emerging intelligence of a specific international terrorist threat. In fact no such

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<sup>2</sup>Munitions are defined as explosives, firearms and ammunition; and anything used or capable of being used in the manufacture of an explosive, a firearm, or ammunition.

threat emerged, so no question of using section 47A arose in relation to the G8. It was used to deal with a different problem, described below.

*Amendments to the Justice and Security Act by means of the Protection of Freedoms Act.*

175. The main change was the introduction of an authorisation procedure for the exercise by the police of these stop and search powers. For the armed forces, the power to search without reasonable suspicion without the need for prior authorisation was retained, the rationale presumably being that if it were necessary in extreme circumstances it would need to be used at very short notice.

*Completion of the Code of Practice May 2013*

176. A related change, made separately from the changes set out above, has been the preparation of a Code of Practice under section 34(1) (a) and 34(2) of the Justice and Security Act. This has been the first time that this code-making power has been used. Last year I saw it as a welcome development in the operational context. This year it assumed significance in legal terms as well.

177. This has been a major development and I have covered it in considerable detail below. For ease of reading, I have split the text up like this:

- Judicial proceedings and the Code
- Parliamentary proceedings
- Conclusions to be drawn from the Parliamentary debates
- Preparation of the Code
- Changes made to the Code after the consultation process.

*Judicial proceedings and the Code*

178. The introduction of the Code was accelerated by judicial proceedings when the Court of Appeal found in May 2013 that the operation of the stop and search powers in the absence of a Code of Practice was unlawful. I have analysed this judgment in full below. On Wednesday 15 May the Code of Practice was brought into force by an order made under the urgent procedure provided in the 2007 Act. Once the Code of Practice was in force and providing the relevant test was met, the PSNI were able to use the 2007 Act powers lawfully in line with the Court of Appeal judgment. Under the terms of the urgent procedure, the Code needed to be debated and approved by both Houses or it would have ceased to have effect on 3 July 2013. It completed the Parliamentary approval process on 26 June and therefore remains in force permanently.

### Parliamentary proceedings

179. The Parliamentary proceedings are all on record in Hansard and I do not need to go into them in full detail here. But I will draw out the main points since they provide a wealth of information about the context both operationally in Northern Ireland and politically at Westminster.
180. In describing the Parliamentary narrative, I have set out below the main processes, in chronological sequence, and have abstracted the main references.
181. The draft Code was scrutinised by the Secondary Legislation Scrutiny Committee who commented on it in their Fourth Report. Their particular interest was in the power of entry under section 23:

*“Although this Code covers matters reserved to Westminster by the Justice and Security (Northern Ireland) Act, it has been developed with the Police Service of Northern Ireland (PSNI), and shared with officials in the devolved Department of Justice at various points throughout its development. The draft Code was published for consultation in December 2012.*

*“The independent reviewer of the Justice and Security (Northern Ireland) Act 2007, Bob Whalley, produces a report (which is published) on the use of these powers, and includes statistics on their use and compliance with requirements. In 2011-12 the section 23 power was used 75 times and in 2012-13 it was used 119 times. PSNI also engage with local communities on these powers and accountability structures require senior officers to attend meetings of the Police and Community Safety Partnerships where specific concerns about police actions can be raised. Community engagement is covered in paragraph 5.2 of the Code”.*

182. The draft Code was debated in the House of Lords on 20 June and approved. In introducing it, Baroness Randerson outlined the purpose and scope of the powers in the Justice and Security Act and the changes made in the Protection of Freedoms Act and then gave the context for introducing the draft Code under the urgent procedure:

*“In December 2012 my Right Hon Friend the Secretary of State for Northern Ireland launched a 12 week public consultation seeking views on the code of practice. The consultation closed on 6 March and a total of four formal responses were received. All four broadly welcomed the introduction of the code as drafted. The comments were carefully considered and amendments to the code were made. The draft code was close to being finalised when the Court of Appeal issued its judgment in a judicial review – the case of Canning, Fox and McNulty – that challenged the Police Service of Northern Ireland’s use of stop-and-question and stop-and-search powers under the 2007 Act.*

*“The Court of Appeal found that, without a code of practice in place for the use of these powers in the 2007 Act, the powers were too broad and lacked adequate safeguards. Noble Lords will wish to note that the judgment related to the powers in the 2007 Act prior to the amendments made by the 2012 Act, which brought in the safeguard of an authorisation process for the stop-and-search power. However, following the judgment and subsequent legal advice, the PSNI suspended its operation of stop-and-question and stop-and-search powers pending further legal advice. Due to the risk to public safety if these powers were not available to the PSNI, it was considered necessary to bring in the Code of Practice under an urgent procedure, as provided for by the 2007 Act. With the approval of the Secretary of State for Northern Ireland, the code of practice was brought into operation on 15 May, and the PSNI was able to resume use of these powers, which are an essential tool in ensuring public safety. This urgent procedure allows the code to remain in force for 40 days. This period ends on 3 July. In order for the code to become permanent, it must be debated and approved by both Houses.*

*“The Independent Reviewer of the Justice and Security Act, Robert Whalley CB, reviews the operation of sections 21 to 32 of the 2007 Act and considers the views of those who use or are affected by these sections. In his most recent review, the independent reviewer found “The operational indicators clearly point towards the operation of the JSA powers for a further year...my judgment is that the Justice and Security Act powers should continue unchanged for a further year.”*

*“The context for these powers is crucial to the debate. Your Lordships will all be aware that the threat level in Northern Ireland remains severe. It is vital that the Police Service of Northern Ireland continues to have available the powers in the Act. The powers in the Act are not terrorism powers per se; they are powers for dealing with public order situations, including, but not restricted to, terrorism. The powers are an important tool for maintaining public order and were exercised by the PSNI during the recent flags dispute. However, given the current situation in Northern Ireland, these powers are often used to protect the public from terrorist attacks. The PSNI has demonstrated that these powers are necessary and effective in dealing with NI related terrorism. They have prevented attacks, saved lives and led to arrests and convictions”.*

183. For the Opposition, Lord McAvoy said:

*“Security in Northern Ireland is of the utmost importance to all Noble Lords in this House, and we are united in our commitment to ensuring that people in Northern Ireland are safe and secure. The men and women officers of the PSNI do their jobs with bravery and dedication. The measures in the Act play a hugely important role in combating terrorism and protecting communities in Northern Ireland and it is very important that they are overseen by rigorous independent scrutiny. That is encompassed in the Code of Practice, which is vital to*

*maintaining public confidence in Northern Ireland in the exercise of these powers.”*

184. The House of Commons debate on the draft Code took place on 26 June. The Minister of State, Mike Penning MP, said:

*“I am sure that we would agree that, like the rest of the United Kingdom, we would like such orders to be unnecessary in Northern Ireland but, sadly, dissident republicans still pose a serious threat to life and limb, as we recently saw with the terrible murder of prison officer David Black. We have had an excellent period with very little trouble during the G8, but the stop and search powers which I authorise every 14 days, after studying evidence of whether or not they are needed, were used extensively every week and every day”.*

*“...we need to make sure that the citizens of Northern Ireland are safe, and that the police and Security Service have the powers that they need to keep everything as safe as possible, Even though these powers are not used elsewhere in the United Kingdom, they are ever so important to the way in which we make sure that we keep the population safe, particularly our officers who serve us so well.”*

185. For the Opposition, Stephen Pound MP said:

*“May I associate myself most strongly and warmly, both on a personal and party basis, with the comments made by the Minister about the fact that in an ideal world we would not have to introduce this sort of legislation. One thing which we are all working towards is the elimination of this sort of specific Northern Ireland legislation. However, the fact means that the measure cannot be simply ignored at present and must be renewed by next Wednesday.*

*“...Certainly, there are controversial aspects to the order. For example, stop and search will always have an element of controversy about it. Some people are also concerned that the power under the order is not just available to the PSNI but to the forces of the Crown throughout Northern Ireland. In the future, I hope that there is a diminution in the extent of that power, which should return to the PSNI, to replicate the situation in the rest of Great Britain.*

*“...The measure is very complicated, but it has to be, and that is the reality. Those of us who have read the judicial review application and the judgment will realise how fraught an issue it is. The principal finding in Canning, Fox and McNulty was that even though the practice was not being challenged, in principle and in theory it was, and that is why we have to have the code.*

*“This is one of those unusual occasions when the Opposition support the Government, but both the Government and the Opposition wish that we did not need to bring this legislation before a Committee. However, we are where we are, and this is a good, clean, honest, open*

*and transparent piece of legislation, and on behalf of Her Majesty's Opposition, I am delighted to support the Government”.*

Conclusions to be drawn from the Parliamentary debates

186. The debates on the Code were the first Parliamentary comment on the Justice and Security Act since the amendments made under the Protection of Freedoms Act. I draw out the following main points from them:
- The bi-partisan policy towards Northern Ireland, which has been a feature of Westminster politics for over 40 years, is continuing
  - In that respect it marks out Northern Ireland politics as different from politics in England, Wales and Scotland
  - Both the Government and the Opposition looked forward to a time when the JSA powers would no longer be necessary for public safety in Northern Ireland
  - But both endorsed their continuation for the present in relation both to terrorism and to public disorder, which were recognised as challenges to public safety
  - The Government made clear that the threat level in Northern Ireland is still “severe” and the implications of that assessment (made by the Security Service) were not challenged in the Parliamentary exchanges
  - The role of the PSNI in keeping the public safe in Northern Ireland was fully recognised
  - There was risk to public safety if the powers were denied to the police as a result of recent judicial intervention – hence the urgent need for a Code to comply with the judgment and restore police powers
  - The extension of the powers to the military also marked out Northern Ireland as different from the rest of the UK
  - There was recognition of the sensitivity of these powers, both police powers and military powers
  - Hence the need for independent oversight, of which the role of the Independent Reviewer was a principal element
  - The Code itself was another important safeguard and vital to maintaining public confidence
  - It commanded confidence on both sides of both Houses of Parliament.
187. I have reflected carefully on the Parliamentary debates mentioned above in making my assessments and judgments this year. In reporting to the Westminster Parliament it is right to have regard to recent Parliamentary proceedings. They give a guide as to the issues which Parliamentarians think are important, and they strengthen the link between Parliamentary oversight and an independent review process.

### Preparation of the Code

188. Some may think it illogical for me to describe the final stages of the Code – its Parliamentary approval – before explaining how it came about in the first place. But the link between the judicial decision and the Parliamentary process is the crucial point here. Nevertheless I will briefly describe what has happened in the past year to prepare the Code.
189. By way of background, I explained last year (paragraph 167 of the Fifth Report) that the Northern Ireland Office had prepared a draft of the proposed Code, which they had then issued for consultation. Responses were received from the Northern Ireland Policing Board's Performance Committee<sup>3</sup>, the Northern Ireland Human Rights Commission, the Police Superintendents' Association of Northern Ireland and the Committee on the Administration of Justice. Rights Watch UK prepared comments which, although not formally submitted as part of the consultation process, they kindly shared with me. There has been a general welcome for the preparation of the Code.
190. I had the benefit of meeting all these groups in the course of the year and was able to discuss with them the detailed comments which they had made to the Secretary of State. But since their comments were directed to the Secretary of State rather than to me I have not commented on them in detail. Instead I have drawn upon the Summary of the Responses to the Public Consultation which was published in May 2013 and which was commented upon in the course of the House of Commons debate on the Code.

### Changes made to the Code after the consultation process

191. I have explored the process by which the Code was completed. Rather than break the flow of a rather complex narrative here, I have set all this out in Appendix D.
192. The analysis in Appendix D covers the main changes from the draft, together with my comments. I think it is helpful to set them out so that those responding, and others, can judge the way in which the Northern Ireland Office amended the draft Code in response to comments. Some of this is relevant to current judicial review proceedings in the High Court in Belfast.

### Future work on Codes

193. Now that the Code has been completed and brought into force, the question will return whether the next logical step is to compile all the existing Stop and Search Codes into one document, which one of my correspondents had suggested. I said in the Fifth Report (paragraph 186) that in my view the priority was to complete work on the Code. That has now been done.

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<sup>3</sup> Formerly known as the Human Rights and Professional Standards Committee.

194. There would be value in a single Code to assist operational officers to make judgment about the powers available to them. But the training for police officers, which I have observed, already requires them to think across the whole range of powers available to them. I am not sure that a single Code would necessarily add much more to what already happens now.
195. The Policing Board's Human Rights Adviser has suggested (Recommendation 11 of the Thematic Report on stop and search) that the PSNI should conduct a review of internal policy and produce a stand-alone policy document setting out the framework within which powers to stop and search under the Terrorism Act and the JSA must be exercised. That seems to me the next logical step towards ensuring that PSNI officers make the necessary connections between all the powers available to them, so as to use them as effectively as possible.

### **Judicial comment and subsequent events**

#### **High Court judgment**

196. Before examining the detailed operation of the Code this year, especially the authorisation regime, I will look at recent judicial comment, since it is relevant not only to the status of the Code but also to what has happened in operational terms.
197. I reported in my Fifth Report (paragraphs 251 to 257) on the judgment by Mr Justice Treacy on 9 July 2012 in the High Court in Northern Ireland (reference TRE8556) in a case involving 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.”*
198. 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.”*
199. After considering the legal and procedural safeguards surrounding the operation of the powers, the judge said (at paragraph 124):
- “(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”.*

### Court of Appeal judgment

200. An appeal was lodged in the Court of Appeal in Northern Ireland on 25 July 2012 against the judgment of Mr Justice Treacy. Judgment was delivered in the Court of Appeal in Northern Ireland on 9 May 2013 by Lord Justice Girvan (reference GIR8854).
201. The Court of Appeal found that without a Code of Practice in place for the use of stop and question and stop and search powers under the Justice and Security (Northern Ireland) Act 2007, these powers were too broad and lacked adequate safeguards.
202. Lord Justice Girvan dealt with the question of interference with Article 8 rights in these terms:

*“(40). It is undoubtedly one of the hallmarks of a free and democratic society that its citizens have a right to move freely within their state subject only to justifiable and necessary legal restraints on that freedom. The individual is entitled to expect that he can exercise his freedom to move untrammelled by the need to account for those movements. It is also a hallmark of a free society that people are entitled when they wish to keep private their personal identity in the absence of some justifiable reason why they should be required to identify themselves. The exercise by agents of the state of a state power to ask a citizen to identify himself and to account for his movements has the clear potential to interfere with the individual’s private life. A person coming or going to venues, the identification of which he may quite legitimately consider to be private or confidential, would justifiably consider it an invasion of his privacy to be stopped and questioned about his movements. Such questions may involve enquiries requiring him to divulge information relating to aspects of his private life which may, for example, relate to his involvement in lawful political, social, cultural or sexual activities which may be considered by some to be controversial or unacceptable. The power to stop and question, particularly, when this may occur in a public place and in the presence or hearing of others, could clearly invade the private life of the individual concerned. While it is argued by the respondent that such a power does not pass a threshold of seriousness so as to give*

*rise to any potential breach of article 8, it is not difficult to envisage factual scenarios and lines of questioning which could occur within the exercise of an untrammelled section 21 power that would give rise to an interference with a private life of the individual”.*

203. Lord Justice Girvan then turned to whether such interference was “in accordance with the law”:

*“(41) Much of the focus of the appellant’s argument was directed to the question whether the statutory power satisfies the “in accordance with law” requirements in article 8.2. Undoubtedly section 21 confers a statutory power and discretion on individual police officers to stop and question and thus there is a clear domestic law basis for the exercise of such a power. The question is whether that statutory power satisfies the “quality of law” requirement demanded by Convention law”.*

204. Turning in more detail to section 21, Lord Justice Girvan said:

*“(46) It is clear that section 21 expressed as a broad discretionary power does not in itself provide guarantees or safeguards against abuse. It is widely framed and it does not contain any rules designed to ensure that the power is not arbitrarily exercised. This is not to say that the 2007 Act read as a whole does not contain the means to ensure a legislative framework which would satisfy the “in accordance with law” requirement provided that the power is a necessary one which satisfies the test of necessity and proportionality under article 8.2. Section 34 enables the Secretary of State to make a code of practice in connection with, inter alia, the section 21 power. Such a code could contain appropriate terms and conditions relating to the exercise of the powers. Such a statutory code governing and controlling the exercise of section 21 powers would form part of the relevant legislative framework. A properly formulated code qualifying and guiding the exercise of the section 21 power then read with section 21 could provide a legal framework that would satisfy the “quality of law” test.”*

205. Having thus introduced the link between the section 21 power and the code under section 34, Lord Justice Girvan said:

*“(49)...It is not, of course, the function of the court to identify or spell out what a relevant code of practice should contain. The formulation of the code will involve the exercise of a margin of appreciation visited in the executive and the legislation. It is clear that it should ensure an exercise of the section 21 power which seeks to achieve the minimum intrusion necessary into the private lives of individuals and clearly specifies the circumstances which justify the exercise of the power. Pending the introduction of such a code the PSNI does not have a proper Convention law compliant basis for exercising the section 21 power”.*

206. Lord Justice Girvan also assessed the status of section 24, with reference to the cases of *Fox and McNulty*:

*“(58) As in the Canning case the question arises as to whether the wide discretionary power contained in section 24 and Schedule 3 was properly exercised by the police pending the introduction of a code of practice or some other legislative formulation of the legal conditions under which the power should be exercised...”*

*“(59) Once an interference with Article 8.1 has been established, the court must then consider whether the breach can be justified under article 8.2. As in the case of section 21, the quality of law tests must be satisfied. We have set out at some length above the considerations which apply in determining the nature of the relevant quality of law concerned. Since adequate safeguards to prevent the arbitrary exercise of the power under section 24 in Schedule 3 paragraph 4 had not been put in place the power contained therein was not properly exercisable”.*

207. He also commented on the exercise of those powers in the JSA which did not require reasonable suspicion. (He made clear that he was commenting on the powers as they existed before the amendments made by the Protection of Freedoms Act):

*“(60) Insofar as the appellant sought to argue that the power could never have been validly exercised in the absence of a reasonable suspicion that the appellants had munitions or wireless equipment unlawfully with them we must reject that narrow argument. The terms of any code made under section 34 were not bound to exclude the possibility of requiring or permitting searches to be carried out on some basis other than the presence of reasonable suspicion of unlawful conduct by the party stopped and searched. To take but one simple example, if intelligence indicated to the police that terrorists were transporting a bomb travelling in the direction of a given town centre in a red Ford vehicle, the stopping by the police of red Ford vehicles in the vicinity of the town, even in the absence of individual suspicions in relation to an individual driver, could properly be considered as justifiable and as a necessary and proportionate response to the risk of mass death and destruction. No reasonable law abiding humane citizen could properly object to a relatively minor invasion of his privacy to help prevent a potential atrocity which could result in death or destruction. The new amended legislation represents the current legislative choice as to the applicable basis to stop and search. That legislation is not the legislation under consideration in the present case.”*

#### General implications of the Court of Appeal judgment for police operations

208. I draw the following implications for police operations under the JSA from this important judgment.
209. The most significant is the need for a Code under section 34 of the JSA to ensure that PSNI operations are compliant with Convention law. I have been clear for some time that a Code would have an operational value to underpin police operations (see recommendation (1) in each of

my Fourth and Fifth reports). Now the courts have found that it is a legal requirement, to satisfy “quality of law” tests (*paragraph 46 of the Court of Appeal judgment*).

210. The provision of such a Code therefore meets the identified gap in the legal framework: the judge has effectively said that the permissive wording in section 34, by which the Secretary of State *may* make codes of practice, is too weak and should be regarded as a mandatory requirement and construed so that the Secretary of State *must* make such codes (*paragraph 49*).
211. As a matter of policy, the Government have hitherto taken the wording of section 34 literally and regarded the Code-making power as permissive. The NI Court of Appeal has found that approach to be inadequate (*paragraphs 46 and 49*).
212. That applies to both the section 21 and section 24 powers (*paragraphs 49 and 59*).
213. Lord Justice Girvan’s comments about the need not to allow “untrammelled” actions under section 21 would benefit from detailed legal assessment, as part of a PSNI pilot referred to in Appendix D, on the validity of questioning about religious or community background (*paragraph 76*).
214. The amendments brought about by the Protection of Freedoms Act, central to which is the formulation of an authorisation procedure, allow police operations without reasonable suspicion, for example in the case of intelligence about a suspect vehicle (*paragraph 60*). This is relevant to the case study reported below.
215. Moreover, to the extent that such operations amount to a relatively minor invasion of privacy, “*no reasonable law abiding humane citizen could properly object*”, in Lord Justice Girvan’s view. The police are in my judgment entitled to regard those words as endorsement of the proportionality of police operations of this kind (*paragraph 60*).
216. Unfortunately, some of those who are the subject of police attention have demonstrated by their actions that they are neither law abiding nor humane.

#### Events subsequent to the Court of Appeal judgment

##### *Operational developments*

217. The Court of Appeal gave their judgment on Thursday 9 May. At the beginning of that day there was in effect across the whole of Northern Ireland an authorisation under paragraph 4A (1) of Schedule 3 to the JSA, by virtue of section 24.

218. Compliance with the Court of Appeal judgment required complete and immediate cessation by the PSNI of all stop and question and stop and search activity under the JSA.
219. Baroness Randerson, for the Government, explained in her speech in the House of Lords on 20 June what happened next. I have quoted from her speech above. In summary, the Code was brought into force on 15 May so that, in Baroness Randerson's words, *"the PSNI were able to resume use of these powers, which are an essential tool in ensuring public safety"*.
220. On the evening of 9 May, faced with the complete and immediate loss of powers which the PSNI regarded as essential to public safety and to their positive duty to protect life under Article 2 of the ECHR, a senior PSNI officer authorised stop and search powers under section 47A of the Terrorism Act.
221. On Saturday 11 May, the Secretary of State confirmed the PSNI authorisation of stop and search powers under section 47A of the Terrorism Act for a 14 day period (until 23 May). This authorisation under the Terrorism Act was subsequently cancelled when the Code of Practice under the Justice and Security Act came into effect at 00.01 on Wednesday 15 May, enabling the PSNI to resume use of the JSA powers including stop and search powers under section 24, if authorised.
222. I have carefully scrutinised all the documents in relation to the section 47A application, including detailed internal notes of the discussions between the NIO and the PSNI. This was the first use made of section 47A anywhere in the United Kingdom, and is so far the only one.
223. Although the use of section 47A is driven by the same overarching need to protect public safety and hence fulfil obligations under Article 2 of the ECHR, the test for its use is different from the comparable power in Schedule 3 to the Justice and Security Act. Otherwise, there would be no need for two separate powers.
224. 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 to prevent it, and that the specified area or place and duration are no greater than necessary to prevent it.
225. Under the Schedule 3 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 to prevent such danger, and that the specified area or place and duration are no greater than necessary to prevent it.

226. The nature of the on-going terrorist threat in Northern Ireland means that the JSA power is likely to be much more appropriate than the Terrorism Act power. It is less likely to be the case that the police will have the degree of specific intelligence which would justify a section 47A authorisation. The nature of a continuous and wide-ranging terrorist threat reflected in the "Severe" rating mentioned above means that the JSA power is likely to be more suitable.
227. In the urgent circumstances brought about by the complete and immediate loss of the JSA powers on the evening of 9 May, the test for the police was whether they reasonably suspected that an act of terrorism would take place.
228. That test could only be met if the intelligence supported it. In reading all the papers for the emergency section 47A authorisation I have looked at the intelligence with this specific test in mind.
229. I am satisfied that the test was met, because the intelligence on this occasion was sufficiently linked to the test of reasonable suspicion that "an act of terrorism will take place," and so I am satisfied that the police were justified in making a section 47A application on 9 May.
230. I am also satisfied that the Secretary of State was justified in confirming the Terrorism Act authorisation on Saturday 11 May.
231. The Secretary of State's officials kept me in close touch with all these developments between the morning of 9 May when the Court of Appeal judgment was given and the coming into force of the JSA Code just after midnight on 15 May.
232. In these unusual circumstances I think that senior police officers and the Secretary of State made correct decisions. Faced with the complete and immediate loss of powers, which were in use at the time for the protection of the public, it was right to seek an alternative.
233. The extent of known threats at that time justified recourse to the Terrorism Act, as I have indicated above. But examination of the papers brought home to me that the Terrorism Act test does not match the circumstances of the on-going terrorist threat in Northern Ireland as precisely as does the Justice and Security Act test. I comment further on this below.
234. With the JSA Code of Practice now in effect, the police can use the JSA powers unless there is further judicial decision to the contrary. Any further use of the Terrorism Act powers should be regarded as the exception (an example would be the final stages of an international terrorist plot).

### *Subsequent legal developments*

235. On 6 September, the Government said that it had decided not to pursue an appeal to the Supreme Court in the case on which Lord Justice Girvan had given judgment.
236. Other legal challenges are pending. These concern the use by the police of their powers under the JSA and the issuing of a record following a stop. There are also challenges to the use of the JSA powers as amended by the Protection of Freedoms Act and to the use of the Terrorism Act. As they are current cases I will make no comment on them.

### **The authorisation regime**

237. In my Fifth Report I described in detail what the new authorisation regime entails. Last year was the first year of its operation and I thought it right to review it in some depth.
238. I will therefore not go over all this again here. Instead, I refer to paragraphs 174 to 250 of the Fifth Report, which set out the procedure and reviewed its operation from its inception on 10 July 2012, through the end of the reporting year on 31 July 2012, to 16 August 2012.
239. For convenience, I briefly summarise below the main elements of the authorisation regime, but without much by way of supporting detail, since there are no changes of significance from last year. Some of the references to particular paragraphs in the Code have changed, but the main narrative in the Code is unaltered.

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

240. 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).

### *The authorising officer*

241. The senior officer making the authorisation must follow a detailed rubric (in paragraphs 8.19 to 8.29) which describes the issues to be covered when making an authorisation.

### *The role of the Secretary of State*

242. 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.

