

**REPORT OF THE INDEPENDENT REVIEWER
JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007**

TENTH REPORT: 1st August 2016 – 31st July 2017

David Seymour CB

April 2018

**REPORT OF THE INDEPENDENT REVIEWER
JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007**

TENTH REPORT: 1st August 2016 – 31st July 2017

David Seymour CB

April 2018

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



© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at: Northern Ireland Office, Stormont House, Stormont Estate, Belfast, BT4 3SH

ISBN 978-1-5286-0332-4

CCS0418448064 04/18

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

REPORT OF THE INDEPENDENT REVIEWER JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007

TENTH REPORT: 1ST AUGUST 2016 – 31ST JULY 2017

The Rt Hon Karen Bradley

Secretary of State for Northern Ireland

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

In her letter to me of 11th November 2013 the Rt Hon Theresa Villiers, then Secretary of State for Northern Ireland, appointed me as the Independent Reviewer for the 3 year period from 1st February 2014 to 31st January 2017 under Section 40 of the Justice and Security (Northern Ireland) Act 2007.

My terms of reference were set out in that letter as follows:

“The functions of the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 will be 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 Military in Northern Ireland 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 matters over and above those outlined in sections 21 to 32 of the Act”.

In his letter to me of 18th January 2017 your predecessor, the Rt Hon James Brokenshire, offered to reappoint me to this post for a further 3 years starting on 1st February 2017 and ending on 31st January 2020.

The Seventh, Eighth and Ninth Reports which I prepared over the past 3 years, together with the first 6 Reports for 2008 to 2013 prepared by my predecessor are available on the Parliamentary website:

www.gov.uk/government/publications.

I now have pleasure in submitting to you my fourth Report, which is the tenth annual report, covering the period 1st August 2016 to 31st July 2017.

An executive summary of this Report is at page 2.

David Seymour CB

April 2018

CONTENTS

CHAPTER

1. INTRODUCTION	1	
2. EXECUTIVE SUMMARY	2	
.....		
PART 1 – THE OPERATION OF THE POWERS IN SECTIONS 21 TO 32		
.....		
3. METHODOLOGY AND APPROACH	6	
4. SECURITY AND PUBLIC ORDER	7	
5. LEGAL CHALLENGES	9	
6. OPERATION OF THE POWERS IN PRACTICE	9	
7. PERCEPTIONS OF JSA POWERS	19	
8. RECORD KEEPING	20	
9. COMMUNITY MONITORING	22	
10. AUTHORISATIONS	22	
11. THE ARMED FORCES	23	
12. MISCELLANEOUS	25	
13. RECOMMENDATIONS	27	
.....		
PART 2 – NON-JURY TRIALS (NJT_s)		
.....		
14. BACKGROUND	28	
15. METHODOLOGY	29	
16. STATUTORY FRAMEWORK	29	
17. WIDER CONTEXT	32	
18. RISKS TO JURY TRIALS IN NORTHERN IRELAND	34	
19. NATURE AND ROBUSTNESS OF PROCEDURES	36	
20. JUROR PROTECTION MEASURES	37	
21. ANALYSIS OF SAMPLED CASES	40	
22. CRITICISMS OF CURRENT ARRANGEMENTS FOR NJT _s	42	
23. RECOMMENDATIONS	47	
.....		
ANNEX A	ACRONYMS	50
ANNEX B	ORGANIZATIONS AND INDIVIDUALS CONSULTED	51

ANNEX C	SUMMARY OF POWERS	53
ANNEX D	STATEMENTS BY THE SECRETARY OF STATE	61
ANNEX E	STATISTICS	68
ANNEX F	AUTHORISATION FORM	75
ANNEX G	NJT STATUTORY PROVISIONS	85
ANNEX H	PPS GUIDANCE ON NJTs	94
ANNEX I	NJT SAMPLED CASES	102

1. INTRODUCTION

1.1 On 11th November 2013 I was appointed by the Rt Hon Theresa Villiers, the then Secretary of State for Northern Ireland, to the post of Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 (referred to throughout this report as the JSA). My appointment was for a 3 year period starting on 1st February 2014. I was reappointed to this post by the Rt Hon James Brokenshire, the then Secretary of State, for a further period of 3 years ending on 31st January 2020. The function of the Reviewer is to review the operation of sections 21 to 32 of the JSA and the procedures adopted by the military for receiving, investigating and responding to complaints. The provisions of sections 21 to 32 are summarized in Part 1 of **Annex C** to this Report. Broadly speaking they confer powers to stop and question, stop and search, to enter premises and to search for munitions etc, to stop and search vehicles, to take possession of land and to close roads. They are designed to address the specific security situation which exists in Northern Ireland. In announcing the appointment the then Secretary of State said that:

“the role of the Independent Reviewer is vital in securing confidence in the use of the powers...as well as the procedures adopted by the military in Northern Ireland for investigating complaints”.

David Anderson QC, the former Independent Reviewer of Terrorism Legislation in the United Kingdom, has said that the value of the Reviewer lies in the fact that he is independent, has access to secret and sensitive national security information, is able to engage with a wide cross section of the community and produces a prompt Report which informs public and political debate. That is the purpose of this Review.

1.2 Under section 40(3) the Secretary of State can require me to include in the Report specified matters which need not relate to the use of the powers in the JSA. In his letter to me of 6th October 2017 the Rt Hon James Brokenshire requested that the issue of non-jury trials be addressed in my annual Report. The terms of reference for my review of NJTs are at paragraph 14.2. Consequently, this Report is divided into two parts – Part 1 deals with the use of the powers in sections 21 to 32 as all previous Reports have done and Part 2 examines the operation of the provisions relating to NJTs in sections 1 to 9.

1.3 I am grateful to all the organizations and individuals who have engaged in this process. I am also grateful to officials in the NIO, PSNI and PPS who facilitated these discussions.

1.4 The previous 9 Reports covering the years 2008 to 2016 can be found on the Parliamentary website:

www.gov.uk/government/publications

1.5 All references in this Report to sections are references to sections of JSA unless otherwise stated.

2. EXECUTIVE SUMMARY

Part 1 – operation of the powers in sections 21 to 32

- 2.1 The **methodology and approach** adopted for this Part of the Review including details of visits, briefings and attendance at conferences are set out. The annual reporting period remains 1st August to 31st July and should be changed to one based on the calendar year at the first available opportunity (paragraphs 3.1 to 3.8).
- 2.2 The **security situation** remains at “SEVERE”. There were 6 national security attacks during this period. The threat from violent DRs is enduring and their attacks are reckless and endanger members of the public. Violent loyalist paramilitary activity has increased. There has been significant progress under the Fresh Start initiative with many arrests, searches and seizures (paragraphs 4.1 to 4.6). The security situation is set out in the Secretary of State’s two statements to Parliament at **Annex D**. There have been very few **public order** issues in this reporting period (paragraph 4.7).
- 2.3 The outstanding legal case of **Ramsey** was heard on 20th November. At the time of submitting this report the judgment had not been handed down. There has also been concern about decisions on JSA powers taken in the Magistrates’ Court (paragraph 5.2).
- 2.4 As regards the **use of JSA powers in practice** the sharp rise in the use of these powers last year has not continued. Based on an analysis of statistics available for this reporting period, it has not only levelled off but decreased (paragraph 6.4). Almost half (44%) of the stops/searches take place in Derry, Strabane and Belfast where most of the DR activity takes place (paragraph 6.5); arrest rates following a stop and search under the JSA remain low (paragraph 6.6) and there is a very low rate of finds following such a search (paragraph 6.7). Consideration should be given to amending the JSA to allow an officer not only to search for munitions but also “to deter, prevent or disrupt their transportation or use” (paragraph 6.8); improvements have been made to the ways in which the use of JSA powers are supervised and the PSNI should monitor the impact of improved supervision (paragraphs 6.9 to 6.10). The PSNI have not accepted the recommendation that, for the purpose of monitoring and supervision, an internal record should be kept of what triggered all repeat stops/searches and all such stops/searches involving children. However, it should be feasible to keep such a record of those cases involving children or other cases which are likely to be sensitive or controversial (paragraphs 6.11 to 6.13); the roll out of BWV is now complete and has gone well and an assessment of its impact will be available for the next reporting period (paragraphs 6.14 to 6.19). Far less concern was expressed this year about heavy handed policing and complaints to the Ombudsman about the use of JSA powers was less than 1% of all complaints received (paragraphs 6.20 to 6.27). There are good operational reasons why JSA powers are used more against DRs than they are against loyalist paramilitaries (paragraphs 6.28 to 6.29). Although there has been considerable debate throughout the UK about the effectiveness of stop and search powers generally, the use of these powers in the JSA is effective as it addresses the unique threat posed by the use and transportation of munitions across Northern Ireland and they should be retained for so long as the current security position remains the same (paragraphs 6.30 to 6.34).