243. The Code sets out in detail the relationship between the authorising officer and the Secretary of State. Paragraphs 8.32 to 8.58 deal with the intelligence picture, the geographical extent, the duration and the briefing provided for officers.

#### *Actions of individual police officers*

244. The third element of the process is the individual police officer. This is dealt with in detail in the Code (paragraphs 8.59 to 8.80) 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.

#### *Role of intelligence*

245. I made clear last year that the role of intelligence is critical to decisions to make or confirm an authorisation. My view on that was reinforced by a comment in the judgment of the Court of Appeal in the judicial review case, which I have already quoted, but which bears on the specific role of intelligence.

246. Lord Justice Girvan, in paragraph 60 of his judgment, said:

*“To take but one simple example, if intelligence indicated to the police that terrorists were transporting a bomb travelling in the direction of a given town centre in a red Ford vehicle, the stopping by the police of red Ford vehicles in the vicinity of the town, even in the absence of individual suspicions in relation to an individual driver, could properly be considered as justifiable and as a necessary and proportionate response to the risk of mass death and destruction.”*

247. The example of intelligence given by the judge is typical of the intelligence reports which will form part of the authorisation procedure. An authorisation will contain several intelligence reports of this kind, of varying detail and credibility. The intelligence picture is critical in determining 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.

#### *Failed authorisations*

248. I will comment here on one point which I was asked to consider this year by an independent group who have been following the preparation of the Code.

249. A situation may arise where an authorisation is not confirmed by the Secretary of State, in which case it lapses. Nevertheless any actions taken during the course of it are lawful<sup>4</sup>. This is correct, because otherwise the police would not be able to exercise their powers

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<sup>4</sup> This point is specifically provided by JSA Schedule 3 paragraph 4D(3).

properly. They would not know whether they might subsequently be found to have been acting unlawfully.

250. It was suggested to me that authorisations which failed to be confirmed might somehow escape the provisions of the authorisation system and that the Code should include provision to monitor and remedy practices which lead to refused authorisations.

251. I doubt that the Code need make explicit provision for this. The Code says at paragraph 5.14:

*“The use and application of these powers should be overseen and monitored by the Northern Ireland Policing Board and the Independent Reviewer of the 2007 Act.”*

252. For my part, I am reviewing every aspect of the authorisation process. Any authorisation which failed to achieve confirmation after 48 hours would attract my close scrutiny. I would want to know why it was made, why the Secretary of State had declined to confirm it, what the operational implications were, and what conclusions both the police and the Secretary of State had drawn from the episode. In fact there have been no such events this year.

### **Assessment of authorisations 2012-13**

253. In paragraph 223 of my Fifth Report, I commented on the three authorisations which covered the period 10 July 2012 to 16 August 2012 (the last period of the previous reporting year and the initial period of the reporting year now under review).

254. With the agreement of the Secretary of State, I have reviewed all the authorisations made from 16 August 2012 and concluding on 6 August 2013.

#### *Format*

255. I described the format for these authorisations in paragraphs 224 to 226 of my Fifth Report. The format has evolved in minor detail throughout the year, but is basically the same as the one which I described last year.

256. The changes which have been made are largely refinements which have been found desirable in the light of experience, to meet the needs and wishes of the various participants in the process, and to take account of legal advice. The process is therefore dynamic in its development, reflecting the close attention given to each authorisation at every stage of its progression.

257. Although authorisation procedures of this kind are not new in UK domestic law (the previous section 44 of the Terrorism Act was the most similar in practice and intent) the requirement in Northern Ireland

to ensure meticulous attention to detail is stringent, so as to reflect the many checks and balances in the system.

258. References in the authorisation form to the draft JSA Code of Practice have been updated to reflect its completion.

*Making the case for an authorisation*

259. This section is at the heart of the authorisation process, as I described in paragraphs 227 to 230 of the Fifth Report. To summarise what I said then, the authorisation process must fulfil specified criteria and meet specified standards. It must be justified for the geographical area to which it applies, and should include references to the security incidents which have occurred recently and, more important, the intelligence which prompts the need for the power over the succeeding 14 days.
260. It also includes references to the level of threat (which has remained unchanged as classed at SEVERE throughout the reporting year), 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 officers.
261. I have no doubts of any kind about the strength of the intelligence picture which has driven the authorisations this year. What is compelling is the weight of the material and the direct links made with the known intent and capability of terrorist groups operating in Northern Ireland. Every authorisation has been supported with detailed and specific intelligence traces about the kinds of terrorist attacks being planned. From my detailed comparison of each intelligence case with its immediate predecessor I am satisfied that both new intelligence and a fresh assessment of the intelligence have been provided in every new application.
262. In some cases information about the precise formulation of an attack or its planning has been incomplete, for example in terms of those involved, their targeting, and their intended timing. Intelligence sometimes comes with such a degree of detail or certainty, but not very often. More usually, elements of the attack planning may be missing. The intelligence is no less deadly for that and it is perilous to set it aside or discount it for that reason.
263. Intelligence practitioners have to learn to handle a range of material from near certainty to vague ambiguity, always bearing in mind the possibility of a deliberate intention to mislead, to throw the authorities off the scent, to involve innocent parties or to create a false sense of security. These phenomena are not new.
264. Of course, an authorisation case which was based on a few scraps of circumstantial material would not amount to much and would not meet the thresholds required here. Some material at the margins of credibility or not specifically linked to attack planning involving

munitions or explosives has been challenged at various stages of the process, and stringent self-regulation has been evident throughout.

265. Senior police officers need to be fully aware of all these issues. Their personal endorsements of each individual authorisation application, which are required if it is to proceed, all of which I have read carefully, demonstrate to me that all those who have put their signatures to authorisations this year are fully aware of the requirements of discernment and judgment imposed upon them.
266. The separation of functions between intelligence experts, legal advisers, senior police officers, officials in the Northern Ireland office and Ministers generates a robust framework for decision taking which, while not fool-proof, provides internal challenges safeguarding against the danger of what is sometimes called “group think” (defined as “prevailing wisdom” in the report of the Butler Review in 2004 on *“Intelligence on weapons of mass destruction”* after the Iraq war).
267. A robust framework of this kind is healthy and necessary. There is nothing more dangerous, as we have seen in other contexts, than a flimsy or disingenuous intelligence narrative which acquires an unstoppable momentum of its own, with disastrous consequences. Scepticism and appetite for challenge must remain essential tools for intelligence practitioners and for policy officials who work with intelligence.

#### *Geographical extent*

268. The question of the geographical extent of a JSA authorisation has been given close attention this year by those charged with scrutinising authorisation applications. As I commented in paragraphs 231 to 236 of the Fifth Report, one of the major criticisms of the old section 44 power was that it was applied, apparently indiscriminately, to wide geographical areas. 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.
269. In paragraphs 233 to 235 of the Fifth Report I set out the thresholds which need to be met to justify applying for an authorisation for the whole geographical area of Northern Ireland (or for the whole of the time period potentially applicable). These issues are carefully set out in paragraph 8.26 of the Code. The extension to the whole of Northern Ireland *“must be justified in terms of its necessity to the particular threat.”*
270. In assessing geographical extent, the PSNI need to consider if terrorist activity, whether planning, targeting or attacks, continues to be carried out throughout Northern Ireland. They refer to the ability of terrorists to move across police area, district and international boundaries and the opportunistic pattern of switching location if a better

target presents itself. Applications are grounded in the location of recent incidents and the developing intelligence picture.

271. If the police wish to apply for the powers for the full geographic area of Northern Ireland, it is their practice (necessary in my view) to record that all eight District Commanders have indicated their view that officers should have access to the powers across the whole of their respective districts.
272. That position is not without difficulty in cases where in a particular district there has been little recent terrorist activity, where the powers have been used less in the preceding period, or where the intelligence seems to relate more to terrorist aspirations than to intent or capability.
273. On at least one occasion this year these issues were tested out quite stringently, because it was not evident from the initial material that the case for full geographic extent was made out. After further analysis and consideration of available material it was concluded that the threshold was reached. It is to the credit of those involved that the challenge process was rigorous, but this is no less than what the Code requires.
274. The formal authorisation process which has now been determined by the PSNI and the Secretary of State is that there needs to be cogent information, of a current threat, in each police district, for the period of the next authorisation (usually 14 days), as a result of which it is necessary to authorise the JSA powers to prevent danger to the safety of any person from the use of munitions or wireless apparatus. That is a concise summary. Detailed information in respect of each of the component parts of an authorisation case will remain crucially necessary if the case is to be made. This must scrupulously reflect the requirements in the Code.
275. All these developments bear on the question whether an authorisation is justified. Once it has been made, the discretion whether to use the powers under the authorisation is left to the individual officer. As Lord Justice Girvan said at paragraph 48 of his judgment in respect of section 21: *“The police are not compelled to stop and question individuals”*.
276. The existence of a stop and search authorisation over a particular geographic area does not provide the police with a free hand to use it at will in that area. That would indeed be a wrong use of the power. Operational decisions must reflect the level of threat, the intelligence, and the specific circumstances of individual behaviour in each case. Any fresh authorisation that follows enables the first two of these matters to be considered anew at a senior level.

#### *Community Engagement and Impact*

277. I commented in my Fifth Report that assessment of the community impact of the use of the Justice and Security Act powers was not

specifically required when the JSA Code was published in draft. The new requirements in the Code covering the need to avoid discrimination (paragraphs 5.6 to 5.8) and monitoring and supervising the use of stop and search powers (paragraphs 5.9 to 5.13) go some way to meeting what I had in mind but not to the full extent of what I think is desirable. It would have been better to include these points specifically.

278. For the present, the need will have to be met by the requirement in the authorisation application *“to provide a detailed account of the steps that have been taken to engage those communities that will be affected by the authorisation”*. The need to take full account of the community engagement dimension should never be far from the minds of all those involved in the authorisation process.

#### *Briefing for officers*

279. I commented in my Fifth Report (paragraphs 239 and 248-250) on the important need to link in the actions of individual officers with the authorisations by senior officers and the role of the Secretary of State. Paragraphs 8.49 to 8.58 set out very clearly the entire context of the use of the JSA powers and how they are to be carried out in police operations.
280. The requirements in the Code are well reflected in the PSNI authorisation forms, which require the authorising officers to *“demonstrate that all officers involved in exercising Paragraph 4A Schedule 3 powers receive appropriate training and briefing in the use of the legislation and understand the limitations of these powers”*.
281. The authorising forms go on to say that *“all PSNI officers using the powers have undertaken a new Counter Terrorism Training programme in 2012”*. This training will need to be kept up to date to reflect recent developments in the Court of Appeal. In particular, it will be important that the training reflects judicial comment on the use of the section 21 stop and question powers as well as the stop and search powers in paragraph 4A of Schedule 3.

#### *Practical implementation of the powers*

282. I described in paragraphs 240 to 243 of the Fifth Report the requirements on the authorising officer to provide practical information about how the powers will be used and why. This is set out in the PSNI Explanatory Notes to guide the authorising officer, from which I quoted last year.
283. Everything I noted last year remains relevant to the way in which the powers are operated. Two points mentioned last year have assumed greater significance in the past twelve months.
284. First is the point that the use of the powers should be led by intelligence rather than done at random. 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 as the Code makes clear. This point has been reinforced by the comments by Lord Justice Girvan, quoted above,

285. Secondly, the PSNI Explanatory Notes make the link between the section 21 stop and question power and the paragraph 4A/schedule 3 stop and search power. The coherent and co-ordinated use of the powers, and the possibility that the use of one may reduce the need for the use of another, are powerful safeguards. This is now all the more important in the light of judicial rulings to the effect that both powers amount to interference with rights under Article 8 of the ECHR, an interference which can be justified if a Code with appropriate safeguards is in place.

*Comment on the authorisation process 2012-2013*

286. Last year I analysed the new authorisation process in some detail, because it established the ground rules to be followed over time. These ground rules have been further refined this year to reflect the working experience of those involved in the PSNI and the NIO, and to ensure that the expectations of both parties are recognised and met. Procedures will naturally continue to evolve, as experience demands. But they will do so within the settled framework of the Code and in accordance with the requirements set down in the Court of Appeal judgement.
287. I repeat the point I made last year that 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.
288. With the agreement of the Secretary of State I have reviewed all the authorisations made under the JSA covering the period from 16 August 2012 to 6 August 2013. I have also reviewed the authorisation made under section 47a of the Terrorism Act. Use of these powers was authorised between 22.00 hours on 09 May and 00.01 hours on 15 May. In my judgment the process has been carried out to a high standard throughout the year. It is exhaustive and comprehensive and fully reflects the requirements in the statutes, Protection of Freedoms Act and the Codes of Practice under the Terrorism Act and section 34 of the JSA. Senior police officers have shown diligence and care. This has been mirrored within the Northern Ireland Office both by officials and by the Secretary of State and the Minister of State.

## **Police operational activity 2012-2013**

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

289. 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.
290. The most serious are the “national security” attacks. The number of such attacks in 2013 (up to the end of November<sup>5</sup>) was 25. This compares with 24 in the calendar year 2012, 26 in 2011 and 40 in 2010.
291. 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 incidents such as the murder of Danny McKay, “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.
292. 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.
293. The monthly update report published on 15 October 2013 gives statistics for the period 1 October 2012 to 30 September 2013. Overall, the report says:
- “The security situation in Northern Ireland has improved over the last decade with fewer security deaths, shootings, bombings and paramilitary style shootings and assaults recorded in 2012/13 than ten years ago in 2003/04. However, a significant threat still remains as evidenced by the two security related deaths in 2012/13 and the numerous shooting and bombing incidents as well as the continued use of paramilitary style shootings and assaults”.*
294. In the 12 month period 1 October 2012 to 30 September 2013 the police recorded 47 shooting incidents and 53 bombing incidents. This is 23 fewer shooting incidents and 15 more bombing incidents than in the previous year (1 October 2011 – 30 September 2012). There were 66 casualties as a result of paramilitary-style shootings and assaults: of these, 25 were shootings and 41 assaults. This compares with 72 casualties, 34 shootings and 38 assaults for the previous year.

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<sup>5</sup> Date this report was completed.

295. The police seized 76 firearms and 8.33 kg of explosives in this period, compared with 69 firearms and 17.61 kg seized the previous year – an increase in one category and a decrease in the other.
296. During 1 October 2012 – 30 September 2013, 140 people were arrested under section 41 of the Terrorism Act, of whom 35 were subsequently charged. This is a decrease in both categories over the previous year.
297. The apparent low level of arrests and charges is a regular theme in comments I receive, and is to some people a constant source of frustration, leading them to argue that the police are using their powers to a disproportionate extent. I do not accept this argument, and I explored this difficult issue in detail in my Third Report (paragraphs 120 to 125).
298. The numbers of arrests and charges are only one of several indicators about police activity against terrorists, as I explained in my Third Report. There has been little significant change in the nature of terrorist activity in the three years since then, and what I said in 2010 still holds good.
299. Of course, if police activity leads to formal actions under the criminal justice process, that is much to be welcomed. I have argued consistently that successful outcomes under the criminal justice process not only remove dangerous people but boost public confidence that the police are tackling the terrorist threat effectively.
300. David Anderson QC has commented on arrests and charges in paragraphs 8.40 to 8.42 and 11.24 to 11.27 in his report on the Terrorism Acts for 2012, which was published in July 2013.

### Specific incidents

301. Major incidents in the reporting year from 1 August 2012 to 31 July 2013 have included:

#### *August 2012 to October 2012*

- Two pipe bombs, one concealed inside a bicycle, found in Strand Road in Londonderry on 20 September
- A mortar-type device found in Ardoyne in Belfast on 4 October
- A bomb found near a Catholic church in Dunloy on 9 October
- A pipe bomb thrown at a police patrol responding to a call from a member of the public in Poleglass, Belfast, on 25 October

#### *November 2012 to January 2013*

- The murder of David Black, a prison officer, when shots were fired at his car on the M1 motorway on 1 November
- Three pipe bombs found in West Belfast on 9 November

- A device found in West Belfast on 12 November which might have been intended for use as an under-car bomb
- A pipe bomb thrown at a police vehicle responding to a call about a burglary in West Belfast on 26 November
- Discovery of a rocket-type device (an Explosively Formed Projectile, known as an EFP) in Londonderry on 6 December, following the stopping and search of a car
- Discovery of two firearms and a partially constructed under car bomb near Lurgan on 9 December
- A pipe bomb left outside the front door of a private house near Newry on 14 December
- Discovery of a firearm and grenade during the search of a house in Londonderry on 20 December
- An under car bomb discovered attached to the car of a police officer in Belfast on 30 December
- A pipe bomb discovered near Tandragee police station on 31 December
- A bomb thrown at a house in West Belfast on 31 December
- A pipe bomb handed in to the offices of a community justice group in West Belfast on 8 January
- A pipe bomb left outside a community centre in North Belfast on 29 January
- A pipe bomb thrown at a police vehicle in North Belfast on 30 January

*February 2013 to April 2013*

- Two pipe bomb devices found by a nun outside the Sacred Heart chapel in Ballyclare on 1 February
- A pipe bomb found outside a residential property in Carryduff on 2 February
- Four crude improvised devices found in South Belfast on 7 February
- A small explosion in the doorway of a house in Greencastle on 24 February
- A Rocket Propelled Grenade (RPG) and launcher discovered during a search of a property in West Belfast on 26 February
- A crude but viable bomb found outside a house in Londonderry on 2 March
- A crude but viable bomb found outside a Catholic church in Glengormley on 2 March
- Four live mortar bombs discovered in a van in Londonderry on 3 March (*see Case Study below*)
- Discovery of a firearm and an explosion when police were deployed in Newtownabbey on 9 March
- Two viable pipe bombs found during a search in West Belfast on 9 March
- A viable mortar bomb, which had been primed to explode, found near New Barnsley police station on 15 March

- A beer keg bomb containing 60 kg of explosive found in an abandoned car near Enniskillen on 22 March
- An explosion in a waste bin near a static police patrol in Lurgan on 30 March
- An explosion of a pipe bomb in a letterbox outside a house in Londonderry on 3 April
- Weapons, ammunition and a suspected pipe bomb found after police stopped two cars in Londonderry on 12 April

*May 2013 to July 2013*

- A pipe bomb partially exploded under a car in Cookstown on 11 May
- Six shots fired at three police officers as they got out of their car at Foxes Glen near Belfast on 16 May
- A partially exploded pipe bomb device in South Belfast on 24 May
- Two pipe bombs thrown at police officers in Twinbrook, Belfast on 28 May
- A bomb found in a house in Alliance Avenue in Belfast on 10 July

302. Further incidents occurred beyond the reporting period. The most significant was the finding of two mortar type rocket devices near Cullyhanna on 27 August, which were assessed to be viable. Other incidents have occurred in Armagh, Belfast, Londonderry, Lurgan and Strabane and there have been letter bomb attacks on senior political leaders and police officers. On 25 November a car bomb partially exploded at the entrance to an underground car park at Victoria Square shopping centre in Belfast.

303. These bomb and shooting incidents have varied greatly in sophistication and intensity, but every one of them had the potential to kill. In the case of David Black, this was the tragic outcome. The main targets have been police officers, both while on duty and at their homes, and police stations, notably Strand Road police station in Londonderry. Other targets have included homes and churches. In many cases, people have been evacuated from their homes. In addition to these actual bomb and shooting incidents, hoax incidents have caused further disruption. I comment below on the police and military response to these incidents.

*Police strategic response*

*The range of challenges in 2012-13*

304. This year the police strategic response has included new actions to deal with a much wider range of scenarios than hitherto. Some of these have concerned the use of the JSA powers but others have ranged further than that and I shall mention them briefly so as to set the context for police operations this year.

305. Specific events this year have broken new ground in police planning and operations. A series of major cultural events, many of them with a dimension across the whole island of Ireland, gave the PSNI scope for innovative opportunities to reach out to communities, especially to young people.
306. The G8 meeting in Lough Erne, bringing together many of the world's most senior political leaders, entailed wholly new concepts of planning and operational co-operation with a range of international and national partners. The World Police and Fire Games, attended by over 7000 police and fire officers from across the world, likewise was a unique challenge.

*Responses from senior officers*

307. I am grateful to the Chief Constable, the Deputy Chief Constable and the Assistant Chief Constables who have given me much of their time to discuss, both formally and informally, their responses to the challenges which the past year has brought. The need to focus on performance and drive up standards does of course have a resource dimension, and the PSNI rightly recognise their responsibilities as a public service in times of fiscal stringency.
308. As the year has progressed, the police have kept me informed, at both senior and operational levels, about their detailed response to my recommendations from the Fifth Report. Much of this work has continued throughout the year and I expect it to continue.

*How the PSNI have responded to the terrorist threat*

309. There has been no relaxation in the scale or scope of police operations against terrorism. All the incidents described above, and many more, have required a professional response drawing on the resources available to the police from within PSNI and the Security Service and the military authorities. Faced with risks to life to the general public and to police, prison officers and military personnel, there is no room for error, hesitation or delay. Awareness of the issues is very high at all levels in the PSNI.
310. The threat from terrorism was a major consideration in all of this year's large international events, but it would have been disastrous if it had to come to overshadow or detract from the main events themselves. It is to the credit of the PSNI that they successfully delivered these major events without recourse to heavy-handed or intrusive policing. In terms of use of the JSA powers and the operational response, the thrust of work in recent years to concentrate on what is proportionate and necessary has brought results.
311. The PSNI continue to work closely with An Garda Síochána. They value this relationship a great deal, and my discussions with HM Ambassador in Dublin confirm me in the view that the relationship is equally valued by An Garda Síochána.

## Community engagement

### *Police community engagement strategies*

312. This aspect remains an integral part of the JSA powers. Senior officers are explicitly required to include consideration of it when preparing authorisations and to signify as such when putting forward authorisations to the Secretary of State, as explained above.
313. Community engagement has come under severe strain in those areas of Northern Ireland associated with parades and demonstrations. Some ground has inevitably been lost and it will take some time to restore matters to where they were before. But we should not get this out of context. Most parts of Northern Ireland remained untouched by this year's disturbances and there is no reason why community engagement strategies should not continue with positive momentum.
314. The Policing Board's Human Rights Adviser, in her Thematic Review of stop and search, has made the direct link between community engagement strategies and operational management at District level and has made proposals (Recommendation 9) about strategies to take all this forward. This seems to me an imaginative step, which is prompted both by the formal requirements in the authorisation process and by the PSNI's overall community engagement policy, but which moves this work out into Districts, where the real gains can be made.
315. I set out the relevant considerations in paragraphs 273 to 281 of the Fifth Report, which continue to apply.

## Police training and operational orders

### *Police training for the Protection of Freedoms Act*

316. In my Fifth Report I commented on the importance of PSNI making sure that training reflected the changes brought about by the Protection of Freedoms Act. That principally related to the authorisation process and the link between the senior officer, tasked with making a judgment about whether there was a reasonable suspicion to support an authorisation, and the officer on the ground exercising the stop and search power.
317. With the Code of Practice now in operation, attention has turned to making sure that its requirements are being carried out. That is a detailed task, which will require a big training commitment over time.
318. One of the concerns frequently expressed to me is the perception that not all the officers involved in police operations, including use of the JSA powers, are sufficiently well aware of what is required of them in sensitive situations. The Committee for the Administration of Justice made that point on page 3 of their submission (no. S408) to the NIO as part of their response to the consultation on the Code of Practice. They

drew particular attention to the role of Tactical Support Groups (TSGs). Other commentators have mentioned this to me as a weakness in police operations.

319. It is absolutely crucial to the overall effectiveness of PSNI operations that TSG officers are fully aware not only of the strength of the JSA powers available to them but also of the dangers if they are used, or perceived to be used, disproportionately or unnecessarily.
320. The reality is that when TSG officers are deployed events may have moved beyond controllable one-to-one encounters into far less predictable crowd management scenarios. When this happens, those intent on creating a riot will abandon personal restraint and incite the crowd, exploiting every opportunity as they do so. Individual police officers have to make split-second decisions. A single mistake can turn an entire scenario wrong.
321. I am glad that PSNI have recognised this. As part of TSG officers' continuing professional development, additional training was delivered to TSG officers from December 2012 to May 2013. I was able to spend a morning observing one of these training sessions and talking informally to the police officers taking part in it.
322. The police must make sure that they keep a careful overview of TSG training and preparedness. In terms of the mood of a crowd, the margin between a successful and a failed TSG intervention is not great.

*HMIC report on stop and search*

323. One way of judging whether PSNI stop and search operations are correctly carried out is by comparison with other professional police opinion. This can be found in Her Majesty's Inspectorate of Constabulary (HMIC). I have mentioned already my gratitude to Her Majesty's Inspector with responsibility for Northern Ireland, Stephen Otter QPM.
324. HMIC have this year produced a report "*Stop and Search Powers: are the police using them effectively and fairly?*" This report deserves careful study. Rather than referring to it in detail here I simply refer to the entry on the HMIC website at [www.hmic.gov.uk](http://www.hmic.gov.uk).
325. This report relates to England and Wales. It does not include any review of policing in Northern Ireland, nor do its recommendations apply to Northern Ireland. Furthermore, there is no equivalent to the JSA powers in England and Wales. But I have mentioned before (paragraph 483 of the Fifth Report) the value of links between PSNI and HMIC and here is another good example of that.
326. From much of what the HMIC report says it is clear to me that the PSNI is ahead of many police forces in England and Wales in terms of good practice. This can be assessed in relation to specific indicators which HMIC has used. With the ten recommendations to Chief Constables in

mind, I judge that particular areas where PSNI show up well are supervision and compliance with legislation (including the Code), governance and scrutiny, collection of information about individual stops, training and briefing for officers and the use of technology.

327. At the same time, HMIC's messages about the need for sensitivity and awareness of impact, which are set out with the needs of black and minority ethnic groups particularly in mind, resonate very loudly in Northern Ireland in relation to communities who may feel, or may be conditioned to feel, that their experience of normal policing is limited or unsatisfactory.
328. HMIC makes clear how important all this is in the case of young people and this work must remain a priority for PSNI as well. Hence my comments in Appendix D about references in the Code to engagement with young people (from whatever community background) so as to guard against negative narratives from the past reproducing themselves in the absence of anything more positive.
329. HMIC intends to revisit the police use of stop and search powers within the next 18 months, to assess the progress made against its recommendations. I hope that senior PSNI officers will ensure that they continue to keep in close touch with this important developmental work.

### Police records

#### *Current practice*

330. I have once again this year been assisted by officers in Antrim Road PSNI station in Belfast who have discussed with me records about the use of the JSA powers in A District (North and West Belfast). These covered the aggregate stop and search records for North Belfast and West Belfast under the whole range of stop powers for the period 1 January to 31 August 2013, and the breakdown month by month. The comparable aggregate statistics for 2012 were also available.
331. As before, this information amounts to only a sample of police records and of the processes involved. I have however discussed several times with the Northern Ireland Policing Board the opportunities open to them to arrange for more systematic monitoring or sampling of police records.
332. This year, I have focused on how the records are being used to support police operations. This involves linkage with other PSNI databases, subject to keeping in separate systems information recorded in different categories, for different purposes or confined to particular groups of officers. These are important safeguards and need to be carefully maintained. I commented on this in paragraph 197 of the Fourth Report.

333. In the volatile and fluid circumstances of an area such as North Belfast there is a clear benefit in linking stop and search activity more closely with ongoing police operations, so I believe that linkage work of this kind should be taken forward.
334. The value lies in giving more substance to the aim of “intelligence-led” policing, reducing the occurrence of interventions which do not have an intelligence basis for them. It further has the potential to reduce the time which each interaction between a member of the public and a police officer may take.
335. It is also being used to enable Tactical Support Groups to have better and faster access to information, allowing them to become more familiar more quickly with the area in which they are deployed. There is a real benefit here: it is a frequently expressed concern that Tactical Support Groups lack appreciation of the characteristics of a particular area, with risks of insensitive or heavy-handed policing, as noted above.

*Comments from the Police Ombudsman about police records*

336. I referred in Part 2 to the receipt in the final stages of this review to a letter from the Police Ombudsman in which he told me that he had made a number of recommendations to the PSNI. The Police Ombudsman said: *“The recommendations relate to the issues of record-keeping and it is hoped that improvement in this area can lead to more confidence in the police complaints system and the policing system generally in Northern Ireland.”*
337. The Ombudsman’s recommendations relate to the proper rationale for search, amendments to the *Aide Memoire* (referred to by Mr Justice Treacy at paragraph 27 of his judgment of 9 July 2012, which I described in my Fifth Report) and to recording mechanisms, recording of outcome of search and accurate recording of times.
338. It is important that the PSNI consider the Ombudsman’s recommendations carefully and respond to them positively where possible. As this will involve detailed work which may take some time, it will not be possible for me to report further on this in the timescale of this report. I have however ensured that my successor has been fully briefed about this recent intervention from the Police Ombudsman.
339. For the present I make the general comment, in my forward view of police powers at the end of the conclusions in Part 7, that I would expect to see the PSNI consolidate in operational orders the developmental work following the enactment of the Protection of Freedoms Act and the implementation of the Code of Practice. Furthermore, as I have said many times before, the drive for best practice in the operation of these powers must be relentless, and every individual use of them must be justified on its merits. These principles must govern all aspects of their detailed operation in practice.

### *Access to records*

340. I should mention here an issue which is currently subject to judicial review in the High Court in Belfast. This concerns how to obtain copies of records of stops, and in particular the different wording in paragraph 8.78 of the Code of Practice compared with the corresponding paragraph in the draft published for consultation.
341. There are two points at issue. The first concerns the availability of printed records if the officer has access to a portable printer, and the second is the reluctance which some members of the public might feel about contacting the police or visiting a police station to obtain a copy.
342. As the case is *sub judice* I will not comment on it further. I merely repeat the point, which I have made before, that full exploitation of the Blackberry system and the central data base should make it easier to establish the number of stops to which an individual may have been subject, and correspondingly easier also to provide information about this to a member of the public. That is important from the perspective of those affected by the use of the powers. How it is best done must await the outcome of the current judicial review.

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

#### *Nature of police and military activity*

343. When a suspect object is found or reported, the police and the armed forces have to make complex assessments quickly. 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. Not much of this is likely to be clear from quick visual inspections.
344. Evacuation of residents is a difficult issue. It is disruptive and distressing to residents and is often the subject of much political, community and media comment. A judgment has to be made, often on very limited information, about the likely size of a weapon, its viability, whether it is primed to detonate, the likely range of the blast effect (particularly in an urban area) and of the explosively driven material, such as slugs of molten copper in Explosively Formed Projectiles (EFPs), bomb fragments and metal nails, and other factors.
345. These judgments have to be made by the police on advice from the military authorities. Cordons have to be set, depending on assessments of the factors listed above. From these assessments will stem the extent and length of any evacuation. Close liaison between the police and military authorities is required, including any likely use of JSA powers.
346. Assessments have also to be made about the potential for secondary devices. These may utilise a variety of technologies but are undoubtedly aimed at killing or maiming a police officer or member of

the armed forces if 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. This has been a real concern in some incidents this year.

347. Other incidents involve attempts to lure police officers in response to seemingly innocuous telephone calls, as at Twinbrook, Belfast, in May and Alliance Avenue in Belfast in July, as the Secretary of State made clear in her July statement.
348. Under the control of the police, the military authorities mount “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.
349. **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 2012 to 31 July 2013.**

#### *Extent of activity*

350. 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 the column on the right.
351. The number of call outs this year was 347 compared with 327 the previous year, a rise of 6%. The number of live devices has increased from 53 to 62, balanced by a fall in finds of firearms and explosives, at 133 compared with 144 last year. The number of explosions is unchanged at 16.
352. The number of hoax calls has risen from 70 to 90, while false calls (genuine calls but not revealing a device), are broadly unchanged at 45 compared with 44 last year.
353. The monthly range of call outs was from 19 in August 2012 to 55 in March 2013. Half the hoax calls came in the three month period February to April 2013. Other activity has been broadly evenly spread throughout the year, the peak month for live incidents being March 2013 (also the month with the overall highest total of call outs).
354. Overall, these figures do not suggest any major change to the patterns or volume of terrorist activity or disruptive hoaxes this year. So we need to see what we can learn about the nature of this activity.

#### *Schedules of Army activity*

355. 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.

356. 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.
357. I have discussed these schedules with the military personnel involved. It is a surreal but humbling experience to discuss an incident or analyse a device with the soldier who has recently dealt with it, in full knowledge of its potential to kill him or other people.
358. The Secretary of State referred in her July statement to the range of devices from relatively simple and basic pipe bombs, which can nevertheless be lethal, to more sophisticated attacks, including two failed attempts to use mortars against PSNI stations. That has been the pattern of terrorist activity this year as it has manifested itself in incidents.
359. The most recent *“Police Recorded Security Situation Statistics”* covering the period 1 October 2012 to 30 September 2013 show bombing incidents in all eight PSNI Districts and shooting incidents in all but one of them. As last year, this may have implications for the new authorisation process for the use of JSA powers.
360. A schedule of incidents as in Table 4 does not of course include terrorist planning and other activity which has not become public but which may be known to the police and the Security Service.

#### *Nature of the military response*

361. The case study described below (the attempted attack on a Londonderry police station in March) shows the response of the Ammunition Technical Officers (ATOs) working under the control of the PSNI.
362. A major incident such as this, as it develops, may require 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). Not all of these powers will be needed, and the timing and sequencing will vary: no two incidents are the same.
363. In discussion with the military authorities, it is clear to me that the role of search officers remains crucial to determining the extent of risk to the public and the extent of any evacuation from the area.

### *Need for military response*

364. 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 enabling the armed forces to act in support of the police has continued throughout the reporting year.
365. I see no scope for any change in the profile, pattern or scale of this activity. I am told by the Brigade Commander that no changes are planned to the availability of ATO resources to PSNI over the near future.

### **Case study: Letterkenny Road, Londonderry 3 March 2013**

366. In her July 2013 statement, the Secretary of State described this incident in these terms:
- “One of the most significant incidents of the past six months was an attempted mortar attack on a Londonderry PSNI station in March. It was aimed at murdering police officers but such devices are highly dangerous and inaccurate. This attack could have caused mass casualties amongst anyone who happened to be in the vicinity if it had been successfully fired...It was only through the highly effective work of the PSNI that this attack was disrupted as it was underway”.*
367. At about 8 pm on the evening of 3 March, the PSNI stopped a white Citroen Berlingo van and a Honda motorcycle at a roundabout on the Letterkenny Road/Foyle Road, which runs south-west from the Craigavon Bridge, along the River Foyle in Londonderry, a short distance from the city centre.
368. What looked like a four-tube mortar system was identified within the lead vehicle, the Berlingo van. EOD assistance was requested. Action was delayed until cordon requirements and some public order issues were resolved (a petrol bomb was thrown at police as they were trying to help evacuate people). About 100 families had to leave their homes in Letterkenny Road overnight.
369. I have been given extensive briefing from Army Technical Officers (ATOs) about the mortar device found in the van, its construction, potential capability and effectiveness, as reflected in the Secretary of State’s comments and those of senior police officers. The police said in the initial court proceedings that the four mortars were located in launch frames, secured in a frame ready for imminent deployment. The mortars contained substantial quantities of explosive. The roof of the van had been cut back to allow the mortars to be fired.
370. The police also said in court that a blast incendiary device was also found in the front passenger well of the van, which police suspected was intended to be used to destroy forensic evidence from the van following the deployment of the mortars. Other items found included

two kitchen timer units, two toggle switches attached to the timers in a plastic lunch-type box and a vehicle battery in the front passenger foot well.

371. The combination of police use of their powers to stop vehicles under the JSA, the deployment of military assets within a cordon under police direction and the action of the ATOs prevented an attack of the kind described by the Secretary of State.
372. Three arrests were made, two at the scene and one in a subsequent house search. Two people were charged under the Terrorism Act and one was released. The incident received extensive press coverage at the time, but the cases are awaiting trial and are therefore *sub judice*.

### **Statistics on the use of the Justice and Security Act powers**

373. **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 2012 to 31 July 2013. 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.
374. 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 2012 to 31 July 2013). 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.
375. 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, age, 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.
376. There have again this year been minor variations between the provisional and final statistical returns because of late reporting and adjustment but they do not significantly affect the conclusions to be drawn.
377. As before, I shall make comparison with those statistics given in previous years.

### Section 21

378. **Table 2A** shows the numbers of people stopped and questioned by the police under section 21(1), month by month. (There is no need this year to refer to Table 1 for the month by month comparison). The average for each month of the reporting year (August 2012 to July 2013) was 222, giving a total of 2,669. For the comparable period last year there was a monthly average of 282 with a total of 3,382. So there has been a reduction of 21% on last year.
379. 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. The total reduction in the usage of section 21 over the past three years, from 6,722 to 2,669, stands at 60%.
380. The monthly range was from 436 to 134. The largest use on any one day was 53 cases, with 46 on one day and 38 on another. The daily average was 7 cases.
381. There was no usage by the armed forces of the stop and question power under section 21(2).

### Section 22

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

### Section 23

383. 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.
384. Section 23 has been used on 147 occasions this year compared with 77 last year. This is an increase of 91%. The monthly range was from 5 in November to 23 in April, with a monthly average of 12. The explanation for the increase is to be found in increased numbers of planned operations and also in response to the upsurge of disorderly protests this year. **Table 2B** sets out the usage of section 23 by the police this year. This may have on occasion engaged the armed forces in support of the police in planned operations (not in public order disturbances, which are handled only by the police).

## Section 24

385. 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.
386. 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 7,319 people were stopped and searched, 6,997 in public places and 322 on private property. This compares with figures of 10,661 (10,320 and 341) last year. The overall reduction from last year to this is 31% and the reduction over the past two years is 54%.
387. The total of 7,319 represents a monthly statistic of 610 persons stopped and searched under section 24, with a monthly range of 1,073 (November 2012) to 362 (September 2013). The total of 7,319 gives a daily average of 20, with a peak of 71 on 15 November.
388. The power to enter and search premises for munitions and wireless transmitters is found in paragraph 2 of Schedule 3 (set out in **Table 2D**). There has been a rise of 20% this year in the use of this power, on 253 occasions compared with 211 last year. Most of the searches this year were in private houses – 188 out of the total of 253, with 65 in other premises.
389. There is a power to seize items found in these searches (paragraph 5 of Schedule 3). This has been used on fewer occasions this year: 56 compared with 73 last year.
390. 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 to a comparable extent this year – 45 occasions, compared with 48 last year. The monthly range was from 10 in November 2012 to none at all in February. The November figure reflects the increased police activity following the murder of prison officer David Black on 1 November 2012.
391. The powers in schedule 3 which are provided under section 24 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

392. 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. This threat has taken the form this year of direct attempts to murder, rather than other incidents.

### Section 26

393. 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, and shows a fall this year: 11,388 vehicles were stopped and searched compared with 16,860 last year, a reduction of 32%. Over two years the reduction has been 40%. The monthly range this year was from 2276 in November 2012 to 534 in July 2013, with a monthly average of 949.
394. There is also a power to remove a vehicle for search. This was used twice this year, compared with once the previous year. It is needed when a more thorough search of a vehicle is needed.
395. 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

396. 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 stop and search powers*

397. The JSA powers are used for specific purposes, all of which have a security dimension, including serious criminality with a paramilitary connection. They sit alongside other police powers, mainly in the Police and Criminal Evidence Order (PACE) and the Terrorism Act. 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.
398. 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.
399. Over the period 1 August 2012 to 31 July 2013, there were 32,389 uses of PACE, Terrorism Act and Justice and Security Act stop and search powers in relation to people compared with 35,138 uses of these powers for the previous year.

- The number under PACE was 22,122 compared with 20,908 the previous year
- Under the Terrorism Act the number was 279 compared with 185 the previous year
- For the Justice and Security Act the number was 9,988 compared with 14,045 the previous year
- **The numbers of stops in absolute terms in all three categories were therefore lower by 8%, with the numbers dealt with under PACE rising by 6%, those under the Terrorism Act rising by 51%, and those under the Justice and Security Act falling by 29%.**

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

- The proportion dealt with under PACE was 68% compared with 59% last year
- For the Terrorism Act the proportion was 0.9% compared with 0.5% last year
- For the Justice and Security Act the proportion was 31% compared with 40% last year
- **This year there were more than two stops under PACE for every one under the Justice and Security Act.**

401. 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.

402. In summary:

- The use of the Justice and Security Act powers has continued on a downward trend, both absolutely and as a proportion of overall stops
- The use of Terrorism Act powers has remained a tiny proportion of police activity (under 1%), but has shown a slight numerical increase this year because the powers within section 47A were used on 67 occasions over five days in May when the JSA powers were not available
- The use of PACE powers has continued to grow both absolutely (by 6%) and as a proportion of the overall total of stops (from 59% to 68%)

- Non-PACE stops have therefore declined overall as a proportion of stop activity (from 41% to 32%)
- Use of the stop and question power (section 21) has fallen by 21%.
- Use of the stop and search powers for persons, property and vehicles (sections 24 and 26) has fallen by 31%
- **Overall, PACE stops rose by 6% and non-PACE stops fell by 28%.**
- **Total stops fell by 8%.**

*Longer term trend information*

403. On completion of six years' reporting, I asked the PSNI Central Statistics Branch, who are the source of all these statistics, if they could examine the longer term trends over the six years of operation of the Justice and Security Act. The tables they have provided in fact go back nine years, and pre-date the use of the JSA by three years, since they report activity on some of the predecessor powers in Part VII of the Terrorism Act (see paragraphs 6 to 9 of the First Report of October 2008).
404. The results of their analysis are shown in **Table 3A**. The statistics relate to fiscal years (April to March) and not to the reporting years for the JSA (August to July) which is why the totals for each category look different from those in Table 1. Nevertheless, if this caveat is borne in mind, they provide some useful indicative trends.
405. The Justice and Security Act came into force in 2007. Its use was limited but growing in the first two years. This partly reflected police unfamiliarity with it (on which I commented at the time), partly the reliance on section 44 of the Terrorism Act, and partly the relative freedom from terrorist activity compared with the renewed surge in 2009 and 2010.
406. Section 44 was withdrawn in July 2010. This led to a switch to alternative "no suspicion" stop and search powers under the JSA, although the tests were different. The switch was not a total like-for-like, which would have been concerning given the different legal tests, and the JSA powers were not used as much as if there had been a direct transfer. This was correct, given the difference in the tests to be applied.
407. After a dip between 2009 and 2011, the PACE powers, which are used to deal with non-terrorist crime, began to resume their greater share of all stop and search activity. Security-related powers began to take a lesser role, the reasons for which are discussed below.

408. The total use of stop and search powers in relation to people in Northern Ireland has declined from its peak of 58,763 to 31,468 over a three year period, a fall of 46%. But the use of stop and search powers is still running at a higher level than nine years ago (31,468 stops in total in 2012-13 compared with 20,956 in 2004-05) with security-related stops also running at a higher level than nine years ago (10,657 stops in 2012-13 compared with 6,522 in 2004-05).

#### *Arrests and charges*

409. The number of people arrested under section 41 of the Terrorism Act for the period 1 October 2012 to 30 September 2013 was 140 of whom 35 were subsequently charged. That compares with 144 arrests and 42 subsequently charged in the comparable period the previous year.
410. 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.
411. There is a perennial debate about whether the effectiveness of stop and search operations can be measured in terms other than arrests and charges. I am quite clear that arrests and charges are an important measure but they are not the only one. I discussed this in paragraphs 120 to 122 of my Third Report.
412. I note also what HMIC say on page 4 of the report on stop and search which I mentioned earlier:
- “The use of measure such as arrest rates is widespread among forces, and useful in terms of understanding how different forces use the powers to reduce or detect crime, but they are too simplistic and cannot be seen as an absolute measure of success....In such circumstances, finding the item and arresting the offender or, alternatively, eliminating the suspicion and avoiding an unnecessary arrest, are both valid and successful outcomes”.*
413. Furthermore, the collection of intelligence is also noted by HMIC as a valid outcome. Recommendation 6 says:
- “Chief Constables should ensure that relevant intelligence gleaned from stop and search encounters is gathered, promptly placed on their force intelligence systems, and analysed to assist the broader crime fighting effort”.*
414. HMIC’s endorsement is a powerful feature, but in the Northern Ireland context I would err on the cautious side. Intelligence acquired in the course of the stop (for example about movements) must be kept properly and securely and its value assessed, but intelligence should be the stimulant for the stop, not its intended product. Suspicions about

“fishing expeditions” and recruiting of informers are still too raw to justify a more interventionist approach.

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

415. The significant reduction in the use of the Justice and Security Act powers which began last year has continued. The principal powers concerned (section 21 stop and question) and section 24 (stopping and searching people) have declined in total use by 29% over the past year and by 51% over the past two years.
416. All that time the threat from residual terrorists has continued at “SEVERE” and terrorist activity has continued at a high level, in terms both of incidents and of planning.
417. I have once again discussed with the police the linkages between their operations and how they have managed to reduced their use of JSA powers by more than half over two years, at a time of high threat levels and terrorist planning.
418. There is no doubt in my mind that the major training programme for all PSNI officers likely to use these powers has had a part in this. The police have delivered training in response to the changes brought about by the Protection of Freedoms Act in 2012 and the Code of Practice in 2013. This has been a big resource commitment but I am glad that the PSNI have recognised how important it was to do this properly.
419. There is also no doubt in my mind, having discussed this in depth with operational officers at all levels, that the planning of operations in response to available intelligence is under constant refinement. The formal role of intelligence in the authorisation process is one of the reasons for this, but in other respects it reflects advances in how intelligence is being integrated into police operational planning.
420. This has two distinct advantages. The first is the focus on terrorist groups and individuals, disrupting their activities and delaying their attacks. Their commitment to violence and intent to continue to plan and carry out violent attacks remain undiminished, but their capacity to do so is under constant pressure and stop and search operations are part of this.
421. Secondly, a reduction in the use of stop and search, of the scale achieved over the past two years, lessens the risk of alienation of sections of the community and links up directly with community engagement strategies. It is thus part of a wider picture.
422. Whether this will over time have any impact on those groups or communities whose opposition to the police is rooted in past difficulties, or which reflect an inherited narrative of distance from the police, is more difficult to assess. But the recognition of how much is at stake

over the longer term is a powerful driver on the police to keep interventions such as JSA stops to the minimum.

#### *Views of senior police officers*

423. 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 and others who have been specifically targeted, including police and prison officers, military personnel, and public officials such as members of the judiciary. The PSNI thus see a continuing need for the powers in the Justice and Security Act throughout the current year.
424. 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 May this year.
425. Assistant Commissioner Dick's comments reflect the close engagement between the PSNI and police forces in Great Britain, in responding both to security threats and to the challenges of policing the G8 at Lough Erne, which took mutual aid arrangements to a new level of planning and operations.
426. Since I need to ask these questions afresh each year, I have pressed senior PSNI officers in some depth about them. In response to questions as to how they would manage if they did not have these powers, they take the view that in dealing with current threats and those foreseen in the short term their ability to protect the public would be much reduced. They point to their obligations to protect life under Article 2 of the European Convention on Human Rights.
427. They also point to the unsatisfactory situation which arose over the five days in May this year when the JSA powers were immediately removed. Falling back on section 47A of the Terrorism Act as an emergency measure was not satisfactory, because the threshold test is different and does not always match current realities in Northern Ireland. Senior police officers said to me on several occasions that they hope not to be put in such a position again.

#### *Need for scepticism?*

428. Of course, I have reflected on whether this might simply be a reaction to disruption of established working patterns and as something of an over-reaction to what was a very senior judicial ruling. It is perfectly understandable to take the view that the police would find ways of managing somehow without the JSA powers. The roof did not fall in when section 44 of the Terrorism Act was withdrawn.

429. But in the context of current scenarios in Northern Ireland I do not think that such a conclusion would be justified. Always hovering in the air is the paramount need to protect the public, and that is an unavoidable test for any public authority.
430. Within the Northern Ireland context it was put to me that to ask the police if they continue to need the powers will attract a predictable response: as my interlocutor put it, *“since when did a senior police officer say he did not need a power?”*
431. While I respect the objective challenge implicit in this question, I do not share its underlying rationale. It is right in my judgement to ask the police the specific question whether they see a continuing need for these powers. It would in my view be incomplete to reach a judgment on this question without taking account of the views of senior police officers. Giving the police a power is not the same as saying they must use it, as Lord Justice Girvan pointed out in May this year.

### **Road Closures and Land Requisitions**

432. 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 principally 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.
433. I made some general comments about road closures in paragraphs 408 to 411 of the Fifth Report, with recommendations 17 to 20 addressing specific issues.

### *Agency arrangements*

434. Orders can 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. It will thus fall for review in the next year of review of the JSA powers. But it seems to me to be working well. It is a good example of close working between the Secretary of State and the Minister of Justice.
435. 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.
436. 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

437. **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.

### *Forthriver Business Park, Springfield Road, Belfast*

438. 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.
439. 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. The context was anti-social behaviour.
440. 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.
441. The Requisition Order came into effect on 15 June 2012. It was in place at the time of the Fifth Report. However, a De-Requisition Order was made on 11 February 2013 when the project was shelved because of funding considerations: it had become too expensive for Invest NI.
442. 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.
443. The Requisition Order came into effect at 15.00 hours on Thursday 28 June 2012 until 18.00 hours on Friday 13 July 2012. This year, a similar requisition was made from 27 June to 13 July.
444. This site on the Springfield Road is sensitive during the parades. I consider that the temporary Requisition Order is justified for the short period over the summer which includes the Whiterock and Twelfth parades.

## Section 32

445. **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.
446. It was used on one further occasion in 2012, in combination with section 29, in East Belfast, as below.

## East Belfast

447. 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. The Orders concerned two sites, quite close to each other.
448. 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.
449. 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.
450. Last year, 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.
451. Following the disturbances in East Belfast in December 2012 and January 2013, I arranged to visit the Short Strand and the Lower Newtownards Road, especially the area around the site of St Matthew's Church, Ballymacarrett. I talked to community leaders in the area. I also once again visited Clandeboye Drive/Cluan Place.

*St Matthew's Church, Ballymacarrett*

452. 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. The fencing which has been installed is of robust construction and shaded in part by shrubs. Last year I noted that the fencing was meeting its purpose and had brought welcome relief and security to the church.
453. That has regrettably proved necessary again this year. East Belfast was the scene of some of the most vicious rioting during the flags protests in December 2012, particularly on 21 and 22 December, and in January 2013. St Matthew's Church remains highly vulnerable to attack, either directly from the main road or caught in between groups of nationalist and loyalist rioters, as for example on the night of 7 January in the Short Strand and Lower Newtownards Road areas.
454. I have seen reports that on 14 January 2013 a group of people with special needs were forced to flee a parochial hall attached to St Matthew's Church. A more detailed report of the incident said that the group consisted of children with special needs, together with their carers, who became very distressed when attempts were made to throw petrol bombs, bottles and stones into St Matthew's Court by way of the Church and had to be evacuated urgently from the parochial hall. From the reports I have seen, this was a very sad incident indeed.
455. I see no alternative to continuing this land requisition Order in place as long as there remains a risk of street disorder in the area of St Matthew's Church. I am told that it will remain in place until the church want the fence removed. More recently, I have been told of a plan to install retractable netting in the grounds of the church to act as a barrier to projectiles thrown from either side of the interface.

*Mountpottinger Road and Clandeboye Drive*

456. The second Order relates to the closely interwoven residential areas south of Bryson Street, north of Mountpottinger Road and Albertbridge Road. I reported last year that this is an area where 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. That has continued periodically throughout the year under review.
457. Specifically, a petrol bomb was thrown into Cluan Place on 16 June 2013, another was thrown into Bryson Street on 18 June, causing minor injuries to a young girl, and another was thrown into Thistle Court on 19 June. Sectarian incidents of this kind (either reciprocal or random) and anti-social behaviour tend to merge in areas such as

these. If the new gates have brought a greater sense of security to the residents then they have been justified.