- 2.5 There is a **sensitivity about JSA powers**. They are regarded as different from the more general stop and search powers in PACE and the Misuse of Drugs Act 1971. Many in the CNR community see them as an unnecessary extension or remnant of the conflict whereas the PSNI see them through the prism of “keeping people safe” (paragraphs 7.1 to 7.4).
- 2.6 There are 3 main issues relating to **record keeping**. An individual who is stopped and searched can only obtain a copy of the record of that stop/search if he attends a police station. The PSNI have changed their software and can now confirm that the number of individuals who do this is minimal. The stops data base need no longer be kept separate from the main police management system (NICHE) (paragraphs 8.1 to 8.6).
- 2.7 Little progress has been made on the difficult question of the **community monitoring** of the use of JSA powers (paragraphs 9.1 to 9.2).
- 2.8 The **authorisation** process under section 24/Schedule 3 which authorises stop and search without reasonable suspicion is undertaken thoroughly and there is considerable scrutiny within the NIO before the Secretary of State approves an authorisation. As in previous Reports I recommend that the duration of an authorisation, once approved, should be for 3 months rather than 14 days (paragraphs 10.1.to 10.5).
- 2.9 The **role of the army** in Northern Ireland remains unchanged. There has been no public concern expressed about the role of the Army during this reporting period. The Army were called out on 217 occasions during this reporting period to deal with munitions. There have only been two complaints. They were not of any substance and were dealt with promptly (paragraphs 11.1 to 11.6).
- 2.10 There have been no developments in relation to **road closures and land acquisition** (paragraph 12.1). The position of **children** and JSA powers is set out (paragraph 12.2) and **views of consultees** not otherwise covered in this Report are summarized (paragraphs 12.3 and 12.4).
- 2.11 New **recommendations** are made -
- (a) the JSA should be amended to enable an officer to stop/search not only to search for munitions but also to “deter, prevent or disrupt their transportation or use” (paragraph 6.8);
 - (b) improved technology should be used to monitor and supervise the use of JSA powers more effectively (paragraphs 6.9 to 6.10 and 7.4);
 - (c) an internal record should be kept of any stop/search where a child is involved, where an unexpected incident has occurred or which might otherwise be controversial or sensitive (paragraph 6.13);
 - (d) the PSNI’s annual assessment of BWV should be comprehensive and address all the issues referred to in paragraphs 6.14 to 6.19;
 - (e) the JSA automated record should be moved onto the main police management system (paragraph 8.5 to 8.6).