458. An Order to gate alleys to the rear of homes in Mountpottinger Road and Clandeboye Drive was made on 23 December 2011. The plan was to rescind it when a gating order was put in place by Belfast City Council. That was done in June 2013. It implies the continuation of the present structural arrangements, but these will no longer involve the powers under the JSA. I believe that their continuation during the period under review up to that time (the major part of the reporting year) was justified because of the intermittent acts of missiles being thrown over the peace lines.
459. Media reports of attempts to bring locally based dialogue between close neighbours on either side of the peace lines suggest some hope of progress over the longer term, but both nationalist and loyalist communities are vulnerable to troublemakers coming in from outside the area and exploiting the narrow configuration of alleyways with the intention of throwing missiles over the fences.

#### Chichester Street

460. 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 2010, 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.
461. 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*

462. The Northern Ireland Office last reviewed this closure in September 2012. Their decision was to keep the closure in place, on the basis of the threat level. They were due to review it again in September 2013. I walked round the site early in 2013.

#### *Consultation with local interests*

463. I have had the benefit of the views of the Lord Chief Justice on the question during a meeting with him in February 2013.

464. In April 2013, I consulted the General Secretary of the Bar Council for Northern Ireland, as I have done in the past. He kindly offered to send me any further comments but in the event none were forthcoming.
465. The Bar Council have been seeking compensation and in April 2013 received a compensation payment for the period up to 31 December 2011. A further compensation payment was made to them in June 2013 for the period up to 31 December 2012. A compensation payment was also made in April to a local firm of solicitors. I am glad that progress on these matters has been made: I commented on compensation questions at recommendation (18) of my Fifth Report.

#### *Conclusion about this road closure*

466. As long as the security threat stands at “Severe”, and in the knowledge that court buildings have been attacked, I think it is inevitable that the road closure in Lower Chichester Street should continue for the time being. It has brought added security to The Royal Courts of Justice and Laganside Court House. No-one is currently arguing for its removal.
467. Now that a further review is pending, it will of course be right to look at the justification again. But in the absence of any change to the level of threat I doubt that there will be a case for change to the closure in principle.
468. I am told that the review will among other things consider what cost savings could be achieved to reduce the ongoing compensation liability. That being so, I expect that attention will turn to questions of mitigating the effects of the closure, which will include questions of compensation. There is little that can be done physically to change the closure without weakening its purpose.
469. I expect that this will nevertheless be a well-prepared review. All those who regularly use the court complex area, or who travel on bus services which have had to be re-routed, have presumably got used to the closure and have adjusted their living patterns accordingly. But, like all the other powers in the Justice and Security Act, questions should be asked as to whether the continued use of the power is justified.

#### Ballykinler

470. 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.
471. 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.

472. 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*

473. I saw 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.
474. 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.
475. 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, which it has not.

#### *Continuation of closure*

476. A further review of the rationale for the closure was completed in January 2013 and it was again recommended that the closure should remain in place, but I am not surprised or concerned by that. I do not think there is any alternative to its continuation for the time being. The original reasoning has if anything grown in strength. The road closed by the barrier is adjacent to a military base which is also used by police officers. It thus remains a prime target.

#### *Mitigation*

477. In my Fourth and Fifth reports I raised the question whether the effect of this barrier could be mitigated. I understand that this year alternative solutions have been suggested by the Ministry of Defence and the PSNI. This has prompted discussion about the physical suitability of these alternatives and ongoing maintenance. The present concrete blocks can certainly be described as low maintenance – that is about their only redeeming feature.

478. The NIO are currently seeking advice from the Centre for the Protection of National Infrastructure (CPNI) about alternatives to the current barriers. The CPNI is a Government organisation which “*exists to protect national security by providing protective security advice.*” This advice covers physical security, personnel security and cyber security.
479. All this activity seems to me to be going on the right lines. It is unlikely that the threat to the police and military personnel will change over the short term, so it seems sensible to examine options which will balance cost, utility and convenience for local residents.
480. I hope that this assessment of alternative measures will not take very long. The process has become very protracted. I also hope that views of local residents will be taken into account. When I met them after the closure had first been made, some were clearly taken aback by the sudden arrival of large concrete blocks which had a distinct WW2 ambience. Painting them bright yellow subsequently did not amount to much of an improvement.
481. What was however heartening at the time was the recognition by local residents that the road closure was necessary as a matter of urgency. It will be important to continue to explain to them the rationale of its continuation. And like every other physical measure whose origin lies in powers under the JSA, the possibility should be kept open that a time may come when the Ballykinler barrier will no longer be necessary

*Brompton Park, Belfast*

482. 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.
483. 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.
484. The closure remained in place in 2012. Some of the disorder in Ardoyne on 12 July last year took place in the Brompton Park area, mainly on the ground rather than on the roofs of the shop fronts. The video footage last year of a burning car being pushed along the road very close to private houses, and the rapid movement of crowds nearby, brought home how even a small-scale closure like this can assume great tactical significance at a time of escalating disorder.
485. This year I inspected the Brompton Park area in a visit to Ardoyne shortly before the Twelfth, with last year’s experience in mind. Indeed,

the intricate interplay of tactical issues around the streets leading off the Crumlin Road cannot be understood without walking round the area and getting the geography clearly in one's mind. Grasping all this is crucial to forming a judgment about police tactics.

486. The need to close off the access did not arise as acutely as last year, because the police were able to keep opposing crowds apart. But the potential for attacks in a closely confined area justified similar action this year.
487. A change has now been made with a Gating Order for North Belfast having been made by the Health and Environmental Services Department of Belfast City Council on 7 August. This includes three gates at Brompton Park. I am told that the Order was due to go to the Council for adoption in September after which the Council would write to residents to let them know about it. I am also told that no written or verbal objections were received from any Brompton residents.
488. The intention is that the Department of Justice will issue a De-requisition Order as soon as the City Council adopts it. I am grateful to the DoJ and to Belfast City Council for this recent information.

*Alleyway running from Crumlin Road through to Balholm Drive, Belfast*

489. 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.
490. 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.
491. This year, a similar Requisition Order was made, to cover the period 11 July to 31 July. I think that it was justified, and that based on recent past experience a three week period was also justified, given the need to anticipate prolonged disorder in Ardoyne, whether coming from nationalist or loyalist crowds or from both. In the event the Order ceased to have effect at the end of July 2013.
492. I took a look at this alleyway during my visit to Ardoyne in early July, just before the Twelfth. Now that the PSNI have secured the area from which access can be gained to the roofs of the Ardoyne shop fronts, it will be essential to maintain that control in the future.

### Asylum Road, Londonderry

493. 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.
494. I commented in some detail last year on this closure. In May 2012 the Northern Ireland Office completed their first annual review and, the second review began in June 2013. I walked round it during a visit to Londonderry shortly after the first review. I did the same again this year.

#### *Case for closure*

495. 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. In my Fourth Report 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.
496. 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*

497. I have commented in my Fourth and Fifth Reports on the impact of this closure on local residents, including a medical centre and local business practices, and from my inspection of the road this year those adverse effects are still being felt. I will therefore not go into this in detail again but my comments from last year still stand.

#### *Continuation justified*

498. Reviewing the rationale for this road closure it is abundantly clear that the threat which led to it in the first place remains very real. Strand Road police station, in the centre of Londonderry, has been bombed twice in recent years and remains a prime target. The threat to police premises and officers is "Severe".

499. Much terrorist activity is planned and carried out in the Londonderry area. This has included the planned attack with four mortar bombs, intended to be fired from a van, which was stopped in Letterkenny Road in Londonderry on 3 March, and which I have reported as a case study.
500. The continued closure of part of Asylum Road is justified. The security of Strand Road police station is a major consideration in the face of recent threats and terrorist activity. It is a vital police facility.

#### *Physical appearance*

501. I have commented in my Fourth and Fifth Reports on the unattractive visual impact of large brown painted metal barriers.
502. Londonderry is the UK City of Culture for 2013 and I am told that as part of the city's activity this year a scheme is being taken forward by the Department of Social Development and Road Service to pedestrianise the closed off area and to replace the existing barrier with alternative bollards which would improve the visual aspect of Asylum Road. The PSNI have advised on the standard of bollards required and PSNI and NIO are working together on meeting the cost of installing them. This scheme is in the process of being installed, and should (I am told) ultimately result in the withdrawal of the road closure order.
503. I understand that the Bay View Medical Practice have not responded to requests to comment on this plan but I hope that renewed contact will be made with them as it is taken forward. They were very clear when I spoke to them about the effect of the closure on access for medical staff and disabled patients, and their needs remain unaddressed.
504. All this is taking time, but it is moving in the right direction. The threat to Strand Road police station is not going to diminish in the near future. But a pedestrianised solution has two advantages: it will greatly improve the area visually and it will enable local interests to take ownership of the issue. Much of the nearby area has been pedestrianised and the centre of Londonderry is an attractive and welcoming environment. The proposed scheme is in keeping with its surroundings and has much to commend it.

#### *G8 Meeting, Lough Erne*

505. As part of the preparations for the G8 Meeting in Lough Erne in June, the Department of Justice made an Order under section 29 taking possession of part of the waters of Lough Erne from 11 June to 16 June. Some 10% of the area of Lower Lough Erne was involved. The purpose of the Order was to provide a marine cordon in the area around the main G8 venue, the Lough Erne Golf Resort.
506. An Order was also made under section 32 closing the A46 Lough Shore Road, Enniskillen, between Carrickreagh on the northern end

and its junction with Drumboory Road on the southern end, from 1 to 25 June. This is the main road running north-west from Enniskillen past the Lough Erne Golf Resort.

507. I did not inspect in detail these uses of the JSA powers. I have received no comments on them. The JSA powers were used sparingly, given the magnitude of the events with which they were concerned, and were limited in time. I consider that they were justified.
508. The PSNI told me that they were reluctant to use the section 29 powers during the G8. In cases where land was needed, PSNI approached landowners and sought their consent through licences. While this may have involved some higher upfront costs in the form of rental payments, it avoided the use of coercive powers and potential litigation and uncertainty. That approach demonstrates good practice in its engagement with the community and in searching for the least intrusive power.

*Procedural guidance for making road closure orders*

509. I commented in my Fifth Report (recommendation 19) on the need to complete as soon as possible the review of consultation procedures over road closures and land requisitions. I am glad to see that this was done in October 2012 with the publication of *Procedural Guidance for making Road Closure Orders under section 32 of the Justice and Security (Northern Ireland) Act 2007*.
510. The Guidance sets out the legal framework, including the compensation arrangements. It makes clear that any person may request the Secretary of State to make an order under section 32 so long as they can clearly demonstrate that their request meets the test as laid down by the legislation. The Guidance anticipates that it “*will be, in the main, for use by PSNI who will be the most likely organisation to require the closure of roads for the protection of police stations and other critical infrastructure sites in Northern Ireland.*”
511. There is advice on how to make an application for a section 32 order, formal written application and consultation, site visit and consultation, security assessment, and recommendation to the Secretary of State. The likely local impact of a road closure is recognised in these terms: “*Restricting the use of a road impacts on and inconveniences other users, who may have to find other routes, and if not done properly may create a road safety hazard*”.
512. In showing how an order may be implemented, there is detailed advice on costs, signage, traffic signing, and notification of the order. There is an obligation on the NIO to review an order no later than 12 months after it was made and every 12 months thereafter, with detailed requirements about consultation and assessment as to whether the order continues to be necessary for the preservation of peace or the maintenance of order.

513. This guidance meets a long-standing need. In keeping with other powers in the JSA, the presumption throughout is that the case for a road closure must not only be justified initially but must also be periodically reviewed. The need to keep open lines of consultation with those affected locally meets concerns which have been frequently expressed to me. Attention to road signage meets another source of frustration.
514. Mitigating the effects of a road closure is mainly met in terms of effects on traffic: nothing is said about the visual impact of a closure. It is not always possible to do much about this if the closure has to be done quickly, and the context here after all is security and public disorder. It is however important in the less tangible terms of local acceptability and impact on the environment. It need not involve great extra cost - merely some sensitivity and imagination when the closure is being designed.
515. Local environmental or aesthetic considerations are very important to those who have to go about their daily lives in close proximity to an unwelcome intrusion or disruption. These feelings should not be ignored or overlooked.

#### *Conclusions about road closures*

516. When the Justice and Security Act came into effect I doubt that there was much expectation that the land requisition or road closure powers would be needed. Their use in the past four years is an unwelcome reminder of continuing problems.
517. As I commented last year, the powers have so far been used sparingly in the light of the threat profile and I expect to see continued restraint.
518. Three quite different scenarios for the use of these powers have materialised. The first, and most serious, is the specific threat to public building such as law courts, police stations and military installations. The threat to such buildings stands at "Severe" and has been borne out by actual terrorist bomb attacks, both carried out and disrupted, The closures at Lower Chichester Street in Belfast, Ballykinler camp, and Asylum Road in Londonderry are in this category.
519. The second is the problem caused by public disorder, up till now associated mainly with the marching season, but to which must now be added community tensions arising during the flags dispute. For the main these have been time-limited, as in Ardoyne and the Springfield Road. But some seem likely to be needed until the risk of damage and violence arising from street disorder has been diminished. That is the case in the area of St Matthew's Church in East Belfast.
520. The third category is the intimidation, disruption and nuisance caused by the harassment of communities of differing affinity living in close proximity to each other. That is the situation in Mountpottinger Road

and Clandeboye Drive. It is a common feature of interface areas. Measures to close rights of access will not necessarily be the correct answer, and indeed may be a backward step. This is especially so if efforts are being painstakingly made to promote community confidence, as on some of the peace lines in North Belfast. Those committed to such work, some of whom I have met, deserve great credit for their vision and perseverance in very trying circumstances.

521. Where such harassment is caused by exploiting narrow alleyways and footpaths so as to throw stones and bottles over fences into people's back gardens, use of closure powers is entirely justified to give local residents some respite from constant intrusion.
522. These problems are more to do with sectarian tensions than with terrorist threats or public disorder and over time it would be preferable to move to more community based solutions, linked with other steps to reduce anti-social behaviour, thus removing the need to call on the JSA powers. The PSNI have a role in this, but so do Belfast City Council, and it is good to see their greater involvement in taking forward locally based initiatives.

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

#### The profile of public order incidents in 2012 - 2013

##### *Policy and legislative context*

523. Successive Governments have regarded public order as a central focus of the Justice and Security Act. Extensive public order disturbances began in August 2012, developed alarmingly over the flags protest in December and January, and resurfaced in July and August this year.
524. In addition to the JSA powers, 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.
525. The use of the Justice and Security Act powers becomes relevant if the development of a disturbance requires 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.
526. 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.

527. It is sadly clear to me this year to me from my extensive discussions with senior police officers, especially those concerned with authorising the use of JSA powers or in command of Districts, that the use of the JSA powers has never been far from their minds when dealing with riots and disturbances. The threat of ballistic attack on police officers, for example when forming a static cordon or closely pressed by a disorderly crowd, has been high.
528. Actual attacks during riots have borne out these fears. These have fortunately been few in number, but a successful firearms or bomb attack during a riot will inevitably involve civilian or police deaths or casualties.

#### *Requirements on the police*

529. 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*".
530. The second objective of police strategies is to plan to preserve public order both as a parade takes place and in its aftermath, either immediately after it has taken place or in the hours and days following.
531. At times this year, especially during the early stages of the flags protest, there was some uncertainty about whether a particular parade or march amounted to an event for which a Parades Commission's determination was necessary or whether the event could be treated simply as a public order event.
532. It is clearly important that there should be no room for doubt about this, since uncertainty is likely to affect the actions of the Parades Commission, the PSNI, and those wishing to parade or protest (which are different things).
533. The issue has arisen in the High Court in Belfast, in an action concerning whether the right to privacy was breached by demonstrations passing close to residential property. The action has not yet concluded.

#### *The flags protest*

534. In assessing comments from political parties and others earlier on in this report, the flags protest has been the dominant issue both in public comment and in operational policing this year.

535. The sequence of events following the decision of Belfast City Council on 3 December 2012 to restrict the flying of the Union Flag over Belfast City Hall to 19 specified days has received enormous media coverage. I have discussed the operational dimension to all this in detail with senior police officers, inviting them to outline their strategic approach, their comments on events and their views of any future impact of these disturbances.

*The police strategy*

536. Over the period 3 December to 9 March, some 2,145 incidents connected with the flags protests have been reported to the police. Since the beginning of 2013, disorder has focused in East Belfast and the Newtownards Road, with 80 offences of assault on police officers in B District (South and East Belfast).
537. The police strategy throughout has been “*to provide a professional, human rights compliant policing service whilst confronting the widespread disorder and a terrorist threat*”. In its reference to the terrorist threat, the police strategy calls into mind the possible engagement of the JSA powers to search for munitions and wireless transmitters in response to events as they unfold.
538. The police operation has had three strands: the protection of Alliance Party offices and party members, road protests and the Saturday City Hall protest.
539. The first part of this operation reflects perceptions about how the vote in Belfast City Council came to be taken, with its impact on senior members of the Alliance Party, the party’s offices in East Belfast and private property.
540. The second involves the daily operation of a Silver Command Room for command and control, the monitoring of social media and establishing the location of protesters and engagement with them. Underlying this are possible risks to life under Article 2 of the ECHR if arterial roads are blocked (for example, affecting access to hospitals), impacts on communities and commerce, and possible disorder and risk of terrorist incidents at interfaces affecting both members of the public and their officers.
541. The third aspect recalls the initial violence at Belfast City Hall on 3 December and its continuation as a focal point for unrest. It involves protestors from North, South and East Belfast, varied in number from 100 to 1000, walking into the city centre, with the potential for disruption and interface tensions.
542. The Chief Constable has emphasised on many occasions that those caught up in the violence associated with the flags protest risk acquiring criminal convictions which will affect the rest of their lives. The police strategy has initially focussed on those engaging in the most

serious violence, with some 195 arrests since the disorder began, and resourcing of the criminal justice strategy, which involves some 70 officers dedicated solely to this task.

543. At the same time the police are aware of the use of social media to organise protest and generate inflammatory comment. They are also aware of public perception and media criticism about lack of action to deal with the protests.
544. Community engagement by the police has involved contact with the political parties, community representatives, discussion of the economic impact, allegations of police brutality and lack of parity between communities in the policing approach. It also involves a range of partners including Belfast City Council (not least because of the Christmas Market and the City Hall), the Public Prosecution Service, the court service, Translink, the other emergency services and the Policing Board.

#### *Assessment of the police strategy to deal with the flags protest*

545. The police have articulated to me a clear strategy for dealing with any further manifestations of the flags protest. I have set this out above. I believe it is correct and includes all the elements I would expect to see. The police need to keep to it firmly. As long as protests continue with the potential to degenerate into violent disorder, with attacks on people or property, or on police officers, there is no choice.
546. There are already indications that the flags protest has entered the lexicon of Northern Ireland anniversaries, with commemorations of the events of 3 December 2012 expected in future years.
547. Because I believe that the flags protest is part of a much more complex narrative about loyalist disorder this year, I have placed my comments in a more general commentary later on in this section, after I have discussed all the public order situations which need consideration this year.

#### *The G8*

548. In June, Northern Ireland hosted the meeting of G8 leaders (Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom and the United States) at Lough Erne in County Fermanagh. This was a major event involving international co-ordination, community engagement, media briefing and extensive logistical, security and public order planning.
549. I was given regular briefings throughout the entire process by senior police officers. Planning envisaged the potential use of JSA powers, including requisition and road closure powers, which I have reported elsewhere. It also involved the deployment of some 3500 police officers under mutual aid arrangements from police forces in Great Britain.

550. The event passed off successfully, to the great credit of the PSNI and military authorities in support. Only two arrests were made throughout the event.

### Belfast: Twelfth of July

#### *Context*

551. In recent years, the main problems in the Twelfth of July parades in Belfast have occurred when the parades have returned up the Crumlin Road, usually in the early evening. The Ardoyne shop fronts have been the traditional flashpoint as the parade has passed through nationalist areas on either side.
552. The risk is that the tensions inevitably aroused by a loyalist parade passing through a nationalist area will be exploited, and street disorder will be fomented, by people coming into the area who do not live there or have no connection with it. The major concerns have been the effect of disorder on vulnerable communities and how much the close proximity of rioting crowds will be used as a cover for armed attacks on the police. Dealing with such risks might involve the use of JSA powers to search for munitions and explosives, either while the disorder is continuing or in the hours or even days afterwards.

#### *Visit and observations*

553. In early July, I spent a day informally going round North Belfast, spending some time in Ardoyne, including looking at the road closures, with the pattern of last year's violence in my mind. I also met those community and church leaders whom I have come to know and was glad to hear their views once more.
554. Early on the morning of the Twelfth of July, I spent some time at the police Gold Command suite at Police Headquarters and met the Chief Constable and his senior staff, together with Mr Ian Learmonth, who is the Chief Constable of Kent and the ACPO lead on public order. I then moved on to the Silver Command suite at Antrim Road Police Station and met the Silver Commander, who had the responsibility for the tactical handling of the day's events. In the afternoon, I returned to the Gold Command suite and stayed there until late in the evening.

#### *Sequence of events*

555. The determination of the Parades Commission came shortly before the Twelfth parades. It was different from the previous year in that it provided that the returning Orange lodges should not parade past the Ardoyne shop fronts but should stop in the Woodvale area. The dynamics of the scenario were thus completely different from 2012, and indeed from previous years, in that no parade, even of a limited size as in 2012, was allowed to pass any further up the Crumlin Road.

556. In contrast to previous years, there was much less disorder in the area of the Ardoyne shop fronts. Protests were minimal, for the obvious reason that the parade was prevented from passing the shop fronts. Instead, the focus shifted to the curtailment of the parade on Woodvale, where the parade was halted by the police. Extensive video footage shows the frustration of the crowd, both paraders and supporters, and the efforts of the police to contain them.
557. In the period after the initial stand-off, the police came under attack from bricks, bottles, other missiles and petrol bombs from loyalist supporters of the parade. Attenuated Energy Projectiles (AEPs) and water cannon were used. This disorder continued at a high level for four nights, with lesser violence for several nights thereafter. In the period 12 to 31 July, 71 police officers were injured. Ninety arrests were made across Northern Ireland.
558. Invoking the mutual aid arrangements with police forces in Great Britain, some 630 police officers arrived in Northern Ireland from police forces in Great Britain before the Twelfth of July parades and some 1300 in the following week.
559. Elsewhere in Northern Ireland most of the parades on the Twelfth of July passed off without disorder.

*Assessment of police operation in Crumlin Road and ongoing issues*

560. I believe that the police correctly judged the implications of giving effect to this year's Parades Commission determination. Allowing the parade to progress further up the Crumlin Road would have breached the determination and would have guaranteed widespread disorder. The police strategy of keeping loyalist groups well back from the Ardoyne shop fronts was correct.
561. As it was, the disorder on the day from loyalist crowds in reaction to this strategy involved serious violence, damage to property and injuries to police officers. The situation in Ardoyne itself was calm (for the first time for many years) and has broadly remained so since then.
562. I have discussed all this recently with senior police commanders in the area. It is clear that the lack of resolution of the initial issue is being played out every night in the Woodvale area, with crowds varying in size and in behaviour, involving a "camp" in Twaddell Avenue. The mood of the crowd reflects the initial deep anger as well as the dynamic of events since July. It has elements of the prolonged disorder at Drumcree several years ago, whose residual elements I observed last year.
563. To the extent that the situation in the Woodvale area generally involves the threat of violence it is an issue for the police. This means that the potential engagement of the JSA powers remains an active possibility, depending on the threat or extent of violence.

564. The police strategy is to prevent loyalist crowds, whether in protest against Parades Commission's determinations or more generally, from advancing further up the Crumlin Road. I judge that this is the correct strategy in terms of preventing disorder. It will encompass giving effect to Parades Commission determinations where they are in effect, and public order strategies where they are not. Otherwise, the risk of confrontation with a nationalist crowd outside the Ardoyne shop fronts would be high and serious disorder would be virtually inevitable.
565. All this comes at a cost to the residents of the area, to the police officers who are nightly abused and threatened, and of course with operational costs for the police.

### Royal Avenue, Belfast

566. On Friday 9 August 2013, violence erupted in Belfast when loyalists mounted a protest against a republican parade to mark the 42nd anniversary of the internment operation carried out in 1971 by the former Government of Northern Ireland.
567. The trouble began when loyalists staged a demonstration in the city centre against a republican parade that was due to pass along Royal Avenue. Within minutes a large crowd was mobilised, much of it by social media, from the Shankill Road. Parked vehicles in the nearby North Street area were set on fire and shops were damaged during the violence. Bricks and fireworks were thrown at police officers, who were also attacked with scaffolding poles and paving stones ripped from the streets.
568. The police fired 26 Attenuated Energy Projectiles (AEPs) and used water cannon. Fifty six police officers were injured and four needed hospital treatment. Eight arrests were made on the night and others followed.
569. This incident illustrates several unpleasant features of the current public order scene in Northern Ireland. The capacity of terrible events some years ago to resonate, either in their own terms or when exploited by others, the rapid mobilisation by social media of large crowds from the opposing community, the use of violence against police and private property, and complete disregard of the negative media impact of large scale disorder in the city centre, demonstrate both the volatility and complexity of public order challenges this year.

### The World Police and Fire Games

570. For ten days in August, Northern Ireland hosted the World Police and Fire Games, involving over 7000 participants at some 41 locations in Northern Ireland. This major event presented another large operational and logistical challenge, but no public order issues arose.