Part 2 – non jury trials

- 2.12 **The background to NJTS** in Northern Ireland, the **terms of reference** relating to this review of NJTs and the **methodology for the review** are set out (paragraphs 14.1 to 15.3).
- 2.13 The **statutory framework** for NJTs in Northern Ireland is summarized – the main provisions are contained in sections 1 to 9 of the JSA and sections 44 to 46 of the CJA 2003. Broadly speaking, the JSA allows a NJT if the DPP suspects that one of 4 conditions is met and, as a result, he is satisfied that there is a risk that the administration of justice might be impaired if the trial were to be conducted by a jury. It is a low threshold and there is no appeal from the DPP’s decision. Section 44 of the CJA permits a NJT if a judge is satisfied that there is evidence of a real and present danger that jury tampering would take place and that it is necessary in the interests of justice for there to be an NJT. So the decision is made by a judge at a hearing; the test is objective; there has to be evidence (not mere suspicion); and there is an appeal from the judge’s order (paragraphs 16.1 to 16.12).
- 2.14. The **wider context is set out** including the background to the right to jury trials; the fact that the right to a fair trial does not equate to the right to a trial by jury; the number of NJTs in Northern Ireland is small; the acquittal rates for NJTs are similar to those for jury trials; and concern about NJTs in Northern Ireland is muted (paragraphs 17.1 to 17.8)
- 2.15 The **risks to jury trials** in Northern Ireland arise from the security situation; the size of the jurisdiction; the presence of paramilitary organizations with associated internal feuding, shootings and beatings resulting in widespread intimidation and, in some cases, relocation of residents; and the fact that many paramilitary organizations are capable of operating outside the limits of their immediate community. The JSA was passed in 2007 because the Government considered that the stringent tests for a NJT in the CJA 2003 would not adequately address the risks to jury trial in the context of Northern Ireland (paragraphs 18.1 to 18.4).
- 2.16 The **nature and robustness of the procedures for a NJT under the JSA** include a full report from the PSNI and a further submission to the DPP after scrutiny in the PPS. The decision making under the current arrangements is thorough and meets high professional standards (paragraphs 19.1 to 19.5).
- 2.17 The **juror protection measures** namely transferring the trial to another location, screening the jury from the public and sequestering the jury i.e. isolating them for the duration of the trial are not considered to be effective in Northern Ireland for a variety of reasons (paragraphs 20.1 to 20.9).

- 2.18 **Sampled cases** covered a wide range of offences and included cases where the DPP decided not to order a NJT. Some trends emerged but this was on the basis of a very limited sample (paragraphs 21.1 to 21.9).
- 2.19 A number of **criticisms of the current arrangements for NJTs** have been made in the past. These include the arguments that they are contrary to the ECHR and principles of fairness at common law; that the test for an NJT is subjective and too low; that the term “associate” (in relation to a member of a proscribed organization) is too wide; that the limited grounds of judicial review under the JSA are unacceptable; that the DPP has an institutionally vested interest in securing a conviction; that the higher test in the CJA 2003 should be the sole basis for a NJT in Northern Ireland as it is in England and Wales ; and finally, that the arrangements for issuing a NJT certificate under the JSA are opaque (paragraphs 22.1 to 22.15). The criticism to be taken most seriously is the last one – namely that the system is opaque.
- 2.20 Some modest **recommendations** are made to address this last concern. The report also suggests that the DPP should consider notifying the defence before he issues a NJT certificate and invite representations. The advantages and disadvantages of doing this are set out in detail (paragraphs 23.1 to 23.4).

PART 1 – OPERATION OF THE POWERS IN SECTIONS 21 TO 32

3. METHODOLOGY AND APPROACH

- 3.1 As I have said in my previous reports, this is not an inspection, inquiry or investigation but a review of the exercise by the police of the exceptional powers in the JSA. It is concerned with how these powers are exercised generally. It is not concerned with individual conduct or complaints which are a matter for the Ombudsman, PSNI disciplinary proceedings and the courts. I have no power to compel people to produce evidence or to co-operate (other than the power in section 40(7) to require the Army to provide me with documents – a power which I have never needed to use). The Report depends for its effectiveness on the willingness of many people in Northern Ireland from a wide variety of backgrounds to contribute to the process by talking honestly and openly about these powers, how they are used and the impact on their communities. I do not attribute views to any particular individual or organization unless those views are already in the public domain. I am very grateful to all those individuals and organizations who freely gave up their time to speak openly about their views and experiences. The Report is based on what they have told me.
- 3.2 I visited Northern Ireland on 12 occasions between February and November 2017. These visits varied in length from 1 to 3 days. I also had a number of meetings in London.
- 3.3 I visited PSNI officers at their HQ in Knock Road, Belfast, at Grosvenor Road and Musgrave Street in Belfast and also in police stations in Lisnasharragh, Antrim, Lurgan, Carrickfergus, Ballymena, Knocknagoney, Sprucefield and Derry and at the Police College at Garnerville. I attended many briefing sessions (both formal and informal) with the PSNI and discussed the use of these powers with many police officers at all levels. I am grateful to those officers who took the time to engage in this process before, during or after going out on patrol. Those sessions were particularly informative. I was also briefed by the Army and MI5. I attended the Army training estate at Ballykilner and observed how the Army dispose of munitions including IEDs.
- 3.4 I also had briefings from PSNI lawyers and statisticians. I attended an all day conference on Stop and Search for senior PSNI officers on 15th February 2017 at the Newforge Country Club in Belfast. I gave a presentation at that conference on the work of the Independent Reviewer. The focus of the conference was on monitoring, operational tactics, children and young persons and accountability. I also attended a workshop co-hosted by Queen's University, the NIPB and the Norwegian Police University College at Queen's University on 23rd June 2017. The theme of that workshop was "21st Century Policing Challenges: Crime, Terrorism and Borders in a Changing Europe".
- 3.5 I had discussions with a wide variety of people in Northern Ireland including the political parties, church and community leaders, NGO's, the CJINI, the Ombudsman, organizations representing police officers, former paramilitaries and ex-prisoners and other members of