## Londonderry: 10 August

### *Observation and sequence of events*

571. The Apprentice Boys of Derry parade, which this year took place on 10 August, falls outside the reporting year but as in the past I shall comment on it here, not least because this year the contrast between events in Belfast and in Londonderry during the marching season was more marked than in the past.
572. This is a major event in the loyalist calendar, regularly attracting 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, not least because of the possibility of disorder from “feeder” parades in Belfast and elsewhere, as contingents of parades assemble before travelling to Londonderry in hired coaches and vans and by private car. Indeed, the event presents major road traffic challenges in addition to its tactical handling.
573. All this was overseen this year in the Gold Command suite at police headquarters in Belfast, which I visited early in the day, before travelling to Londonderry and going to the Silver Command suite to see the planning for the day’s events, including scrutiny of the police Operational Order.
574. I then toured the city centre on foot in the company of senior police officers, spending some time in the historic centre of the city, The Diamond, where the parades march past the war memorial. Crowds of onlookers were smaller than in 2012 and were well-behaved. There was no evident risk of confrontation between marchers and local residents. A planned “white line” protest (involving people sitting down in the middle of the road) did not materialise.
575. I then moved onto the walls and saw the evidence of recent paint attacks on the Memorial hall, across the pavement from the walls which look over to the Bogside. Walking along the walls, I observed the parades marching towards the north side of the historic city. I then walked back to Strand Road PSNI station through Guildhall Square, inspecting the road closure in Asylum Road as I did so.
576. Throughout the day I spoke informally, and at some length, to police officers on duty at various points in the city, taking their views on the nature of the parades, the public response, and their expectations of how events later in the day might develop. On return to the Silver Command room, I observed the final stages of the parades in the early evening.
577. The parades passed through with no disorder. Trouble in nationalist areas in the evening was more limited than last year, and disruption from bomb hoaxes and other distractions was much less.

### *Assessment of police operation*

578. 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. The police have to consider both the wider context of events elsewhere in Northern Ireland and any unwelcome last minute incidents, local or otherwise, which can disrupt planning and create tensions. The disturbances in Royal Avenue in Belfast occurred only hours before the Apprentice Boys march and were an obvious cause of concern.
579. Despite the unfavourable climate created by the previous night's events in Belfast, the enduring flags protest and the stand-off on the Twelfth of July parade in Belfast, events in Londonderry this year passed off satisfactorily. The police gave effect to the Parades Commission's determination discreetly, maintaining a low-key presence which combined friendly interaction with the public with a watchful reserve capacity if needed, which it was not.

### *Community opinion*

580. Anecdotal comment is not definitive but may help to illuminate, especially about issues of public mood. A leading member of the nationalist community in the city, whose comments I have come to value over time, told me as we conversed in The Diamond that he believed that the sense of pride which both communities in the city currently felt was helping to balance old attitudes and prejudices.
581. As I envisaged last year, major civic events have had a positive impact. The choice of Londonderry as the UK City of Culture for 2013 and the city's hosting of Fleadh Cheoil na hÉireann (the largest celebration of Irish music and culture in the world, bringing 430,000 visitors to the city in the week after the Apprentice Boys parade) represent major achievements in themselves but also indicate a forward-looking mood promoting confidence and resilience. All this may seem intangible, but it has value in reducing sectarian tensions and in isolating the tiny minority whose planned acts of violence in Londonderry have disfigured what otherwise has been a positive year in the city.

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

582. I base these conclusions on my observation of public order operations and from discussion with the political parties, independent groups and individuals, including the views discussed in Part 2.
583. The issues which I discuss will be instantly recognisable to anyone in Northern Ireland but I think there is value in setting all this out in detail for the benefit of my primary audience, the Westminster Parliament.

### *Police strategies to deal with disorder*

584. There has been much debate about whether the initial police response to the flags protest was correctly judged. This centres on the alleged lack of speed in preventing protestors gaining access to Belfast City Hall on the night of the vote on flag flying, which some took immediately as a sign of police acquiescence in illegal behaviour. I reject that allegation, but unfortunately it soon gained ground.
585. More significantly, there is a perception in the nationalist community that the police misjudged the immediate tactical issues. Some have taken the view that the police overestimated the potential scale of loyalist protest, which led them to hold back from dealing firmly with the protest for fear of provoking an uncontrollable backlash.
586. One consequence of this, I was told, was a failure to protect the Short Strand enclave in East Belfast from marauding loyalist gangs, when there were sadly several previous scenarios, notably in 2011, which should have led the police to intervene sooner and with more firmness.
587. Another unfortunate consequence was the growth of perceptions that the police were much softer on loyalist rioters than they would be on nationalist crowds, kindling old accusations of police partiality between communities.
588. Those taking this view believe that after a slow start the police realised the dangers of such an approach and hardened their stance towards the loyalist protestors, providing the kind of reassurance that nationalist communities feel they have been promised in recent times. Those who follow this narrative have expressed relief at the current stance but regret that it took the police many weeks to get to this point.
589. But this, too, has had a reaction in the inevitably febrile atmosphere of inner city streets of Belfast. It has prompted a deep sense of betrayal among loyalist groups, who have long taken the view that for the police to deal firmly with a loyalist crowd would be an outrageous betrayal of long-held custom and belief. I believe that this is what lies behind the vicious attacks on police from loyalist mobs, which have so blighted public order scenarios this year.

### *Manpower, NHS and financial implications*

590. I do not comment on resource questions, which are matters for the Department of Justice, the National Health Service, and the PSNI, not for me. But I think it is important to summarise the main points this year for the benefit of the Westminster Parliament.
591. Between 1 July 2012 and 21 August 2013, approximately 682 police officers have been injured dealing with public disorder. This is in the region of 10% of the total strength of the PSNI. Of these 682 officers, 51 were referred to hospital Accident and Emergency Units, and four

remained in hospital for over 24 hours. A total of 48 officers were put on sick leave from work as a result of public order incidents. Up to 3 September 2013, there were 2416 absence days recorded, and 18 officers remain on sick leave as a result of injuries sustained on public order duty.

592. The Policing Board were recently given information about the costs of public disorder. In total, for the 5 month period 1 April to 31 August this year, additional costs (above normal policing costs) were £18.5m and opportunity costs (other work delayed or abandoned) were £4.3m, making £22.8m over this period (which does not include the period of the major flags protest). It is costing approximately £60,000 to police the Woodvale interface in Belfast every night.

#### *Future strategies*

593. The position will continue to be fragile and liable to setbacks. But all this underlines an absolutely basic premise of future strategy: the imperative need to engage with all communities with total impartiality, to show no favour to any community, and to deal with disorder with vigour and firmness, whatever its provenance. I believe that the PSNI are fully committed to this approach.

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

### ***Introduction***

594. 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.
595. 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.
596. 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*

597. The role of the armed forces in Northern Ireland is now essentially one of background support to the civil power (the police) and the civil authorities. Soldiers are no longer deployed on the streets.
598. The system for investigating complaints has not basically changed this year, but there have been some changes to the final reporting of outcomes to the complainants.
599. 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 HQ 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)*

600. 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 JHS (FS) ALD as the Flying Station at Aldergrove.

601. 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 on approaches to Aldergrove, and military aircraft must comply with its instructions, just as civilian aircraft have to do.
602. The Flying Station at Aldergrove has information on its website about how to make a complaint. This includes a 24 hour 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”.*
603. All complainants about aviation security this year have been able to give basic details about the aviation activity concerned. There have been no disputes this year about whether the complaint concerned a jet aircraft or a helicopter, nor has there been dispute, as there was last year, about the particular day or time of day concerned or about the height at which the helicopter or aircraft was flying.

#### *Compensation claims*

604. If a claim is made, the complaints investigation procedure stops. The case then passes to the Common Law Claims and Policy (CLCP) area in the Ministry of Defence in London, who administer the claims process, dealing with all claims and involving loss adjusters as necessary.
605. 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 CLCP, leading to the complaint being resolved. When this happens, the staff concerned in CLCP are supposed to copy their reply to HQ 38 (Irish) Brigade for audit purposes.
606. Three cases this year led to claims. One case, which related to an injured horse, took four months to conclude. It was settled with the payment of compensation and costs, details of which I have seen but which I have not disclosed here for reasons of personal financial confidentiality. The resolution of the case only became known when the

HQ Staff chased up the CLCP. Thereafter, the HQ Staff asked the Flying Station at Aldergrove to write to the solicitors involved to close off the case, but there is no record on the file of their having done so.

607. In the two other complaints, the initial information about the complaint raised the possibility of a claim because of nuisance and damage to livestock as a result of helicopter flying. Soon after receipt of the complaint, the HQ Staff passed on to the complainant details of how to lodge a claim for compensation. They wrote again six weeks later to ask the complainants if they intended to make a claim, pointing out that they could not themselves investigate further until it was clear whether a compensation claim was being made. There is no record of any reply, or of any further involvement on the part of the CLCP.

### *Statistics*

608. There were 18 complaints in the year under review.
609. This compares with 12 in 2011-12, 8 in 2010-11, 56 in 2009-10 and 124 in 2008-9. As before, changes in such small samples do not carry any great statistical significance, but I have looked at them as a group, as well as individually, to see if any patterns emerge, and have commented below.
610. Of the 18 complaints this year, 8 were classed as formal and 10 as informal. (Two of the 8 formal complainants may come to be classed as informal if no further information is sent in by the complainant). The number of formal complaints is the same as the previous year, and the 10 informal complaints compare with 4 last year.
611. 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 and the outcome may affect how the case comes to be classified. 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. This year the informal route has been used effectively in several cases with no indication that the claimant felt unsatisfied.
612. 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. As last year, all related to helicopter and aircraft flying.
613. **Table 5** shows the total of formal aircraft and helicopter complaints from 1 January 2007 to 31 July 2013. **Table 6** shows informal aircraft and helicopter complaints for the same period. The major reduction in

complaints incurred in 2009-10 following the departure of the Puma helicopters of 230 Squadron RAF in November 2009.

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

#### *Origin of complaints*

614. HQ 38 (Irish) Brigade provided me with the folders of all 18 aircraft and helicopter complaints from 1 August 2012 to 31 July 2013, which I reviewed in September.
615. Six complaints this year came in via the PSNI and six direct to HQ Staff, either by email or by telephone (picked up by staff in office hours and otherwise on the mailbox). Four came in via the Civil Representative. One complaint came in via the Flying Station at Aldergrove and one via the Low Flying Complaints and Enquiries Unit at RAF Wittering. The four complaints which came in via the Civil Representative were all informal, reinforcing the value of the Civil Representative in the handling and informal resolution of aircraft and helicopter complaints

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

616. Ten of the complaints this year related to helicopter flying and 8 to fast jets.
617. Six of the 10 helicopter complaints related to the nuisance arising from noise disturbance, 3 concerned injuries to farm animals, and 1 concerned an allegation that a helicopter had landed.
618. In one case relating to a helicopter, enquiries showed that no military aircraft were involved, and the complainant was advised to contact the Civil Aviation Authority.
619. One of the helicopter complaints related to the return phase following completion of the G8 on 18 June, when there were over 200 aircraft movements in a two hour period in the late afternoon. These flights involved the RAF, the Army Air Corps (AAC), the US Army, the US Marine Corps, PSNI, civilian aircraft chartered by the Foreign and Commonwealth Office (FCO) and an air ambulance.
620. Three of the 8 complaints relating to fast jets concerned the visit of the Red Arrows to the Armed Forces day at Carrickfergus on 22 June. Four concerned training flights on 31 August by Tornados from 12 Squadron RAF from RAF Lossiemouth in Scotland, which were forced by bad weather to fly lower than expected. One related to a fast jet returning to Great Britain following a training flight on 24 June.
621. Of the 8 complaints about fast jets, 5 concerned shock and distress caused by noise and low flying, two involved farm animals and one concerned injuries to a racehorse.

622. The geographical distribution of both helicopter and fast jet complaints this year covers Armagh, Aldergrove, Ballymoney, Dunloy, Dungannon, Fivemiletown, Helen's Bay, Limavady, Londonderry, Loughbrickland, Scarva, Templepatrick and Trillick.

*Case recording*

623. The procedures for recording a case and keeping track of it are now well established, with some modifications this year. When a complaint is received by the HQ 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.
624. For formal complaints, 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. The main details about the complaint are held in a summary document (MoD Form 953). This document is used for handling informal complaints.
625. The checklist for formal complaints includes the name of the complainant, 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, whether the Chief of the Air Staff were informed (changed during the year to informing the Low Flying Complaints and Enquiries Unit at RAF Wittering), whether the Ministry of Defence claims organisation has been notified, the date a written acknowledgment was sent, when a formal reply was sent, whether a visit has been arranged and when all this information was entered on the databases. It is no longer the general practice to send a leaflet to the complainant.
626. The replies which are received are then used by the 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 process has not been altogether straightforward this year because of turnover of staff in various parts of the organisation.

## Case handling

### *Results on target period for reply in formal cases.*

627. There is a target period of three weeks from the date of receipt for the despatch of a reply. This applies in the formal cases (8 this year). The target period rule does not apply in the case of an informal complaint.
628. Usually these replies are sent from the HQ Staff. Where the complaint concerns a fast jet the reply will now normally be sent from the Flying Station at Aldergrove.

### *Cases meeting the 15 day target where action was completed.*

629. Seven of the 8 cases were dealt with inside the 15 day target. In 3 of these 7 cases, HQ staff sent off final replies within the 15 day target. These cases, which were straightforward, were closed.

### *Cases meeting the 15 day target where final action was delayed*

630. Four of the 7 cases where an initial response was sent within 15 days were not completed in that time.
631. One of these 4 cases was initially classed as a formal complaint because it was referred by an Environmental Health Officer (EHO) to the HQ Staff, who put enquiries in hand to find out the facts. Efforts to obtain further information about the complainant were unsuccessful. In the absence of any further response from the EHO the case was closed.
632. In a further 2 of these 4 cases, it was clear from the outset that potential compensation claims were involved. Initial replies from the HQ Staff were sent within 4 working days. Those letters gave details of how to make a compensation claim and explained that investigation of the complaint could not be resolved until any claim for compensation had been settled. Since nothing more had been heard within a further period of 6 weeks the cases were regarded as closed: they can be reopened if there are further developments.
633. The last of these 4 cases derived from the training visit of an RAF Tornado and led to a compensation claim. An acknowledgement letter was sent to the solicitors acting for the complainant within the 15 day period. The compensation claim was settled in January. This only became clear when the HQ Staff asked the CLCP about progress. The CLCP had completed the case but had not told the HQ Staff that they had done so. There is no record of any final letter of closure on the file.
634. Compensation cases are complicated but it is disappointing to have to report once more that not all those involved in the process across the wider Ministry of Defence seem to appreciate the need to keep a clear audit trail of any letters which they have sent to complainants or their

solicitors. Without such an audit trail it is impossible to reach a judgment on whether the case has been properly completed.

#### *Cases not meeting the 15 day target*

635. One case originated on 3 September 2012 but a reply was not sent until 10 January 2013. The Flying Station at Aldergrove sent off the reply because it concerned a training visit from an RAF Tornado from RAF Lossiemouth. It took some time to obtain details of the flying pattern, not least because of the need to check flying logs under the conditions of low flying caused by a low cloud base. Further delay occurred because of staff absences on other duties and sick leave.
636. Even with all these factors affecting it I believe that this case could have been dealt with much more quickly.

#### *Files*

637. I have been able to follow the action on the files without difficulty, apart from dealing with the problem (familiar to anyone who has to construct a narrative from emails) of the endless repetition of earlier email messages.
638. As before, the checklists at the front of the formal cases, and the summary sheets for the informal cases, have been well maintained. This is to the credit of the HQ staff at the heart of the process who take pride in their ownership of it. The checklists show quickly and clearly to anyone picking up the file what action has been taken and where the case lies. This is the key to understanding how a case is being dealt with.

#### *The quality of the complaints process*

639. Some of the cases this year have been quite complicated. This has particularly been the cases involving the training visit of Tornado aircraft from RAF Lossiemouth on 31 August and cases where compensation has been involved.
640. Last year I commented on the frequent changes of personnel at the Flying Station at 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. This has again been a factor this year, and has once again meant that the precise sequencing of action has been quite complex. I came across a telling comment on one file from an operational unit complaining about the poor quality of a staff handover.
641. It is clear to me that all those who have been dealing with complaints cases for some time at HQ in Lisburn realise the potential sensitivities of any complaint regarding military activity in Northern Ireland. Their

understanding of the turbulent history of the past has imbued them with acute sensitivity and awareness.

642. That is not fully shared by everyone involved in these issues in Great Britain or those whose acquaintance with Northern Ireland may be short-lived. They understandably apply the same assessments as they would to any military activity elsewhere in the United Kingdom. But perceptions and judgments in Northern Ireland are not the same as in Great Britain and it remains a constant concern to make sure that every action in response to a complaint fully reflects awareness of its potential resonance and significance.

*Some comments on files*

643. Every case needs investigating and response to a high standard, but the potential resonance and significance to which I refer above become more acute if a complaint is taken up by a political representative.
644. One complaint this year concerned a suggested landing on a hilltop in a predominantly nationalist area by a green helicopter, from which 6 people got out, dressed as "military personnel". Such cases still have the capacity to arouse suspicion in Northern Ireland, confirmed in this case by reports that a number of people had come out of their houses to look at the scene.
645. The complaint originated from an MLA and went first to the police who passed it on to the HQ Staff. The Civil Representative became involved because more precise information was needed about the helicopter. There was a suggestion that it belonged to Northern Ireland Electricity (NIE) but that possible explanation was soon eliminated.
646. The records on the file show the result of investigations by the Flying Station Aldergrove. These concluded that the helicopter concerned was not a military one. The records state that the Flying Station Aldergrove operates Gazelle helicopters which carry a maximum of 4 people and do not conduct landings on private land in Northern Ireland except in case of emergency.
647. The formal reply in this case was completed within 15 working days. It was sent to the PSNI since that was the route requested by the MLA concerned. The reply said that there were no military helicopters in the area on the date and at the time of the complaint and advised the PSNI to refer the complainant to the Civil Aviation Authority (CAA) Aviation Regulation Enforcement in London.
648. This case exemplifies the potential for cases of helicopter flying to re-awaken old concerns and distrust, both about the activity complained of and the procedures for dealing with it. These were clearly recognised by all those involved at HQ and at the Flying Station at Aldergrove. They handled the case correctly.

649. I have commented on this case in some detail because it was by far the most significant case this year in terms both of the nature of the complaint and the potential for controversy.

*Section 40(6) review*

650. On the basis 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. I have told the Brigade Commander this myself.

**Conclusions about helicopter and aircraft flying**

*Notice about flying*

651. Only one complaint this year derived from lack of information about military flying procedures in Northern Ireland, which is a significant change from previous years.

652. The website of the JHC Flying Station at Aldergrove includes a message about night flying. It is sensible to make the position clear. The message says that:

*“JHC Aldergrove seeks to limit the use of night flying only to when that training is absolutely necessary for our operations and, if possible, geographically spread the risk of disturbance. Additionally, we always adhere to the prescribed UK Night Flying System regulations.”*

653. It is however disappointing to report that what I said last year about the need to keep website information up to date has gone unheeded. I made a specific recommendation (23) about this. When I sampled the Flying Station Aldergrove website on one occasion in September, information was given about flying times in the third week of May, which was some 16 weeks previously.

654. I am told that the website has now been withdrawn to be re-designed. I welcome this. We are all familiar with corporate websites which undermine their positive intentions by displaying information long out of date. I believe that the Flying Station at Aldergrove have now recognised this point.

*Perspectives and public tolerance*

655. I have examined carefully both the detail of the individual complaints and the terms in which they have been expressed. It is encouraging to report that fewer people than previously have expressed their complaints in terms of strong outrage or alarm. One complaint was made by someone whose frailty and nervousness, from his own

comments, suggested heightened anxiety, and his distress was witnessed also by his care assistant and taxi driver.

656. Events which lead to animals being frightened and injured, with 3 cases this year where it was necessary to destroy the animal concerned, remain a concern. They cause disruption, economic damage and distress to local business owners and managers. That is why it is important to maintain an effective compensation scheme. I have no direct involvement in these cases but have seen no evidence to suggest that it is not meeting its intended purpose.
657. The arrival of fast jets has introduced a new dimension. But we should not get this out of perspective. Three of the complaints related to the Red Arrows visit for Armed Forces Day in Carrickfergus on 22 June, an event attended by over 100,000 people.
658. Furthermore, the enormous amount of aviation traffic generated by the G8 at Lough Erne in June led to only one complaint to the military authorities. That is a great tribute to the patience and understanding of the majority of the population in Northern Ireland.

## **Part 7: Conclusions**

### **Preliminary**

659. These conclusions relate to the sixth full year of the operation of the Justice and Security Act, from 1 August 2012 to 31 July 2013, based solely on the review activity described in the text above. I close with a forward view (in place of recommendations) and an overview of the Justice and Security Act since 2007.

### **The security profile**

#### ***Introduction***

660. The murder of a prison officer, David Black, on 1 November 2012, was the most terrible security incident this year.
661. The range of detailed comment on the security profile from informed public figures shown in Part 4 gives me a basis for judging the range of threats to public security this year, and their pattern and intensity.
662. Additionally I have drawn upon formal presentations from the PSNI, the Security Service and Explosives Ordnance Disposal officers, from observations on the ground and from discussions with police officers of all ranks. Finally, there is the wealth of comment from many sources, which I have reflected in Part 3.
663. As before, I shall report separately on terrorism, public order and organised crime, following the main areas of concern identified by the Government when the Justice and Security Bill was introduced in 2006.
664. The central question in my mind is the need to assess the part played by the Justice and Security Act in dealing with all these areas.

#### ***Terrorism***

665. The terrorist threat is principally assessed by the number of national security attacks in 2013 which up to 30 November<sup>6</sup> was 25. This compares with 24 for the whole of 2012. Additionally, there has been a range of other attacks.
666. Terrorist attacks have ranged from sophisticated devices such as mortars to crude constructions such as pipe bombs, but all have been potentially lethal, with the capacity to cause death and serious injury. Mortar attacks have been planned against police stations and other targets. Mortars are large devices with the

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<sup>6</sup> Date this report was completed.

capacity to cause serious casualties and damage to property. Pipe bombs are smaller devices, thrown at targets or left to be picked up at random. Under-Vehicle Improvised Explosive Devices (UVIEDs) have also been used.

667. In addition, terrorists have carried out shooting attacks, of which the murder of David Black on 1 November was the most serious. Hoax devices have caused much disruption, involving evacuating people from their homes and disruption to traffic. Large amounts of weapons, explosives and ammunition have been found.
668. Targets for terrorist attack have this year included police officers (both on and off duty), police stations, military personnel, prison officers, churches, community centres and private houses.

### *Public order*

669. For public order, this has been the most badly disturbed year for some time. The period August and September 2012 saw serious disorder in areas of Belfast. The “flags protest” in December and January involved large scale rioting in East and North Belfast. Occasional violent incidents, as in Royal Avenue in Belfast on 9 August 2013, brought large numbers on to the streets. Finally, the halting of the return parades in Crumlin Road in Belfast on the Twelfth of July created disorder, followed by continuing protests.
670. Enormous amounts of police resources have been deployed to deal with these disturbances. The PSNI have told me formally, in response to my enquiry, that some 682 officer injuries occurred over the period 1 July 2012 to 21 August 2013, equating to about 10% of the total force of the PSNI.

### *Organised crime*

671. For organised crime, the Organised Crime Task Force report in their ‘*Annual Report and Threat Assessment for 2013*’, page 27,<sup>7</sup> that paramilitary groups remain active in Northern Ireland. Despite publicly denouncing organised criminality, dissident republican groups remain largely dependent on organised crime to fund their terrorist activities. There also remains involvement in organised crime by some members of the loyalist groups – the Ulster Defence Association (UDA) and the Ulster Volunteer Force (UVF).

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<sup>7</sup> <http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/octf-annual-report-2013.pdf>

## **Police strategic response**

### ***Logistics, planning and training***

672. **Specific events this year have broken new ground in police planning and operations. These have included major cultural events, many of them with a dimension across the whole island of Ireland, the G8 meeting in Lough Erne, bringing together many of the world's most senior political leaders, and the World Police and Fire Games, attended by over 7000 people.**
673. **The public order challenges have continued, at a much higher level of intensity than last year, as a major focus for police activity. At the same time, the terrorist threat has continued relatively unchanged overall, with 25<sup>8</sup> national security attacks in the first eleven months of 2013, a range of other terrorist attacks, hoax calls and continuing terrorist planning.**
674. **There has been no relaxation in the scale or scope of police operations against terrorism. All the incidents described above, and many more, have required a professional response drawing on the resources available to the police from within PSNI and the Security Service and the military authorities.**
675. **Faced with risks to life to the general public and to police and prison officers and military personnel, there is no room for error, hesitation or delay. Awareness of the issues is very high at all levels in the PSNI.**
676. **Alongside all this operational activity, the PSNI have correctly judged the need to move forward with refining their operational planning so as to respond effectively to the changes brought about by the Protection of Freedoms Act 2012, the JSA Code of Practice brought into force in May this year, and judicial intervention in May which brought JSA stop and search operations to an immediate halt for a period of five days.**
677. **It is to the credit of PSNI that they have realised the need for these important changes without hesitation and have anticipated them wherever possible. They have also correctly judged that the operations of Tactical Support Groups, while vitally important to securing order, can be perceived as heavy-handed or insensitive, and for that reason have provided additional training in the use of JSA powers, which I have observed at first hand.**

### ***Relationship with An Garda Síochána***

678. **The PSNI continue to work closely with An Garda Síochána over a wide range of police activity. This relationship is very important to**

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<sup>8</sup> Total number of national security attacks from 01 January 2013 to 30 November 2013.

the PSNI, and my discussions with HM Ambassador in Dublin confirm me in the view that the relationship is equally valued by An Garda Síochána.