the public. I was also briefed by officials in the NIO and DoJ. I also discussed the use of JSA powers and NJTs with the Secretary of State. A full list of all those consulted is at **Annex B**.

- 3.6 I also read articles and papers provided by academics.
- 3.7 The powers in the JSA address the unique security situation which exists in Northern Ireland. They are not replicated elsewhere in the UK. There are similar (but not identical) powers to stop and search in TACT 2000 which apply throughout the UK. Max Hill QC is the Independent Reviewer of Terrorism Legislation in the UK and, with his agreement, the arrangement whereby the JSA Reviewer reviews the use of these TACT 2000 powers in Northern Ireland will continue. Those TACT 2000 powers are summarized in Part 2 of **Annex C**.
- 3.8 There has been no legislative opportunity to amend the JSA but I repeat my concerns about the reporting period (paragraph 3.9 of my last Report) with the hope that it will be changed at some point in the future to the calendar year.

4. SECURITY AND PUBLIC ORDER

Security

- 4.1 The terrorist threat to national security continues to emanate from 4 DR groups namely the new IRA, Oglai na h'Eirann (ONH), the Continuity IRA (CIRA) and Arm na Poblachta (ANP) all of whom remain opposed to the current political process in Northern Ireland. Although support for their activities is at a low level they are firmly committed to the use of violence.
- 4.2 These groups have continued to target and attack police officers, prison officers and members of the armed forces in efforts to undermine normalisation in Northern Ireland. Throughout this reporting period, the threat level in Northern Ireland from these groups has remained at "SEVERE" which means that an attack is highly likely. The threat level in Great Britain from these groups remained "SUBSTANTIAL" throughout the reporting period, which meant that an attack was a strong possibility. It was reduced to "MODERATE" on 1st March 2018 which means an attack is possible but not likely.
- 4.3 During this reporting period there were 6 national security attacks carried out by DR groups. They involved a range of different methods. These attacks include
- (a) in August 2016 pipe bombs were thrown at PSNI vehicles in Londonderry and Belfast. These devices did not function and there were no injuries;
- (b) In January 2017, a police officer was shot and seriously injured in a shooting attack at a petrol station in the Crumlin Road in North Belfast. Up to 10 rounds from a military assault rifle were fired at the officer. ACC Mark Hamilton said that the attack was "reckless" and said that there could have been "multiple deaths";

(c) In February 2017 a PSNI officer on his way to work narrowly escaped serious injury when an IED, which had been placed under his vehicle, failed to function as he drove off. The device exploded during the subsequent clearance operation but there were no injuries;

(d) In March 2017 DRs in Strabane detonated a roadside device in a residential area as a PSNI vehicle was passing. The blast missed the vehicle and none of the officers were injured.

- 4.4 The threat from such DR activity is enduring and the reckless nature of the attacks threatens civilian lives. The threat is constrained by the response of the PSNI, MI5 and their security partners north and south of the Irish border. There were over 130 disruptive actions, including arrests, charges and seizures, carried out against DRs in Northern Ireland and the Irish Republic during this reporting period. Each of the main DR groups has suffered significant disruption including the loss of personnel and weapons stocks.
- 4.5 Ciaran Maxwell, a former Royal Marine, was sentenced to 18 years at the Old Bailey after admitting a series of terror related charges. The PSNI found 43 weapons hides. Mr Justice Sweeney told Maxwell that the purpose of a pipe bomb, 14 of which were constructed by Maxwell, was to maim and kill a potential victim. He went on to say that Maxwell was “dangerous” and threatened the political stability in Northern Ireland. The judge said that Maxwell had “considerable skills as a terrorist bomb maker”.
- 4.6 It is important to note that the JSA is concerned with the prevention of death and injury caused by the use of munitions generally. In addition to these “national security attacks” against “emanations of the British State” there was a high level of activity involving the use of munitions among both republican and loyalist paramilitaries. DRs remain heavily involved in conducting paramilitary style attacks including shootings, bombings, assaults and intimidation directed at their own communities. The level of violence involved in such incidents remains extreme and has, on occasion, involved gangs of men shooting minors. Violence within loyalist paramilitaries is also at a high level. The Secretary of State has made two recent statements to Parliament on security – see **Annex D**. In his statement of 23rd October 2017 he stated that, so far in 2017, there had been 2 paramilitary related deaths, 19 casualties of paramilitary style shootings and 57 casualties of paramilitary style assaults. As of 26th September, following the Fresh Start initiative, investigations have resulted in just under 100 arrests and 200 searches. Sixty-six people had been charged or reported to the PPS. Around £450,000 worth of criminal assets had been seized or restrained including £157,000 cash. Drugs with an estimated street value of around £230,000, guns, ammunition and pipe bombs are among property that has been seized.

Public order

- 4.7 As regards public order, it has been a quiet year during this reporting period. There were only minor incidents reported during the main parades on 12th July and in Londonderry on 12th August during the Apprentice Boys’ parade. The agreement between the Ligoniel Orange Order and CARA held and this year’s “12th” was regarded as one of the quietest for a very long time. The bonfires were regarded as well handled by the PSNI. There was a general feeling that the resolution of the Twaddell Camp situation had contributed to better public order atmosphere. There was also some acknowledgement that relations with the

TSG have improved. The PSNI state that of the 33 sensitive parades all except one passed off peacefully.

5. LEGAL CHALLENGES

- 5.1 In my last report I referred to the key outstanding challenge to police powers to stop and search namely the case of **Ramsey**. The case was heard in 2017 but at the time of submitting this report to the Secretary of State the judgment had not been handed down.
- 5.2 The PSNI have expressed concern at decisions taken in the Magistrates Court which they say proceed on a misinterpretation of the JSA powers. In one case, in February 2017, the police stopped and searched a vehicle under the JSA. Two knives were found and were then seized under PACE. The individual was charged with unlawful possession of a knife. The Court decided that the search should not have taken place because a vehicle is a private place and the seizure of the knife was unlawful. The case against the individual was dismissed. In another case, two individuals were stopped and searched under the JSA in June 2017. The individuals were abusive and ran away prior to being searched. They then assaulted the police officers. They were charged with disorderly behaviour, assault on a police officer and obstruction. The case was heard in the Magistrates Court in August 2017. The Court decided that, under the JSA, the individual had the right to refuse to be searched and the police could not search a person unless permission was given. The Court went on to say that the search should not have taken place and the police could not seize property (a mobile phone) without a warrant. The Court decided that the police were acting outside their powers and the case was dismissed. Given the clear wording of the JSA and existing case law, it is not clear on what basis these decisions were made.

6. OPERATION OF THE POWERS IN PRACTICE

How frequently are the powers used?

- 6.1 Detailed statistics relating to the use of the powers in JSA and TACT 2000 are at **Annex E**.
- 6.2 The number of occasions on which the powers were exercised by the PSNI between August 1st 2016 and 31st July 2017 (together with comparisons with the previous year) is as follows –

JSA

- (a) Section 21, stop and question – **2034** (down from 2,858 – a **29% decrease**);
- (b) Section 23, entry of premises – **6** (up from 2 – a **200% increase**)
- (c) Section 24/Schedule 3, paragraph 4, stop and search for munitions – **7,502** (down from 7,793 – a **4% decrease**)
- (d) Section 24/Schedule 3, paragraph 2, power to enter premises – **169** (down from 188 – a **10% decrease**)

(e) Section 26/Schedule 3, power to search vehicles – **19,312** – down from 27,028 - a **29% decrease**).