### *Community engagement*

679. **Community engagement is an integral part of the JSA powers. Senior officers are explicitly required to include consideration of it when preparing authorisations and to signify as such when putting forward authorisations to the Secretary of State.**
680. **Community engagement has come under severe strain this year in those areas of Northern Ireland associated with parades and demonstrations. Some ground has inevitably been lost and it will take some time to restore matters to where they were before.**
681. **But we should not get this out of context. Most parts of Northern Ireland remained untouched by this year's disturbances and there is no reason why local community engagement strategies should not continue with positive momentum.**

### *Analysis of authorisations*

682. **My analysis of every one of the authorisations under the Justice and Security Act this year has satisfied me that each one has met the statutory tests and has furthermore been justified on its merits.**
683. **All concerned in the PSNI and the Northern Ireland Office have been conspicuously careful to ensure that the detailed requirements in the authorisation form are worked through on every occasion, for example in the refreshing of the intelligence supporting each application, and in the involvement of District commanders. Legal advice, both in PSNI and the NIO, has infused the process at every stage.**
684. **The culture in which these authorisations are being prepared rightly reflects the need to question assumptions and treat each application as if it were the first of its kind. Challenge is built into the process at several stages as the authorisation progresses within the PSNI, from the PSNI to NIO officials and from NIO officials to NIO Ministers.**

### *Statistics on the use by the police of their powers*

#### *Proportionate change in use under each power*

685. **Analysis of police activity across the range shows a fall this year of 8% in stop activity overall. The numbers dealt with under PACE have risen by 6%, those under the Terrorism Act have risen by**

**51% (on very small numbers), and those under the Justice and Security Act have fallen by 29%.**

686. **Within the statistics for the Justice and Security Act, there has been a 21% fall in the numbers stopped and questioned under section 21. Under schedule 3, the numbers of people stopped and searched have fallen by 31%, and the numbers of stops and searches of vehicles have fallen by 32%.**
687. **The proportion of stops under security powers (the Terrorism Act and the Justice and Security Act) was 32% compared with 41% last year. On a similar basis, the proportion of stops under non-security powers (mainly PACE) was 68% compared with 59% last year. Looking at PSNI activity overall, there were more than two stops under PACE for every one under the Justice and Security Act.**

***Trend information this year***

688. **The significant reduction in the use of the Justice and Security Act powers which began last year has continued. The principal powers concerned, section 21 (stop and question) and section 24 (stopping and searching people), have declined in total use by 29% over the past year and by 51% over the past two years.**
689. **All that time the threat from terrorists has continued at SEVERE and terrorist activity, both incidents and planning, has continued at a high level.**
690. **I have once again discussed with the police the linkages between their operations and how they have managed to reduced their use of JSA powers by more than half over two years, at a time of high threat levels and terrorist planning.**
691. **I believe that the major training programme for all PSNI officers likely to use these powers has had a part in this. In effect the police have had to do this twice, in response to the changes brought about by the Protection of Freedoms Act in 2012 and with the completion of the Code of Practice in 2013. This has been a big resource commitment but I am glad that the PSNI have recognised how important it was to do this properly.**
692. **Furthermore, police planning of operations in response to available intelligence is under constant refinement. The formal role of intelligence in the authorisation process has been one reason for this, but advances in the integration of intelligence into police operational planning have also been evident to me.**
693. **Consequently, the focus has intensified on terrorist groups and individuals, disrupting their activities and delaying their attacks. Their commitment to violence and intention to plan and carry out**

violent attacks remain undiminished, but their capability to do so is under constant pressure. Stop and search operations are an important part of this.

694. A reduction in the use of stop and search, of the scale achieved over the past two years, lessens the risk of alienation of sections of the community and links up directly with community engagement strategies. It is thus part of a wider picture.
695. Whether over time this will have any impact on those groups or communities whose opposition to the police is rooted in past difficulties, or which reflect an inherited narrative of distance from the police, is more difficult to assess. But the recognition of how much is at stake over the longer term is a powerful driver on the police to keep interventions such as JSA stops to a minimum.

*Trend information over the lifetime of the Justice and Security Act*

696. The completion of six reports is a good moment to look at the statistical trends over that period. I therefore asked the PSNI Central Statistics Branch, the source of all these statistics, if they could examine the longer term trends over the six years of operation of the Justice and Security Act.
697. The tables they have provided go back nine years, and pre-date the use of the JSA by three years, since they report activity on some of the predecessor powers in Part VII of the Terrorism Act (see paragraphs 6 to 9 of the First Report of October 2008). With some caveats on the relative time scales involved, they provide useful indicative trends.
698. The Justice and Security Act came into force in 2007. Its use was limited but growing in the first two years. This reflected police unfamiliarity with it (on which I commented at the time), reliance on section 44 of the Terrorism Act, and the relative freedom from terrorist activity compared with the renewed surge in 2009 and 2010.
699. Section 44 was withdrawn in July 2011. This led to something of a switch to alternative “no suspicion” stop and search powers under the JSA, although the tests were different. The switch was not a total like-for-like, which would have been concerning given the different legal tests, and the JSA powers were not used as much as if there had been a direct transfer. This was correct, given the difference in the tests to be applied.
700. After a dip between 2009 and 2011, the PACE powers, which are used to deal with non-terrorist crime, began to resume their greater share of all stop and search activity. Security-related powers began to take a lesser role.

701. The total use of stop and search powers in relation to people in Northern Ireland has declined from its peak of 58,763 to 31,468 over a three year period, a fall of 46%. But the use of stop and search powers is still running at a higher level than nine years ago (31,468 stops in total in 2012-13 compared with 20,956 in 2004-05). Security-related stops are also running at a higher level than nine years ago (10,657 stops in 2012-13 compared with 6,522 in 2004-05).
702. The resurgence in terrorist activity over the period 2009 to 2010, hardly foreseen nine years ago, explains these statistics. Without that resurgence I do not think there would have been a similar growth in stop and search activity.

### *Police records*

703. There is a formal requirement on the Chief Constable to keep records under the JSA. It is a means of holding the police to account, both in operational terms and in enabling statistical analyses to be made and studied. But, of greater importance, it enables the individual person who is stopped to be given access to a record of the event and, if he so wishes, to base a complaint on it.
704. Recent progress in developing electronic recording of stops has made it easier to hold the police to account, by improving the accuracy of recording and the speed of record retrieval. It has brought its own challenges in terms of enabling people to gain access to records on terms which suit them and in circumstances with which they feel comfortable. Current judicial proceedings bear on this but I believe that solutions can be found which meet all the necessary requirements.

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

705. The Government established in 2007 that the armed forces should act in a limited capacity in Northern Ireland, and always in support of the police. The conditions underpinning support were laid down under Operation Helvetic and have been maintained since then.
706. In particular, there is no role for the armed forces in public order situations, nor has it been suggested to me by anyone in recent years that they should have such a role.
707. When a bomb or other device is found or suspected, the police set up and maintain cordons and may have to evacuate people from their homes. But they have no capability in Northern Ireland to deal with suspected bombs or finds of weapons, ammunition and explosives. To deal with these they are reliant on “advanced search” operations carried out by members of the armed forces

and the deployment of military Explosive Ordnance Disposal (EOD) capability, carried out by Ammunition Technical Officers (ATOs).

708. I place on record once more my admiration for the skilled and dedicated work carried out by these military personnel in dangerous circumstances. They sometimes face public hostility or indifference, incredible though that may seem when massive risk to life is potentially at stake.
709. The number of call outs of these military forces in this reporting year was 347, compared with 327 the previous year, a rise of 6%. The number of live devices increased from 53 to 62, balanced by a fall in finds of firearms and explosives, at 133 compared with 144 last year. The number of explosions was unchanged at 16.
710. The number of hoax calls has risen from 70 to 90, while false calls (genuine calls but not revealing a device), are broadly unchanged at 45 compared with 44 last year.
711. Overall, these figures do not suggest any major change to the patterns or volume of terrorist activity or disruptive hoaxes this year, confirming assessments elsewhere in this report.
712. The Secretary of State referred in her July statement to the range of devices from relatively simple and basic pipe bombs, which can nevertheless be lethal, to more sophisticated attacks, including two failed attempts to use mortars against PSNI stations. That has been the pattern of terrorist activity this year in incidents and finds of munitions. I have described one of these attempts to use a mortar against a PSNI station in the case study in Part 5.
713. 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.

#### **Road Closures and Land Requisitions**

714. The powers in the Justice and Security Act to close roads and requisition land have been exercised in recent years to deal with three distinct problems: specific threats to buildings such as law courts, police stations and military installations, disorder or community tensions associated with the marching season (usually for a limited period of time) and intimidation, disruption and nuisance caused by the harassment of communities of differing affinity living in close proximity to one another.
715. The power has been used sparingly in recent years. Alleviating local community problems should preferably reflect community-based initiatives to reduce anti-social behaviour. Increasingly, the power is being used by the Department of Justice under the

agency arrangements, in co-operation with Belfast City Council, and also with the Department of Social Services and Road Service.

716. The existing road closures have been maintained and no new ones have been added this year, apart from temporary measures in relation to the G8. They are being periodically reviewed by the Northern Ireland Office, who have also this year completed their procedural guidance for making road closures.
717. The longer term closures apply to Chichester Street in Belfast, to Ballykinler camp and to Asylum Road in Londonderry. These three locations are all very different, but all fall into the first category, in that the case for their continuation or removal depends on the security situation. At present, there is no case for any change.
718. In East Belfast, road closures and land requisitions provide protection for St Matthew's Church and reassurance to densely packed loyalist and nationalist communities living cheek by jowl. These are live issues and trouble is likely to erupt in these areas at any time in the current unsettled atmosphere in East Belfast.
719. The short term use of the powers in Brompton Park and Balholm Drive in Ardoyne in North Belfast did not in the event prove necessary because of the Parades Commission's decision not to allow return parades past the Ardoyne shop fronts on the Twelfth of July this year, but there is a case for always making sure that the police have maximum flexibility in tactical control of this area over the tense period around the Twelfth.
720. There has been welcome progress this year in efforts to mitigate the effects of road closures, through both the settlement of compensation claims and improved visual amenity. Local environmental or aesthetic considerations are very important to those who have to go about their daily lives in close proximity to an unwelcome intrusion or disruption.

### **Public order**

721. Public disorder arising from protests, marches and parades and leading to attacks on the police has been a major feature of the security profile this year.
722. Public order issues in Northern Ireland arise principally in the context of contentious parades. To put the disorder this year into perspective, over 4300 parades took place throughout the year, only about 5% of which were regarded as contentious. Only a few gave rise to violence. The context of nearly all parades in Northern Ireland, even when accompanied by protest, is entirely peaceful.

723. **But the dynamics changed in 2012-13. Disorder associated with parades in August and September 2012 continued in the Carlisle Circus area of North Belfast, creating a new flashpoint in the Carrick Hill area and outside St Michael’s Church.**
724. **These developments created a fragile atmosphere which could not withstand the violent reactions which broke out after the vote on 3 December in Belfast City Council to change the policy on flying the Union Flag above Belfast City Hall. Much of the ensuing disorder affected East Belfast.**
725. **Finally, the scenario in Ardoyne on 12 July was different this year, following the determination of the Parades Commission not to allow return parades along the Crumlin Road through Ardoyne. Disorder involved the loyalist community and its effects were felt in loyalist areas. Attempts have continued since then to “complete the parade” up the Crumlin Road, at a cost in police resources of £60,000 per night.**
726. **There has been much debate about whether the police response to the flags protest was correctly judged, and I have analysed this in some detail above. Perspectives have differed wildly, with blame and counter-blame cast very readily on all sides, leaving the police in the middle of the arguments.**
727. **The position will continue to be fragile and liable to setbacks. But all this underlines the imperative need to engage with all communities with total impartiality, to show no favour to any community, and to deal with disorder with vigour and firmness, whatever its provenance. I believe that the PSNI are fully committed to this approach.**

### **Military complaints**

728. **The number of complaints this year was 18, compared with 12 last year. Of these 18, 8 were classed as “formal” and 10 as “informal”. As last year, all related to helicopter and aircraft flying. They covered a wide geographical area in Northern Ireland.**
729. **There is a target of 15 days to reply to formal complaints. Seven of the 8 formal cases were dealt with within the target. In 3 of them, HQ 38 (Irish) Brigade staff sent off final replies while 4 more were dealt with elsewhere. Four of the cases where an initial response was sent within 15 days were not completed within 15 days, for a variety of legitimate reasons. One case was bedevilled by delays and was not resolved until four months later. Even with all the difficulties which arose, I believe it could have been resolved sooner.**
730. **Ten of this year’s complaints related to helicopters and 8 to fast jets. Eleven concerned nuisance and distress caused by noise, 6**

concerned injuries to farm animals and a racehorse, and one concerned an allegation that a helicopter had landed.

731. Once again, the HQ 38 (Irish) Brigade staff have maintained the complaints system with care, attention to detail and desire to give a good service to the public. They realise the potential sensitivities of any complaint regarding military activity in Northern Ireland. Their understanding of the turbulent history of the past has imbued them with acute sensitivity and awareness.
732. That is not fully shared by everyone involved in these issues in Great Britain or those whose acquaintance with Northern Ireland may be recent or relatively short-lived. They understandably apply the same assessments as they would to any military activity elsewhere in the United Kingdom. But perceptions and judgments in Northern Ireland are not the same as in Great Britain and it remains a constant concern to make sure that every action in response to a complaint fully reflects awareness of its potential resonance and significance.
733. The arrival of fast jets has introduced a new dimension. But we should not get this out of perspective. Three of the complaints related to the Red Arrows visit for Armed Forces Day in Carrickfergus on 22 June, an event attended by over 100,000 people.
734. Furthermore, the enormous amount of aviation traffic generated by the G8 at Lough Erne in June led to only one complaint to the military authorities. That is a great tribute to the patience and understanding of the majority of the population in Northern Ireland.

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

735. 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”.*
736. It has been my practice to ask this question afresh each year. These are exceptional powers, to be used when no other course is open, and even then as sparingly as possible.
737. I reach a view on this by looking first at the operational indicators and then at the range of opinion offered to me.

#### ***Operational indicators***

738. There are three tests which are relevant, as shown in the evidence in this report. The first is the value of these powers as demonstrated 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.

739. On the first test, the powers have been used extensively, as Part 5 shows, but with a substantial reduction this year compared with last. They have been used to disrupt terrorist activity, not least in the recovery of large amounts of munitions as a result of searches. The case study is an example of an operation based on JSA powers which prevented a major tragedy.
740. On the second test, the best measure of threat is to look at terrorist capability and intent and calibrate the findings on both. Either on its own would be of great concern. Together they can be conclusive. Both elements were identified in the Secretary of State's statement on 17 July.
741. Events since then, notably the Cullyhanna mortar and the letter bombs in October, confirm that position. The Security Service and the PSNI have had considerable success this year in disrupting terrorist activity, but both told me at my October review with them that terrorist capability and intent remain dangerous.
742. On the third test, the PSNI and the ACPO take a clear view that the JSA powers remain necessary to deal with the current threat. The PSNI have described to me successful disruptive operations and recovery of weapons, ammunition and explosives.
743. They have also explained to me in some detail how the immediate loss of these powers for five days in May 2013 demonstrated that the Terrorism Act powers, helpful though they may be in clearly defined circumstances, do not adequately match the ongoing terrorist threats facing the public in Northern Ireland each day and over a longer period. My analysis of what happened in those five days in May confirms the view that the test for JSA authorisations is more suited to the situation in Northern Ireland at the present time.
744. On these three operational indicators therefore, the case for continuing these powers is confirmed without any doubt.

#### ***Other views***

745. 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, which I have interpreted widely. Hence my purpose in seeking out a range of independent and unofficial views, including community opinion and what might be called "grass roots" views. Those contributing are listed in Appendix C.

746. The dominant issues this year have been public order, parades and flags, to the extent that many people have not mentioned stop and search powers at all. It has barely featured in some discussions when other issues, such as historical enquiries, have evidently been much in people's minds. Even community issues have been presented through the perspective of street disorder rather than as an aspect of other police operations.
747. That does not remove the need to think hard about stop and search, as I have reminded people in my discussions with them. What little comment there has been this year on the powers has focused on their practical impact rather than on their continuance as such.

*Concluding judgment on whether the powers are needed this year*

748. All this leads me to the conclusion that the operational indicators need no balancing this year with other factors, and that the case for continuing the powers unchanged for a further year has been conclusively made out.
749. But the significant reduction in the use of the Justice and Security Act powers, at a time when the threat level is "severe" and terrorist attacks and planning have continued, is to be welcomed. The principal powers concerned, section 21 (stop and question) and section 24 (stopping and searching people), have declined in total use by 29% over the past year and by 51% over the past two years. That is the right direction of travel and needs to be sustained.
750. Further judicial intervention may affect the picture. Subject to that, my judgment is that the Justice and Security Act powers should continue unchanged for another year.

*A forward view*

751. I have decided this year not to make specific recommendations, for three reasons:
- The conclusion of this report marks a transition to the term of office of a new reviewer
  - Many of the recommendations of the Fifth Report have been taken forward in the course of 2012-13
  - The Policing Board's Human Rights Adviser has made recommendations about stop and search, which I support and which now deserve attention from the PSNI.
752. Therefore I shall describe those broad areas where I would expect to see progress over the next reporting year.

### **Police powers**

753. The police have completed their developmental work following the enactment of the Protection of Freedoms Act and the implementation of the JSA Code of Practice.
754. I would expect to see that work consolidated in operational orders, driven from PSNI Headquarters but increasingly taken forward by District and Area commanders.
755. Training in the use of JSA powers and their linkage with other powers must continue as a high priority, even when training budgets are tight. The evidence this year shows how worthwhile this has been. There should be specific training for all officers likely to be using JSA powers and for all new officers.
756. Recording of stops and ensuring that members of the public can gain ready access to those records must continue as a priority for both operational and supervisory officers. It is the subject of current judicial scrutiny.

### **Authorisations for Justice and Security Act powers**

#### **The authorisation process**

757. I would expect to see the comprehensive authorisation process continue, as a major focus for officers working on intelligence issues, senior PSNI officers, and Northern Ireland Office Ministers and officials. A high standard of compliance with statutory requirements has been achieved, which is what the legislation and the Code of Practice require.
758. The refreshment of the intelligence picture for each application, and the way in which it is being used to illuminate the current threat, have rightly assumed a central role and are the key to making the case for each application.
759. It is also important that the District Commanders are fully brought into the authorisation process, so that the geographic areas to be included reflect their views.
760. Finally, the section in the authorisation form reflecting community engagement must likewise be refreshed in every application and should include evidence that senior officers have personally become involved in this part of the process.

#### **Community engagement**

761. Despite the prominence of community engagement in the authorisation process, and the day-to-day efforts of the PSNI officers specifically tasked to work on community engagement,

there remain areas of the community which are still hard to reach, either because of bad experiences of the police in the past or because of renewed injections of distrust.

762. The PSNI will continue to encounter elements of hostility, indifference and scepticism as well as enjoying the widespread support of the community in Northern Ireland. They must therefore continue their efforts to reach out to all sections of the community vigorously. Community engagement must remain central to the strategic approach across the whole range of PSNI activity, of which JSA authorisations are an important part.

### **Police operations**

763. Police operations involving the JSA powers will continue to reflect the intelligence profile, ongoing threats and imminent dangers, liaison with the Security Service, military assets for advanced search and Explosives Ordnance Disposal, and co-operation with police forces in Great Britain and An Garda Síochána. This is a well-defined pattern of activity, with effective protocols and contacts, which need to be actively maintained.

### **Military operations**

764. The police arrangements are effectively matched by the military authorities, acting in support of the police. They have so far proved resilient in the face of pressures on Ministry of Defence resources and frequent turnover of personnel with other challenging assignments, such as service in Afghanistan.
765. This needs to continue. The armed forces still have a significant role to play in ensuring public safety in Northern Ireland. I see no scope for any change in the profile, pattern or scale of this activity. I am told by the Brigade Commander that no changes are planned to the availability of specialist resources to PSNI over the near future.

### **Road closures and land requisitions**

766. I have identified this year three separate scenarios for the use of these powers. They were not used at all in the early years of the JSA, but events forced a change.
767. The process of review should, if undertaken properly, enable the case for each closure to be periodically re-assessed, balancing the security needs with local impact and opinion. This should be done with a sensitive touch which seeks out and responds to local feeling.
768. In the current climate, road closures and land requisitions may appear to acquire semi-permanent status. That would not be

desirable. As with all JSA powers, the question of their continuance needs to be constantly revisited.

769. I see no scope for their removal in the near future, though it would be preferable over time if in some respects they came to be handled as community issues, with less dependence on the Justice and Security Act.
770. In the meantime, efforts at mitigation, in terms both of financial compensation and of visual amenity, should be pursued wherever practicable and affordable.

### **Public order**

771. Public order remains the most volatile issue in the security profile at present, reflecting sectarian tensions and street unrest. It has assumed massive proportions this year and the PSNI will need to maintain a commensurate capacity to deal with it, involving nearly all aspects of their resources and capabilities. The PSNI face unique challenges within the context of policing in the United Kingdom.
772. Preparing PSNI officers for all this and leading them through it, often in the face of hostility, abuse and worse, and helping damaged people and bruised communities in the aftermath of violent unrest, is an inescapable public duty of the highest importance, to which I believe the Chief Constable and his senior officers remain fully committed.
773. My comments in the past that others, not the PSNI, need to try to solve these issues seem to me to have acquired even greater resonance this year. We can only hope that the Haass initiative manages to find positive ways forward.

### **Military complaints**

774. These now take a much lower profile than a few years ago. Keeping it that way will entail ensuring that the current effective complaints investigation machinery is maintained.
775. Sensitivity to the impact of military operations in Northern Ireland needs constantly to be instilled in those coming new to all these issues. Up-to-date public information about military aviation should be made freely and easily available.

## **An Overview of the Justice and Security Act since 2007**

### ***The recent historical background***

776. Historical perspectives are crucial to understanding Northern Ireland. For many people, events which took place many years ago feel as if they happened yesterday, especially if they reflect an undimmed sense of personal loss and sadness.
777. On a wider view, if one compares the present position in Northern Ireland with landmark dates over the recent past, whether in relation to ceasefires, the Good Friday Agreement, the St Andrews' Agreement or the Hillsborough Agreement, the progress to a better environment is unquestionably secure for the future. It is palpably obvious to anyone walking round the streets of Belfast and Londonderry, in towns such as Coleraine and Portadown, and in rural communities. Life in Northern Ireland has changed.
778. Freedoms which people take for granted in Great Britain can now be fully enjoyed in Northern Ireland. The younger generation in particular have known no other way of life. Northern Ireland has been totally transformed from the fractured and beleaguered society which I first encountered in 1970.
779. It is because these precious gains mean so much to ordinary people that the activities of the tiny group who are unwilling to accept the course of recent events cause such concern and frustration, raising fears that the achievement of a normal society is going to take much longer than people had hoped.
780. That is the broad perspective against which we should look back to the introduction of the Justice and Security Bill as it then was, some seven years ago in December 2006, and the pattern of events since then.

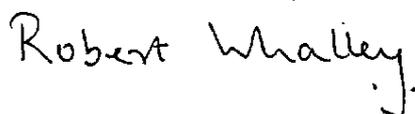
### ***Trends in the use of Justice and Security Act powers***

781. The longer term trend information which the PSNI have provided shows how the use of stop and search powers in the Terrorism Act and the Justice and Security Act has evolved over the past six years.
782. In particular, it matched the resurgence in violence over the period 2009 to 2010. But since then, significantly, it has begun a marked downward trend, at a time when terrorist activity has not declined in equal measure.
783. That downward trend demonstrates the impact of senior level focus by the PSNI on operational planning, the use of intelligence, police officer training and community engagement. Undoubtedly the new authorisation regime has served to concentrate minds

and has become a powerful factor determining and refining the use of the JSA powers.

*Future operation of the Justice and Security Act powers*

784. The PSNI have now put in place effective arrangements for managing the JSA powers. I have every confidence that these will continue for as long as the powers are needed. How long that period will be is impossible to predict, since it depends on the activities of terrorists and other criminals.
785. These powers will have served their purpose when it is clear that Northern Ireland has become a normal society, or at least more normal than it is at present.

A handwritten signature in black ink that reads "Robert Whalley". The signature is written in a cursive style with a small flourish at the end of the last name.