TACT 2000

(a) Section 43, stop and search of person reasonably believed to be a terrorist – **144** (down from 254- a **43% decrease**)

(b) Section 43A stop and search of vehicle reasonably believed to be used for terrorism – **47** (down from 149 - a **68% decrease**)

(c) Section 47 A stop and search without reasonable suspicion where senior police officer reasonably believes an act of terrorism will take place – **NIL** (the **same as last year**).

6.3 Again these statistics need to be seen in a wider context. There are a number of stop and search powers in Northern Ireland which are listed in paragraph 7.5 of the Seventh Report. The **overall use of stop and search under all legislation** (including PACE, the Misuse of Drugs Act 1971 and the Firearms (Northern Ireland) Order 1981) totalled **32,982** – down from 35,473 in the previous reporting period – a **decrease of 7%**.

What do these statistics tell us?

6.4 Two years ago the PSNI had formed a view that JSA powers had been underused for a number of reasons. So training was rolled out to improve officer awareness of these powers and their appropriate use. As a result, the use of these powers increased significantly during the last reporting period (see paragraph 6.3 of the Ninth Report). In that period the use of stop and question under section 21 went up by 34%; the use of stop and search under section 24/Schedule 3 went up by 85%; the use of the power to enter premises under section 24/Schedule 3 went up by 72%; and the use of the power to stop vehicles under section 26 rose by 130%. On the basis of the figures for this reporting period, that sharp rise in the use of JSA powers has not continued. However, these statistics may be misleading. For example, if the number of persons stopped and searched under section 24 are analysed by reference to the financial year (as opposed to the reporting period of 1st August to 31st July) then that would show an increase in the use of that power from 6,980 in 2015/16 to 7,935 in 2016/17. It may be that a clearer picture of any long term trend will emerge when next year's statistics are available.

6.5 Other points to note are

(a) on average 170 people are stopped and questioned under section 21 every month (this represents a daily average of 6 per day);

(b) the greatest use of this power was in Belfast (555), Derry City and Strabane (330), Lisburn and Castlereagh (323) and, in relation to the threat posed by loyalist paramilitaries, Mid and East Antrim (297). This accounts for almost three quarters of the use of the power;

(c) the use of the most controversial power to stop and search without reasonable suspicion (section 24/Schedule 3) has fallen by 4%. The total of 7,502 people stopped and searched under this power represents a monthly average of 625 and a daily average of 21. There are daily spikes when the power has been used up to 88 times per day. I have been briefed on the operational reasons why the power was used so much more on those particular days;

(d) the majority of these stop/searches take place in Derry City and Strabane (1,812), Belfast (1,502), Armagh, Banbridge and Craigavon (904) and, in relation to the threat posed by loyalist paramilitaries, Mid and East Antrim (814). These are the areas where most paramilitary activity takes place.

What is found during a stop and search and what are the outcomes?

6.6 The arrest rates following the use of these powers are set out below.

Power	Number of persons stopped	Number of persons arrested	Arrest rate
JSA s.21	2034	15	0.7%
JSA s.24	7502	88	1.2%
-with authorisation	7319	80	1.1%
-with reasonable suspicion	183	8	4.4%
TACT 2000 s.43	144	6	4.2%
TACT 2000 s.43A	47	0	0.0%

6.7 Following person and vehicle stop and search under section 24/Schedule 3

- firearms were found on 5 occasions
- ammunition was found on 3 occasions
- wireless apparatus was found on 13 occasions (9 occasions involving mobile phones and 4 occasions involving walkie talkies or CB radios).
- The overall rate of success following a search for munitions and wireless -telegraphy was 0.1%.