**ROBERT WHALLEY CB**

**November 2013**

## 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 the premises or anyone who enters the premises to remain on the premises. For example, movement within the premises may be restricted, or entry in 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 seek 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<sup>9</sup>

Table 1:

**Police Service of Northern Ireland Summary Sheet**

**Justice and Security Act – 1<sup>st</sup> August 2012 - 31<sup>st</sup> July 2013**

	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Total
<b>1. JSA Section 21 - Number of persons stopped and questioned</b>	174	171	204	436	195	173	140	240	303	183	316	134	2,669
<b>2. JSA Section 23 - Power of Entry</b>	12	8	10	5	6	7	13	19	23	11	21	12	147
<b>3. JSA Section 24 (Schedule 3) - Munitions and Transmitters stop and searches</b>													
No. of persons stopped and searched, public place:	424	345	756	1016	461	510	432	582	835	514	629	493	6,997
No. of persons stopped and searched, private place:	15	17	36	57	22	12	14	24	37	22	44	22	322
Persons stopped and searched - total	439	362	792	1073	483	522	446	606	872	536	673	515	7,319
<b>JSA Section 24 (Schedule 3) - Searches of premises:</b>													
No. of premises searched - Dwellings:	13	14	22	25	7	9	15	20	18	8	23	14	188
No. of premises searched - Other:	4	2	2	27	3	6	1	4	3	2	4	7	65
No. of occasions items seized or retained	7	1	9	15	2	5	4	6	4	0	2	1	56
<b>JSA Section 24 (Schedule 3) Use of Specialists:</b>													
Use of specialists - No. of occasions 'other' persons accompanied police:	2	3	1	22	2	3	0	1	1	4	2	4	45
<b>4. JSA Section 26 (Schedule 3) - Search of Vehicles</b>													
(1) (a) Vehicles stopped and searched under section 24	741	698	1118	2276	957	669	578	920	1273	779	845	534	11,388
(1) (b) Vehicles taken to another location for search	0	0	0	0	0	0	0	1	1	0	0	0	2

<sup>9</sup> Source: Statistics Branch, Police Service of Northern Ireland, Lisnasharragh 131

**Table 2:** <sup>10</sup>

**Use of Powers by Police in Northern Ireland under the Justice and Security (Northern Ireland) Act 2007 between 1<sup>st</sup> August 2012 and 31<sup>st</sup> July 2013**

Table 2A	
Section 21 - Stop and Question	
Year	Number Persons Stopped and Questioned
<b>2012</b>	
August	174
September	171
October	204
November	436
December	195
<b>2013</b>	
January	173
February	140
March	240
April	303
May	183
June	316
July	134
<b>Aug 12 - July 13</b>	<b>2,669</b>

Table 2B	
Section 23 - Power of Entry	
Year	Number of Premises Entered
<b>2012</b>	
August	12
September	8
October	10
November	5
December	6
<b>2013</b>	
January	7
February	13
March	19
April	23
May	11
June	21
July	12
<b>Aug 12 - July 13</b>	<b>147</b>

<sup>10</sup> Tables 2A to 2E information source: 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	Private	Total
<b>2012</b>			
August	424	15	439
September	345	17	362
October	756	36	792
November	1016	57	1073
December	461	22	483
<b>2013</b>			
January	510	12	522
February	432	14	446
March	582	24	606
April	835	37	872
May	514	22	536
June	629	44	673
July	493	22	515
<b>Aug 12 - July 13</b>	<b>6,997</b>	<b>322</b>	<b>7,319</b>

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	
<b>2012</b>					
August	13	4	7	2	
September	14	2	1	3	
October	22	2	9	1	
November	25	27	15	22	
December	7	3	2	2	
<b>2013</b>					
January	9	6	5	3	
February	15	1	4	0	
March	20	4	6	1	
April	18	3	4	1	
May	8	2	0	4	
June	23	4	2	2	
July	14	7	1	4	
<b>Aug 12 - July 13</b>	<b>188</b>	<b>65</b>	<b>56</b>	<b>45</b>	

**Table 2E**

**Section 26 (Schedule 3) – Searches of Vehicles**

<b>Searches of Vehicles by Police</b>		
<b>Year</b>	<b>Vehicles stopped and searched under JSA Section 24 (Schedule 3)</b>	<b>Vehicles taken to another location for search</b>
<b>2012</b>		
August	741	0
September	698	0
October	1118	0
November	2276	0
December	957	0
<b>2013</b>		
January	669	0
February	578	0
March	920	1
April	1273	1
May	779	0
June	845	0
July	534	0
<b>August 12 - July 13</b>	<b>11,388</b>	<b>2</b>

**Table 3**  
**Number of Uses of Each Stop/Search and Question Legislative Power in Northern Ireland (i.e. under PACE, Terrorism Act and Justice and Security Act)**

1<sup>st</sup> August 2012 – 31<sup>st</sup> July 2013

Persons stopped and searched under:	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	Jul-13	Aug 12 -Jul 13
PACE / MDA / F Order	1,748	2,484	2,711	1,991	1,302	1,134	1,264	1,723	2,078	2,252	1,655	1,780	22,122
TACT S43	9	12	11	21	24	11	4	4	11	18	28	12	165
TACT S43A	0	0	2	7	9	2	1	1	6	6	13	0	47
TACT S47A	0	0	0	0	0	0	0	0	0	67	0	0	67
JSA Section 21	174	171	204	436	195	173	140	240	303	183	316	134	2,669
JSA Section 24	439	362	792	1,073	483	522	446	606	872	536	673	515	7,319
<b>Total (Powers Used)<sup>11</sup></b>	<b>2,370</b>	<b>3,029</b>	<b>3,720</b>	<b>3,528</b>	<b>2,013</b>	<b>1,842</b>	<b>1,855</b>	<b>2,574</b>	<b>3,270</b>	<b>3,062</b>	<b>2,685</b>	<b>2,441</b>	<b>32,389</b>

1<sup>st</sup> August 2011 – 31<sup>st</sup> 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	1,773	1,740	1,396	1,545	20,908
TACT S43	12	14	12	17	11	16	21	14	21	16	14	17	185
TACT S43A	0	0	0	0	0	0	0	0	0	0	0	0	0
TACT S47A	0	0	0	0	0	0	0	0	0	0	0	0	0
JSA Section 21	286	309	289	308	276	326	277	244	283	336	251	200	3,385
JSA Section 24	975	981	1,025	1,239	942	1,006	749	779	788	876	626	674	10,660
<b>Total (Powers Used)</b>	<b>2,782</b>	<b>2,929</b>	<b>3,700</b>	<b>3,409</b>	<b>2,842</b>	<b>3,110</b>	<b>2,880</b>	<b>2,930</b>	<b>2,865</b>	<b>2,968</b>	<b>2,287</b>	<b>2,436</b>	<b>35,138</b>

<sup>11</sup> 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 provisions JSA S24 and JSAS21. PACE figures are inclusive of the Misuse of Drugs Act (MDA) and the Firearms Order as in previous years. Figures from April 2012 have been amended slightly.

**Table 3A**

**Longer Term Trend Information**

<b>Legislation</b>	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10*</b>	<b>2010/11*</b>	<b>2011/12*</b>	<b>2012/13*</b>
PACE / Misuse of Drugs Act / Firearms Order	14,434	16,036	16,174	15,362	20,011	23,990	22,785	20,746	20,811
No. of uses of TAct sect 84	3,838	3,299	1,576						
No. of uses of TAct sect 89	2,684	1,906	718						
No. of uses of TAct sect 44	N/A	448	913	3,358	9,548	28,770	9,156	0	0
No. of uses of TAct sect 43	N/A	N/A	N/A	13	56	97	375	254	167
No. of uses of JSA sect 21				28	112	5,285	5,355	3,511	2,803
No. of uses of JSA sect 24				251	372	621	11,721	12,699	7,687
<b>Total uses of each legislative power</b>	<b>20,956</b>	<b>21,689</b>	<b>19,381</b>	<b>19,012</b>	<b>30,099</b>	<b>58,763</b>	<b>49,392</b>	<b>37,210</b>	<b>31,468</b>
<b>Total no. of persons stopped/searched<sup>12</sup></b>	20,956	21,689	19,381	19,012	30,099	53,885	45,394	35,268	30,502
PACE	69%	74%	83%	81%	66%	41%	46%	56%	66%
Terrorism Act	31%	26%	17%	18%	32%	49%	19%	1%	1%
JSA	0%	0%	0%	1%	2%	10%	35%	44%	33%
	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\* Based on individual uses of each power from 2009/10 onwards (i.e. combinations of powers counted separately)

<sup>12</sup> The difference between total use of each power and total no. of persons stopped will be due persons stopped under combinations of powers being counted under each legislation used (ie. some double counting)

**Table 4:**

**Explosive Ordnance Disposal (E.O.D) Activity in support of the Police**  
**EOD Call Outs: August 2012 – July 2013**

	LIVE	EXPLOSION	HOAX	FALSE	INCENDIARY	FINDS	TOTAL
Aug-12	1	1	6	3	0	8	19
Sep-12	2	0	4	3	0	12	21
Oct-12	3	0	1	3	0	17	24
Nov-12	6	2	2	10	0	13	33
Dec-12	7	1	6	4	0	8	26
Jan-13	7	0	7	1	0	10	25
Feb-13	8	2	14	2	1	10	37
Mar-13	12	3	22	5	0	13	55
Apr-13	3	1	10	4	0	13	31
May-13	5	5	3	5	0	13	31
Jun-13	5	0	7	2	0	7	21
Jul-13	3	1	8	3	0	9	24
<b>Total</b>	<b>62</b>	<b>16</b>	<b>90</b>	<b>45</b>	<b>1</b>	<b>133</b>	<b>347</b>

**Table 5:**

**Formal Helicopter Complaints: 1 January 2007 – 31 July 2013**

	2007	2008	2009	2010	2011	2012	2013
January	1	1	13	1	0	3	1
February	2	4	8	2	1	1	0
March	1	3	13	1	0	0	0
April	5	18	2	2	0	0	1
May	5	4	10	0	0	0	0
June	3	9	10	1	0	1	2
July	5	11	19	0	1	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	-	-
<b>Total</b>	<b>31</b>	<b>95</b>	<b>115</b>	<b>8</b>	<b>5</b>	<b>9</b>	<b>5<sup>13</sup></b>

<sup>13</sup> This total figure represents up to July 2013

**Table 6:****Informal Helicopter Complaints: 1 January 2007 – 31 July 2013**

	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
January	8	3	1	0	0	0	0
February	12	4	0	0	0	0	0
March	3	2	0	0	1	0	0
April	7	1	1	1	0	0	0
May	9	0	1	0	0	2	0
June	7	3	1	1	1	0	9
July	13	4	0	2	0	1	0
August	4	0	0	2	0	0	-
September	0	4	0	0	0	1	-
October	3	0	0	0	1	0	-
November	0	0	0	1	0	0	-
December	2	1	0	0	0	0	-
<b>Total</b>	<b>68</b>	<b>22</b>	<b>4</b>	<b>7</b>	<b>3</b>	<b>4</b>	<b>9<sup>14</sup></b>

<sup>14</sup> This total figure represents up to July 2013

## 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  
Belfast City Council Health and Environmental Services Department  
Chief of Air Staff, Ministry of Defence  
Church leaders from Catholic and Protestant communities  
Civil Representative  
Committee for the Administration of Justice  
Common Law Claims and Policy Division, Ministry of Defence  
Community groups in Ballykinler, Belfast and Londonderry  
Criminal Justice Inspection Northern Ireland  
David Anderson QC  
Department of Justice  
Derry City Centre Initiative  
Derry City Centre Traders' Forum  
DUP  
Grand Orange Lodge of Ireland  
HM Ambassador to Ireland  
HM Inspector of Constabulary Stephen Otter QPM  
HQ 38 (Irish) Brigade  
Justice  
Liberty  
Low Flying Complaints and Enquiries Unit, RAF Wittering  
The Rt Hon Lord Carlile of Berriew QC  
Minister of Justice  
Northern Ireland Office  
Northern Ireland Human Rights Commission  
Northern Ireland Policing Board  
Northern Ireland Policing Board Performance Committee<sup>15</sup>  
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  
Revd Mervyn Gibson  
Rights Watch UK  
SDLP  
Security Service  
Sinn Fein  
Superintendents' Association of Northern Ireland  
Dr John Topping, University of Ulster  
UUP  
Vernon Coaker MP

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<sup>15</sup> Formerly the Human Rights and Professional Standards Committee

## Appendix D: Review of Completion of Code of Practice: May 2013

1. Completion of the Code following a consultation process involved much detailed work by the NIO. For convenience, I have grouped the subjects raised into fifteen separate areas. These broadly correspond to those issues which came up as the Code was being prepared, especially the full and helpful comments from those responding to the invitation to do so. They do not necessarily correspond to the order in which subjects are dealt with in the text of the Code:
  - Mental illness and learning or behavioural disability
  - Disability access
  - Human rights compliance
  - Avoiding discrimination
  - Monitoring and supervising the use of stop and search powers
  - Recording a section 21 stop
  - Recording the basis of a stop
  - Mutual aid
  - Questioning to establish identity and movements
  - Separating those stopped from one another, stopping and searching of children and stops and searches where children are present
  - Interpreters and language
  - Additional amendments (references are to the final text of the Code)
  - Community impact and assessment
  - Gaining access to records of stops
  - Monitoring the religious or community background of those subject to stops

### *Mental illness and learning or behavioural disability*

2. In paragraph 4.6, rephrasing on the use of appropriate adults was requested, and footnote 3 of paragraph 4.6 has been amended by replacing the term *“if a Custody Sergeant suspects that a person may be mentally disordered”*, with *“if a Custody Sergeant suspects that a person may have a mental illness and learning or behavioural disability”*. This has been suggested to bring the text more in line with international and national human rights disability legislation and also to anticipate new capacity based legislation in Northern Ireland.
3. The PSNI Equality, Diversity and Good Relations Strategy 2012-17 has an ongoing measure (on page 22) by which *“PSNI will seek advice from those with specialist knowledge on how best to communicate with children and young people and also those with learning disabilities, older persons and those with mental illness”*. The ownership of this measure is shown as the Policing with the Community Branch. I would expect a strong link to be made between this work and training for operation of JSA powers.

### Disability access

4. Specific requirements were also proposed that the Code should be made available in police stations in various formats such as Braille and audio formats in line with disability accessibility provisions (with reference to articles 2, 9 and 12 of the United Nations Convention on the Rights of Persons with Disabilities). I believe that this question should be left open and looked at again if experience shows it to be necessary. Paragraph 5.4 makes clear that the powers must be exercised without discrimination on the grounds of disability and that provision should be called upon if people with disabilities are found to be encountering problems in police stations.
5. Similar considerations may apply further back in the process, in respect of understanding the nature of the stop and search, and later on if the person stopped wishes to gain access to records about stops and searches. Article 13 of the United Nations Convention recognises the right of a disabled person to access justice and Article 14 the right to equal recognition before the law. Again I think it sufficient at this point not to suggest a formal amendment to the Code, but instead to leave the point open and look at it again if experience shows it to be necessary.
6. All the issues which were raised about mental illness, learning or behavioural disability and access for people with disabilities should be covered in PSNI training for operation of the JSA powers. These issues may not require further recognition in the Code but must continue to receive further attention by PSNI.
7. The Policing Board's Human Rights Adviser has commented (Recommendation 5 of the Thematic Review) on the next steps necessary to address issues of language barriers or sensory impairment.

### Human rights compliance

8. Paragraph 5.5, under the general principles governing the exercise of police powers, says that the powers must be exercised in accordance with the obligations of public authorities under the Human Rights Act 1998. One commentator suggested that the language of human rights could be further integrated within the Code, for example by mentioning the United Kingdom's obligations in respect of the International Covenant on Civil and Political Rights (ICCPR), Article 2, and under the European Convention on Human Rights (ECHR), Article 14 (*Prohibition of discrimination*) with the text of Article 8 (*Right to respect for private life*) being quoted in full.
9. The significance of the reference here to Article 8 of the ECHR is of course given added resonance because it was at issue in the judicial review case which I reported at paragraph 252 of the Fifth Report, where I drew attention to the finding of Mr Justice Treacy on 9 July 2012 (paragraph 119 of his judgment) that the exercise of a 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.

10. Similarly, the judge found that the exercise of the power to stop and search on pain of criminal sanction under section 24 and paragraph 4A of Schedule 3 to the JSA constitutes an interference which must be justified. He also concluded that the impugned powers were “*in accordance with law*” and that no violation of Article 8 had been established, which is why the PSNI continued to use them until the position was overturned in the Court of Appeal on 9 May 2013.
11. All these developments add weight to the argument that specific rights should be set out in much more detail in the Code. But I am not sure that this is necessary. Paragraph 5.2 says explicitly that the PSNI should respect members of the public and protect their human rights and fundamental freedoms which are listed in Schedule 1 to the Human Rights Act. The inclusion of new text about the oversight responsibilities of supervising and senior officers is in my judgment sufficient recognition of the seriousness of ensuring human rights compliance.
12. At the operational level, I think it is better to make sure that the scope of the human rights compliance requirements is fully reflected in police training rather than being set out in more detail in the Code.

#### Avoiding discrimination

13. In paragraphs 5.6 to 5.11, a request was made that the Code expressly state that “*stop, search and question powers may never be exercised on the basis of racial profiling*”. To strengthen the Code on this issue an additional section was added titled “*Avoiding discrimination*”. The text of this new section is based upon the corresponding Code in Northern Ireland for the Terrorism Act 2000 (section 11 of the TACT Code).
14. The new section relates directly to concerns that stop and question and stop and search powers may have an adverse impact on communities with a particular religious affiliation. These concerns have been raised with me by various people this year. Some of those doing so have shared with me their correspondence with the PSNI about this.
15. Paragraph 5.6 of the Code says:  
  
*“Racial or religious profiling is the use of racial, ethnic, religious or other stereotypes, rather than individual behaviour or specific intelligence, as a basis for making operational or investigative decisions about who may be involved in criminal activity”.*
16. Paragraph 5.7 says:  
  
*“Officers should take care to avoid any form of racial or religious profiling when selecting people to search under section 24/schedule 3 powers. Profiling in this way may amount to an act of unlawful discrimination, as would discrimination on the grounds of any protected characteristics”.*

17. Paragraph 5.8 says:

*“To avoid the kinds of discrimination referred to... great care should be taken to ensure that the selection of people is not based solely on ethnic background, perceived religion or other protected characteristic. Profiling people from certain ethnicities or religious backgrounds may also lose the confidence of communities”.*

18. It is probably wise to include warning language of this kind, to avoid dangers of any direct or indirect discrimination. These are live issues in Northern Ireland, affecting the nationalist community in particular, but also, increasingly, recently arrived communities from European Union countries. If police training is effective, the possibilities of improper use by individual police officers will be minimised. The basis for action is clear: it should rest on individual behaviour or specific intelligence.
19. The inclusion of “*solely*” in paragraph 5.8 is probably unnecessary: the correct course is to discount all the listed characteristics and take decisions on the basis of individual behaviour or specific intelligence. Nevertheless it is probably better to have identical wording in the JSA Codes and TACT Codes since they cover the same ground, and the text in paragraph 5.8 of the JSA Code is based upon paragraph 11.3 of the TACT Code.

#### *Monitoring and supervising the use of stop and search powers*

20. A new section “*Monitoring and supervising the use of stop and search powers*” makes the link between the actions of individual officers and the oversight of supervising officers. It is identical to the comparable text (section 12) in the TACT Code and reflects recommendations 7 and 8 of my Fourth Report and paragraphs 287 to 291 of my Fifth Report. It is encouraging that the NIO and the PSNI have taken active steps to follow through the issues relating to supervision and oversight which I mentioned in my earlier reports.
21. Paragraph 5.9 brings out the role of supervising officers. These are not identified by rank but the context makes clear that it relates to those with active oversight of particular operations:

*“Supervising officers must ensure in the use of stop and search powers that there is no evidence of them being exercised on the basis of stereotyped images or inappropriate generalisations. Supervising officers should satisfy themselves that the practice of officers under their supervision in stopping, searching and recording is fully in accordance with this Code. Supervisors must also examine whether the records reveal any trends or patterns which give cause for concern, and if so take appropriate action to address this”.*

22. Paragraph 5.10 concerns officers of higher rank than those supervising operations:

*“Senior officers with area or service-wide responsibilities must also monitor the general use of stop and search powers and should take action if they do not feel the powers are being used appropriately.”*

23. Paragraph 5.11 makes the direct link between operations and their monitoring and recording:

*“Supervision and monitoring must be supported by the compilation of comprehensive statistical records or stops and searches at service, area and local level. Any apparently disproportionate use of the powers by particular officers or groups of officers or in relation to specific sections of the community should be identified or investigated.”*

24. Proper record keeping is central to the operation of powers such as these. It is important as an evidence base in individual cases, both as a measure of whether the action was justified (for example, whether it led to an arrest or seizure of munitions and explosives) and to provide information to enable any complaint to be properly dealt with. It is also important to identify trends – over time and by area – and to provide comparative information, for example between police districts. I described how records should be kept in paragraphs 292 to 305 of my Fifth Report and set out the overall statistics in Tables 1 and 2. I have included this year’s statistics similarly.
25. These are aggregate statistics for Northern Ireland as a whole: they are not shown by police district. Direct comparison between one district and another would be misleading: each district is unique in its population profile and its security challenges, which will lead to variations in police operational practice. I have told the Northern Ireland Policing Board that it would require a review process larger than mine to analyse the records and statistics by district: this is perhaps a function more suitable for the Board than for me, reinforced by the recently published - and very powerful - Thematic Report from the Board’s Human Rights Adviser.
26. A specific point was raised in relation to the absence of formal monitoring by the police of the use of various powers, for example, under section 75 of the Northern Ireland Act 1998. The Code already makes clear (in paragraph 5.4) that the PSNI should have regard both to section 75 and section 76 (the duty to promote equality of opportunity and good relations and not to discriminate, in the circumstances prescribed). That forms part of the general principles governing the exercise of police powers under the Code.
27. One of the virtues of a Code such as this is that it makes the link between police operations on the ground and their oversight at senior level. Supervising and senior officers are required to monitor the use of stop and search powers: this is quite explicitly set out in paragraphs 5.9 to 5.11 of the Code. They can therefore be expected to monitor compliance with sections 75 and 76 of the Police Act. They are given no leeway in this, rightly so. In theory, therefore, there is a perfectly adequate oversight mechanism at operational level.

28. A specific point was raised with me about the recording (as against the monitoring) of religious or community background. As this is a substantial issue I will deal with it separately below.

#### Recording a section 21 stop

29. Paragraph 6.12 requires the police to make records of instances of stop and search. I commented on this in paragraph 583 of my Fifth Report. The record keeping process for section 21 stops should work in exactly the same way as for section 24 stops. This is particularly important because the operation of section 21, especially the safeguards governing its use, was a central issue in the judicial proceedings in the High Court and the Court of Appeal.

#### Recording the basis for the stop

30. As regards paragraph 8.75 (now paragraph 8.74), it was suggested that, to ensure open transparency on the exercise of the powers, a requirement to record the basis for a stop and question or stop and search should be added to the Code. Transparency is indeed important, which is why there is already a requirement of the kind mentioned here, set out in paragraph 8.61 (previously 8.62) with the recording requirement in new paragraph 8.75 at point (v).
31. In addition, the sequencing of actions when completing the record form on the PSNI's Blackberry drop down menu will not allow the officer to proceed through it without noting the power used and giving an explanation of the reason for it. A footnote has been added to paragraph 8.75 explaining this:

*"The Blackberrys used by the PSNI require that the basis for using the power is recorded before the officer can input further details relating to the stop".*

This safeguard was already in the Blackberry system, as noted at paragraph 298 of my Fifth Report.

#### Mutual Aid

32. Paragraph 5.15 deals with support to the PSNI. This may be provided by additional organisations, such as other police forces under the mutual aid arrangements or the armed forces. The reference to the mutual aid arrangements has been amended with an additional footnote to show the legal basis for this (section 98 of the Police Act 1996) and to make clear that officers from other police forces (in England, Wales or Scotland) have access to all the powers of a PSNI officer. It is a welcome addition to the Code.
33. I have said in past reports (for example recommendation 16 in the Fourth Report) that the PSNI should ensure that existing mutual aid arrangements are fully exploited. This year these provided welcome assistance to the

PSNI during the G8 meeting in Lough Erne in June and the disorder associated with the Twelfth of July parades.

34. Deployment of police officers from Great Britain on to the streets of Northern Ireland at the height of the summer tensions is never going to be entirely straightforward. It would be unwise to deploy them in tactical operations unless they have been trained both about the sensitive situations in which they may find themselves and specifically about the JSA powers, if they are to be used for that purpose.
35. But I have no doubt that their deployment this year was the right thing to do. It gave the PSNI support in depth and a tactical reserve which enhanced PSNI resilience. This was beneficial both to officers on the front line – not least in the face of the draining effects of the heat this year - and to deter further disorder, whether repetitive or escalatory. I have said in the past that no-one gains, other than criminals and those who promote disorder, and many people suffer, if the police do not maintain control of events on the streets.

#### Questioning to establish identity and movements

36. Paragraph 6.5 deals with the important and sensitive issue of the extent of permissible police questioning under section 21 (stop and question) to establish identity and movements, not least because non-compliance (in the sense of refusal to answer a question or failure to answer a question to the best of his or her ability) may give rise to the commission of offences.
37. The first draft said:  
*“Officers may ask any question necessary to ascertain their identity.”*
38. This was changed to:  
*“Officers may ask a person necessary questions to establish their identity”.*
39. I regard this as essentially a semantic change since the purpose is the same under each formulation – to establish identity, and to ask only necessary questions for the purpose.
40. Paragraph 6.5 goes on to give some examples which help to establish identity. The examples listed here are drawn from the “Overview” comment in relation to section 21 in Appendix A to this report (the summary of police powers). They may include requests for a person’s name, address and date of birth, and may include the provision of a form of identification, such as a driving licence or passport.
41. These enquiries should be generally sufficient for the purpose. Only in a case where a person is being deliberately evasive or obstructive would it be necessary to move beyond the areas of questioning set out in paragraph 6.5.

42. Furthermore, paragraph 6.5 makes clear that as soon as an officer is satisfied that identity has been established, the person should no longer be subject to questions relating to their identity.

*Separating those stopped from one another, stopping and searching of children and stops and searches where children are present*

43. In relation to paragraph 6.11, concern was raised about the operation of section 21(5) which states that the power to stop a person includes the power to stop a vehicle. The Code also provides that if a vehicle is stopped officers may question the occupant or occupants separately or jointly to establish identity and movements, in case situations such as these should include children.
44. It was suggested that separating occupants of a vehicle for questioning might have an adverse effect on persons being stopped. I believe there may well be good operational reasons for doing so (for example, to compare what the occupants say about their intended movements) and I do not think that the police should be prevented from separating people in this way.
45. A request was also made that the Code should provide details that where a child is the subject of stop, search and question powers he or she should be provided with a card setting out the powers of the PSNI and his or her rights.
46. To help clarify, a footnote was added to the paragraph referring the reader to the PSNI Policy Directive 13/06 "Policing with Children and Young People", which provides guidance on how the PSNI would determine the most appropriate response. An additional sentence was also added to paragraph 6.11 to advise that the PSNI do carry information cards for children or young people who are stopped and searched.
47. Inevitably there will be cases where stops and searches take place when children are present. It would create a false position if the presence of children created some kind of immunity from the operation of police powers. Instead, steps should be taken to minimise any adverse effects of the search on any children who may be present by following extant PSNI guidance in the Policy Directive.
48. It is right to make explicit provision for the protection of children in this way. There is an obligation on the police, in accordance with requirements under Article 3 of the Convention on the Rights of the Child, to ensure that the best interests of the child are a primary consideration.
49. It would also be desirable to make a link with the measure (on page 27 of the PSNI Equality, Diversity and Good Relations Strategy 2012-17) mentioned above in relation to mental illness and those with learning or behavioural disabilities, which includes a commitment to seek advice from those with specialist knowledge on how to communicate with children and young people.

50. The Policing Board's Human Rights Adviser, in Recommendation 7 of the Thematic Report on stop and search, suggests that the PSNI should develop and issue guidance on stopping and searching children. That would bring all these various strands together and give this work added impetus.

#### Interpreters and language

51. In relation to paragraph 8.71, a request was made to remove the requirement that the PSNI must use acquaintances as interpreters where a hearing or language problem was identified. This has been changed from a mandatory to a permissive requirement. More detail has been provided about access to translation services using the Blackberry system.
52. The Policing Board's Human Rights Adviser has commented (Recommendation 5 of the Thematic Review) on the next steps to address issues of language barriers or sensory impairment.

#### Additional amendments (references are to the final text of the Code)

53. Section 5 of the Code sets out the general principles governing the exercise of police powers under the JSA. Among these general principles are requirements in relation to engaging community support and respecting human rights. These general principles are now linked with specific requirements on senior officers set out in paragraph 5.2:

*"At a local level accountability structures require senior officers to attend meetings of the Police and Community Safety Partnerships where specific concerns about police actions can be raised".*

I welcome this addition. It has become very clear to me in my discussions with political parties and others who wish to make the new police structures work effectively that the Police and Community Safety Partnerships are a valuable part of the new machinery. There is thus every value in recognising them formally in this Code.

54. Paragraph 8.78 deals with making sure that a person subject to a stop is given a *"unique reference number"* enabling them to gain access to a copy of the police record of the stop. I mentioned this in paragraphs 298 and 302 of my Fifth Report. This paragraph is the subject of an ongoing judicial review, and as the matter is sub judice, it would not be appropriate to comment further.
55. I am aware of some allegations that these references are sometimes not provided, or that blank report forms have been handed out. I do not know if these allegations have any substance, because it is not part of my role to investigate them, but it is right that the Code should set out what the correct procedure should be. It is also important that anyone who feels that he has been unjustly treated in the course of a stop should know about the remedies available by reference to the Police Ombudsman and should have confidence in those procedures.

56. In paragraph 9.1, an erroneous reference to powers of search in section 23 has been removed. Section 23 confers powers only of entry, not of search. The Code refers to specified circumstances where this may be done: the section 23 powers may be used if “*necessary in the course of operations for the preservation of peace or the maintenance of order*”.
57. Paragraph 9.6 relates to searches of vehicles to ascertain if there are munitions unlawfully or wireless apparatus in the vehicle. The procedure for records of vehicle searches mirrors the procedure for the search of persons. The key information is the “*unique reference number*” and guidance on how to obtain a full copy of the record.
58. In Annex A/Section 23, references to Inspector and Superintendent authorisations for entry were written in the wrong order and have now been corrected.

### Community impact and assessment

59. One of those responding to the Secretary of State’s consultation on the draft Code noted that it included no requirement to assess the community impact of the use of the JSA powers, nor was there any guidance as to the community engagement process, despite the authorisation form containing such a section.
60. I examined this point in paragraph 237 of my Fifth Report, when I said that there was a strong case for including in the Code an assessment of the community impact of the use of the JSA powers. I noted then that it was 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 Police and Community Safety Partnerships, the Police Ombudsman and the Independent Reviewer.
61. It remains my view that there would be value if the Code were to include references to the need for assessments of community impact and engagement. (They are not the same thing: community impact relates to the potential effect of a police operation, community engagement is about prior communication). In examining authorisations I have been looking carefully at what the authorising officer has said about these important matters. I would expect the Secretary of State similarly to look at this carefully. The volatility of community situations in Northern Ireland means that this should continue to have a high priority.
62. As to oversight by others, it would be perfectly reasonable for the Policing Board, in calling senior officers to account for their operations, to ask them about their response to the requirement on the “authorisation form” to engage the Board, and indeed to engage with Police and Community Safety Partnerships also.

### Gaining access to records of stops

63. Gaining access to records of stops has become the subject of a current judicial review in the High Court in Belfast. The issue is whether differences between the draft and the final text of the Code were so significant that they should have been dealt with specifically in the consultation process or re-consulted upon, and whether the terms of the draft Code had given rise to a legitimate expectation that a written record would be given out.
64. I do not intend of course to comment on the specific issue which is before the courts, but the case in question does not affect the general principle that the person subject to the stop should be able to gain access to a record of it as soon as practicable, and in a manner which is convenient to him. The more use is made of recording processes, the easier it becomes to establish the extent to which a person has been stopped and whether there is the basis for a complaint. There is a link here with the “*unique reference number*” mentioned above enabling a person to obtain a full copy of the record.
65. As I have said before, the Police Ombudsman for Northern Ireland provides a formal process, underpinned by statute, for the investigation of complaints against the police. I believe that it works effectively and is more appropriate than the use of judicial review to deal with disputed facts, as against questions of law, in particular cases.

### Monitoring the religious or community background of those subject to stops

#### *Background: what the Code says*

66. Several people have raised the issue with me this year of the absence of formal requirements in the Code to monitor the religious or community background of those stopped. It has been argued that a record should be made on the Blackberry at the time of the stop. The Human Rights Adviser to the Policing Board has examined this question extensively in her Thematic Report on stop and search.
67. The requirements in relation to avoiding discrimination are set out in paragraphs 5.6 to 5.8 of the Code. For convenience I repeat them here.
68. Paragraph 5.6 of the Code says:  
  
*“Racial or religious profiling is the use of racial, ethnic, religious or other stereotypes, rather than individual behaviour or specific intelligence, as a basis for making operational or investigative decisions about who may be involved in criminal activity”.*
69. Paragraph 5.7 says:  
  
*“Officers should take care to avoid any form of racial or religious profiling when selecting people to search under section 24/schedule 3 powers.*

*Profiling in this way may amount to an act of unlawful discrimination, as would discrimination on the grounds of any protected characteristics”.*

70. Paragraph 5.8 says:

*“To avoid the kinds of discrimination referred to... great care should be taken to ensure that the selection of people is not based solely on ethnic background, perceived religion or other protected characteristic. Profiling people from certain ethnicities or religious backgrounds may also lose the confidence of communities”.*

71. The police should therefore not take into account a person’s religious or community background: the basis of the case should rest on individual behaviour or specific intelligence, as I have said above. Having set aside religious or community background as the basis for action, the next question is whether any record should be made of it.

72. Some people have suggested to me that the police should ask a specific question designed to elicit information about the religious or community background of the person in front of them. Others suggest that if that information is not forthcoming the police officer should make a judgment and enter it on the record by ticking a box. Those advocating this say that without such records it will not be possible for supervising and senior officers to carry out fully the monitoring requirements set out above.

73. The analogy would be the 13 ethnic markers already selected and entered on the record. These ethnic markers are then used in PSNI statistics to show the pattern of use of the JSA powers by ethnic origin and police area. The resulting statistical tables are made regularly made available to the Policing Board.

#### *Recent discussion and comment*

74. Rights Watch UK asked the PSNI, by means of an “FOI” request (under the Freedom of Information Act - Request Number F-2013-00920) *“for figures by police area of the ethnicity of those stopped in the exercise of JSA stop and search and stop and question powers”*. In response they were provided with statistics relating to section 21 and 24 stops from 1 October 2007 to 31 December 2012, with the caveat that the statistics included 2012-13 provisional statistics that might be subject to minor amendments.

75. Rights Watch UK asked a follow-up question (Request Number F-2013 - 01878) in these terms:

*“Can I clarify whether your response “The Stop and Search system does not collate information on the person’s religion” means that no data is held by PSNI on the religious belief of those who are stopped and searched and stopped and questioned under these powers?”*

*"If this is the case, could you please provide information on how the PSNI monitor the exercise of stop and search and stop and question powers to ensure that they are not exercised in a discriminatory way against particular religious groups, in accordance with section 75 Northern Ireland Act 1998 and the non-discrimination obligation in the PSNI code of ethics, article 6 and under human rights law.*

*"I am aware of the PSNI Equality, Diversity and Good Relations Strategy 2012-2017 which sets out a medium term measure to ensure that police powers are being exercised fairly and impartially (p 27). This measure entails the use of data analysis to "evaluate aspects of service delivery to ensure (the PSNI) are treating people fairly and with respect such as...stop and search" with particular reference to "religious belief".*

*"Please could you provide the data collected in pursuance of this measure".*

76. In response, the PSNI said:

*"This is to inform you that the Police Service of Northern Ireland (PSNI) has now completed its search for the information you requested and the answers to your questions are as follows:*

*"I can confirm that the PSNI does not currently collate data on the religious or community background of anyone stopped and searched.*

*"The PSNI have given a commitment in its Equality, Diversity and Good Relations Strategy 2012-17 to collect such data. A working party has been established to assess how best to comply with this undertaking in the time frame outlined.*

*"It is our intention to pilot a self defining tick box form post stop and search questioning to see if this is a possible way to gather the data.*

*"It is anticipated that this pilot will start late 2013".*

77. The reference cited here (page 27 of the PSNI Equality, Diversity and Good Relations Strategy 2012-17) lists stop and search among nine areas of police activity which will be evaluated using data analysis. The ownership of this measure is the Policing with the Community Programme Board (Statistics Branch). The categories impacted upon include age, disability, gender, political opinion, race and religious belief.

78. I have discussed these issues with senior police officers. In particular I have discussed the references to the Equality, Diversity and Good Relations Strategy 2012-17 quoted above. Senior police officers have updated me on the references quoted above in requests under the Freedom of Information Act to pilot studies for a self-defining tick box form, on which work is progressing but is by no means complete. The response given above to these FOI requests from Rights Watch UK is by no means therefore the end of the story.

79. The incentive to include and record information about religious or community background derives from concerns that the powers are being used disproportionately against people from a Catholic, republican or nationalist background. This is a legitimate concern which needs to be addressed.
80. Those who see a strong case for recording religious or community background argue that unless attempts are made to collect this information, it will be impossible to prove or disprove perceptions of undue use in relation to one particular religious or community group, thus undermining or frustrating the requirement in paragraph 5.11 of the Code that any apparently disproportionate use of the powers by particular officers or groups of officers or in relation to specific sections of the community should be identified and investigated.
81. They also point to the requirements imposed on public authorities under section 75 of the Northern Ireland Act 1998 to have due regard to the need to promote equality of opportunity across nine separate categories. The section 75 requirements have been raised with me by those who believe strongly that they should explicitly bear upon police operations under the JSA.
82. A revised Guide to the Section 75 Statutory Duties (the Guide) was produced by the Equality Commission for Northern Ireland and approved by the Secretary of State in April 2010. In a section on Leadership and Commitment the Guide says:

*“Section 75 was intended to be transformative. Its aim was to change the practices of government and public authorities so that equality of opportunity and good relations are central to policy making, policy implementation, policy review and service delivery”.*

*What the PSNI should do: assessment of relevant considerations*

83. In practical terms, conversations about religious or community background between police officers and people being stopped might not always be straightforward. The subject of the stop might regard the questioning as intrusive, even if it fell short of engaging rights under the ECHR (*Article 8, the right to respect for private and family life...*). That point would have to be determined by the courts. We should remember that Mr Justice Treacy found last year that the exercise of stop and question and stop and search powers constituted an interference with Article 8 rights, albeit he found that they were in accordance with the law.
84. If the subject refused to give the information (which he or she would be perfectly entitled to do since it is not relevant to establishing identity or movements) it would then fall to the police officer to make a judgment from which an entry could be made on the Blackberry record.
85. In some cases that might be easy, but in others it might lay the officer open to accusations of prior assumptions, undue reliance on personal judgment

and attitude, or use of irrelevant factors. This would be contrary to both the intention and the specific requirements of the Code. It might also run counter to the clear intentions under section 75 of the Northern Ireland Act as set out in the Equality Commission's Guide. In the uncertain climate of Northern Irish community relations, it might serve only to reinforce misconceptions and suspicions and thus aggravate or stimulate the very concerns for which the procedure was designed to promote a remedy. That would not be a good thing.

### *Conclusion*

86. I can find no clear conclusion of the issue from what I have seen so far. The PSNI intention to explore further the value of a pilot scheme seems to me to be a sensible next step to test out some of these questions. It will benefit from the expertise of those who have worked on these issues in the past, whether by way of direct input or involving some form of consultative group. It will also need to be analysed skilfully.
87. The Northern Ireland Policing Board have asked my opinion about these issues, which I discussed with them as part of their oversight of police operations under the JSA. They have done so in the context of their Human Rights Adviser's Thematic Review on stop and search, Recommendation 7 of which suggests a way forward for PSNI to consider how to include within its recording form the known or perceived community background of all persons stopped under the Terrorism Act and the JSA.
88. Above all, it will be important, as I told the Policing Board, to keep in mind clear objectives of what is intended here. I believe that pre-eminent among them will be the need to ensure that the police operate the JSA powers with the purpose of keeping all sections of the community safe, while at the same time constantly seeking new ways to reassure those who might find co-operating with the police difficult.
89. The criteria against which the pilot should be judged must be pragmatic, not theoretical. Meeting formal requirements is important, especially those generated by legislative changes following the Good Friday Agreement, but bringing about lasting change on the ground is the real test of effectiveness.

## **Appendix E: Statement by the Secretary of State<sup>16</sup>: 17 July 2013**

### **The Secretary of State for Northern Ireland (Theresa Villiers):**

Following the decision by the UK and Irish Governments to wind-up the Independent Monitoring Commission in 2011, my predecessor made a commitment to provide bi-annual updates to the House on the security situation in Northern Ireland. This is my second such statement as Secretary of State for Northern Ireland.

#### *Overall threat in Northern Ireland*

This statement comes after a very successful G8 summit in Northern Ireland that passed without significant incident. This is an achievement of which we should all be proud. Nevertheless we remain vigilant in the face of the continuing threat from terrorism in Northern Ireland.

We are currently in the height of the parading season in Northern Ireland. Unfortunately, rioting has once again broken out in connection with Twelfth of July parades. As well as causing damage and injury directly, such disorder also potentially provides opportunities for terrorist attacks on police, as illustrated by the pipe bomb thrown at the police on Monday from Brompton Park in Ardoyne.

Since my last statement to Parliament in February 2013, the threat level in Northern Ireland has remained at 'SEVERE'. This means that an attack remains highly likely.

There were 24 national security attacks during 2012, compared with 26 attacks in 2011. So far this year there have been ten national security attacks. Some of these involve the use of relatively simple and basic pipe-bomb devices, but these can be lethal. There have also been a number of more sophisticated attacks, including two failed attempts to use mortars against PSNI stations. Many more attacks were prevented and disrupted through the excellent work of the PSNI and their security partners. I would like to congratulate and thank the PSNI and the Security Service for their highly effective work in countering the threat from terrorism.

Police officers, soldiers and prison officers continue to be the primary target of the terrorist groups. This was illustrated by an attempt last week to lure police officers to a house in Alliance Avenue in North Belfast where two pipe bombs had been primed to go off to kill anyone who opened the front door. A similar attempted attack took place in May when two PSNI officers were shot at when responding to

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<sup>16</sup> Hansard Parliamentary Business Written Statements 17 July 2013

a reported burglary in West Belfast near Twinbrook and a pipe bomb was thrown at them. Were it not for effective deployment of the training all PSNI officers receive on dealing with this kind of “come on” attack, these incidents could well have had fatal consequences.

Another device near the M5 at Newtownabbey could have fatally injured the three police officers who attended the incident.

There was a serious risk with all of these attacks that people in the local community could have been injured or killed, as well as police officers.

One of the most significant incidents of the past 6 months was an attempted mortar attack on a Londonderry PSNI station in March. It was aimed at murdering police officers but such devices are highly dangerous and inaccurate. This attack could have caused mass casualties amongst anyone who happened to be in the vicinity if it had been successfully fired. This provided further evidence that so-called dissident republican groups have no regard to the people living in the areas which they target. It was only through the highly effective work of the PSNI that this attack was disrupted as it was underway.

The Police Service of Northern Ireland and the Security Service, along with An Garda Síochána, continue to demonstrate a robust commitment to bringing to justice those who carry out such attacks.

Northern Ireland has already witnessed a historic year with the G8 summit in Fermanagh and the accompanying visit by the President of the United States to Belfast. The successful delivery of these events would not have been possible without the cooperation of the PSNI, Security Service, An Garda Síochána and police forces from across the UK who came to Northern Ireland to provide mutual aid support. Despite recent public order problems, this year contains further opportunities to present a positive image to the world, with events associated with the Derry-Londonderry City of Culture and World Police and Fire Games.

Those who dedicate themselves to making Northern Ireland a safer place will continue to work together to ensure that these events pass off successfully and without incident.

#### *Activity of republican paramilitary groups*

The so-called “new IRA” continues to contribute significantly to the threat in Northern Ireland. They have conducted one national security attack – the brutal murder of prison officer David Black in November last year.

That they have only conducted one attack is at least in part down to the achievements of the security forces. As mentioned earlier, in March of this year PSNI successfully intercepted a mortar in Londonderry moments before it was deployed. In April, a young member of this grouping was caught in possession of five handguns and in June the PSNI recovered a quantity of high explosive. These disruptions serve to prevent specific attacks while also demonstrating to potential terrorists across Northern Ireland the reach of the security services.

The efforts of the PSNI has been ably supported by An Garda Síochána. In March, An Garda Síochána arrested five persons following the shooting dead of Peter Butterly in a car park near Drogheda, Co. Louth. Three of the men were subsequently charged with membership of an unlawful organisation, namely the IRA. In the same month, eight men were arrested in connection with terrorist activities and have also been charged with membership of an unlawful organisation. In recent weeks, An Garda Síochána recovered their biggest ever find of dissident arms and explosives including approximately 15kg of Semtex. This is a significant find which has undoubtedly saved lives.

Despite these successes for the security forces, this grouping continues to try to develop its capability. Its lethal intent and disregard for the wishes and safety of the wider community means that it remains a high priority for the PSNI and their security partners.

Óglaigh na hÉireann (ONH) has been very active over this period and has demonstrated increased lethal intent, including IED, shooting and pipe bomb attacks on PSNI officers in the Belfast area. In March the group was responsible for a failed mortar attack against New Barnsley PSNI station in north Belfast, as well as a large vehicle borne IED which was abandoned in County Fermanagh. Fortunately the group has had only limited success; if the devices been deployed and functioned as intended, they would almost certainly have resulted in injuries or fatalities.

Continuity IRA (CIRA) has splintered into several competing factions. These groups continue to be dangerous. Over the last six months they have been responsible for a shooting attack against PSNI officers in Craigavon as well as multiple hoax devices. These hoaxes are extremely disruptive to the community with families evacuated from their homes and suffering from a range of disturbances on an all-too-regular basis.

Groups involved in these terrorist attacks continue to engage in a range of criminal activity including fuel laundering, smuggling, drug dealing, robbery and extortion.

### *Threat to GB from Northern Ireland related Terrorism*

The threat level in Great Britain remains at 'moderate', which means an attack is possible but not likely. We recognise, however, that dissident republican terrorists continue in their aspiration to conduct an attack in GB. All threat levels are, of course, kept under constant review.

### *Activity of loyalist paramilitary groups*

As noted in my last statement on the security situation in Northern Ireland, the UDA and UVF leadership remain committed to their ceasefires, although individuals associated with these groups continue to be engaged in criminal activity.

### *Paramilitary style shootings and assaults*

Throughout this period, paramilitary style attacks continued with involvement by both republican and loyalist groups. These attacks, which include beatings, shootings and even murder, continue to cause significant and irreparable harm to families on both sides of the community.

### *Co-operation*

The Government continues to offer its full support to the PSNI to ensure that they have the capability they need to tackle the threat. The Government recently confirmed that the PSNI will receive an additional £31million funding in 2015-16 to tackle the threat faced from terrorism in Northern Ireland. That funding package extends the £199.5m of support provided to the PSNI by this Government in 2011. The ongoing provision of £31 million in security funding for the PSNI is part of the Government's continuing strategy to maintain pressure on the terrorists to make Northern Ireland a safer place for everyone.

Co-operation across government and agencies has been strengthened by the working arrangements around the G8 summit, including even stronger links with Irish counterparts. I hope that these new relationships can provide a sound basis on which to further enhance our work on tackling the threat faced in Northern Ireland. Cross-border cooperation with An Garda Síochána remains strong and they continue to work with PSNI to ensure that those who exploit the border for criminality and terrorism are brought to justice. I would like to take this opportunity to pay tribute to the role of An Garda Síochána in ensuring a successful, safe and secure G8 summit. 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.

## *Conclusion*

There have been some striking successes for Northern Ireland this year, not least of which is the G8. The Government is committed to building on that success. However, the significant public disorder that has occurred on and around 12th July provides an illustration of some of the continuing policing and security challenges in Northern Ireland.

We remain fully committed to tackling the threat from terrorism and keeping the people of Northern Ireland safe and secure.

## **Appendix F: Comment and opinion – the social and political context**

### **Introduction**

1. The profile of public order events in Northern Ireland has dramatically increased in this year. The threat of armed violence from dissident republican groups has also never been far from people's minds. Patterns of illegal activity among some on the loyalist side also feature. Successful events such as the G8 meeting in Lough Erne and the World Police and Fire Games have also been part of the big picture.
2. I therefore decided this year that, as well as identifying streams of opinion about police operations, I would look at the public order protests as a whole, especially where the JSA powers have been actually or potentially involved, and see if I could synthesise a narrative to inform Westminster opinion.

### **Understanding this year's public order events**

3. Understanding the meaning of events presents great challenges to anyone coming from outside Northern Ireland, and in any conversation with those close to the scene it is not long before the depth of alienation, polarisation of views and sense of mutual incomprehension between communities and groups become painfully evident.
4. To put things into perspective, the vast majority of people in Northern Ireland want to live normal lives and manage to do so. Their desire to move on from the past is unshakeable and their resilience is very encouraging. For most people life goes on as normal, subject to interruptions such as road diversions in the face of bomb incidents or hoaxes.
5. There is however no doubt that the shock of the flags decision reverberated widely through the loyalist community, even when accompanied by recognition that it was taken by due democratic process. Indeed, that recognition itself has served to confirm the realisation that the political and demographic make-up of Belfast, as reflected in seats on the City Council, no longer reflects domination on the part of Protestant/unionist/loyalist opinion. In other words, the old order has passed away. Some find this extremely painful.
6. Whether that recognition leads to acceptance, acquiescence or resistance depends on where in the spectrum one seeks to sample opinion. There is no shortage of those seeking to disentangle all the threads of this year's events – indeed, there is almost daily coverage in the media in Northern Ireland - without any obvious conclusions or viable ways forward becoming clear.
7. My discussions this year have included members of the Orange orders as well as leading members of local loyalist communities, especially in North and East Belfast. Again I have encountered a range of opinion, one obvious conclusion of which is that a community which to outsiders once appeared monolithic is no longer so. The strains between those whose protests stop

short of violence and those quite prepared to cross boundaries have been very evident.

### Street violence

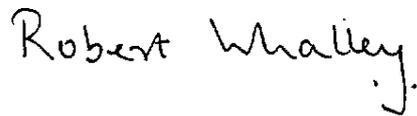
8. At local level, the opportunities which street protests provide for assertion of local control over streets and neighbourhoods have been exploited much more this year. These local tensions surface in the media when they involve serious violence inflicted on individuals caught up in events, resulting in murder or serious injury, but much of this is unseen.
9. These events do not occur at random. Struggles for local street control, conflict between gangs and drug feuds usually reflect complicated scenarios, perhaps involving only a handful of leaders or associates. The same things happen in big cities in Great Britain all the time. But the legacy of paramilitary violence hangs over Northern Ireland like a black cloud. It raises the spectre of a potential threat to the progress to normality which has been the objective of political activity in recent years.
10. It is of course true that all this has been present to some degree in loyalist areas for many years. Nor is it only in loyalist areas: similar patterns are clearly obvious in nationalist areas, especially where dissident republican groups seek to gain a foothold. The analysis of organised crime confirms that view. But the vehemence of loyalist protest activity this year and its manifestation in orchestrated crowd violence, coupled with extreme hatred of the police, is unmistakable.
11. I detected these incipient trends last year and commented on them at paragraph 565 of the Fifth Report, but it is disturbing to record how events have moved on. The result has been increased suspicion, distrust, fear, alienation and retreat into sectarian bunkers, which has inevitably set back progress, certainly in some areas of Belfast.
12. The depth of the problems now to be faced is perhaps best shown by my discussion with one of the leaders of organised loyalist street opinion in East Belfast. When I asked him why people blocked roads, his response was *"because that's what people do"*. It is no help to say that such a comment has no logic and answers nothing: those expressing these views have moved way beyond conventional logic and instead have constructed their own alternative logic, which is coherent to them and is enthusiastically embraced by many in their communities.

### Balancing the picture and moving forward

13. To put this into perspective, most areas of Northern Ireland (including Londonderry) and much of Belfast, remain untouched by these developments, and social, political and economic progress continue relatively untrammelled. Indeed, it is bizarre to realise that on 9 August, when serious rioting was taking place in Royal Avenue, the young university

and professional community happily enjoying outdoor café life were completely unaware of what was happening a few streets away from them.

14. On the positive side, the political settlement and the devolved structures have proved resilient in the face of challenge. And some Northern Ireland political leaders have from time to time issued statements commenting upon the need for restraint.
15. More practically, two initiatives have come forward. The first was the attempt by the PSNI to convene talks in Cardiff among some of those involved. The second initiative, and probably the more significant, has been the recall of a veteran of previous attempts to find a way through intractable issues, the former US diplomat Dr Richard Haass. His work is ongoing as this report concludes.

A handwritten signature in black ink that reads "Robert Whalley". The signature is written in a cursive, slightly slanted style.

**ROBERT WHALLEY CB**

**November 2013**







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