6.8 The issue of the very low arrest rates and low rate of finds following the exercise of JSA powers has been dealt with in previous Reports – see paragraphs 6.7 and 6.8 of the Eighth Report and paragraphs 6.7 to 6.14 of the Ninth Report. The JSA powers are essentially preventative in their nature. It is important that the PSNI take every opportunity to explain why the arrest rate and rate of find are so low (see paragraph 6.14 of the Ninth Report). The PSNI website goes some way to explain this. However, the website does not address the low arrest rates for other stop and search powers (including those requiring reasonable suspicion e.g. PACE and Misuse of Drugs Act) or the fact that, in those cases, there are often other more appropriate methods of disposal – see paragraph 6.8 of the Eighth Report. It is clear that the JSA powers are effective in disrupting and deterring the activities of DRs and loyalist paramilitaries. Schedule 3, paragraph 4 of the JSA provides that an officer may stop a person in a public place and search him “for the purpose of ascertaining whether he has munitions unlawfully with him or wireless apparatus with him”. When these powers are next reviewed by Parliament then, if the powers are still considered necessary in the light of the security situation, Parliament should consider amending the JSA to make it clear that an officer may stop and search a person for the purpose of not only of searching for munitions but also “to deter, prevent or disrupt their transportation or use”. Such an amendment would align the JSA more closely to how, in practice, this power is used.

How effectively is the use of the powers monitored by the PSNI?

- 6.9 Last year I recommended that the PSNI make arrangements to ensure that the use of JSA powers was supervised more regularly using the PUMA system. The PSNI have accepted this recommendation. Supervisors now conduct regular checks on stop and search powers under all legislation not just JSA powers. A quality assurance check will consist of an officer of the rank of sergeant or above randomly selecting search records from the database to ensure that the power has been used legally. The record can then be checked against the BWV footage to ensure that the individual has been treated fairly and with respect. A recent audit within the PSNI showed that 38% of stop and search records had been selected at random for supervision checks. The PUMA system has been updated to allow supervisors to monitor whether the object of the search related to the purpose of the search e.g. if an officer using JSA powers finds a firearm on the person being searched. This approach is consistent with the Home Office “Best Use of Stop and Search Scheme” which, though it applies only in England and Wales, is followed by the PSNI in the interests of openness and transparency.
- 6.10 This is an important development because junior officers have, under the JSA, extremely wide powers of stop and search without reasonable suspicion. I was told that 54% of front line officers in Derry City and Strabane have under 2 years’ experience of policing. In January 2016 the PSNI undertook an Assurance Review in Belfast City. Of the 541 officers surveyed 107 took part – a 19.8 % take up rate. It is clear from these responses that greater supervision and, indeed training, would improve officer confidence in using the powers. The impact of greater supervision should be monitored by the PSNI. Effective supervision will be an important factor demonstrating that the JSA powers are being used appropriately. It is also important that the supervision takes account of the requirements of paragraph 5.9 to 5.13 of the Code of Practice relating to the appropriateness, proportionality and necessity of using JSA powers. I recommend that the PSNI assess the impact of improved supervision on the use of JSA powers and, in particular, stop and search for the next reporting period.

Repeat stops and searches and stops outside schools or involving children

- 6.11 In my last Report I recommended that consideration should be given to keeping an internal written record of what triggered any decision to stop and search in all cases where an individual has been repeatedly stopped and searched and in all cases involving a stop and search near a school of when an individual is accompanied by a child.
- 6.12 The PSNI have not accepted this recommendation because it would not be feasible for a police officer to articulate the reasons why an individual has been stopped and searched given the numbers involved. In their response they state, correctly, that –
- “It is sufficient under the legislation and Code of Practice that an individual is, told that due to the current threat in the area, and to protect public safety, a stop and search authorisation has been granted”.*
- 6.13 Given the number of repeat stops and searches it would not be feasible for the PSNI to keep a written record in every such case. Moreover, it is correct that the PSNI are not required to make a written record of what triggered the stop and search in these

circumstances. However, this is not an issue of strict legal compliance and sufficiency. The College of Policing in England has produced a definition of a fair and effective stop and search encounter. It states that –

*“a stop and search is most likely to be fair and effective when... the search is **justified, lawful and stands up to public scrutiny**....And was the most proportionate method the police officer could use to establish whether the person has a prohibited article”.*

Moreover, the Code of Practice (paragraph 8.61) states that –

“8.61 Where a person or vehicle is being searched without reasonable suspicion...there must be a basis for that person being subject to search. The basis could include but is not limited to

- *That something in the behaviour of a person or the way in which a vehicle is being driven has given cause for concern;*
- *The terms of a briefing provided;*
- *The answers made to questions about the person’s behaviour or presence that give cause for concern.”*

Most stops and searches take place without serious incident. However, in cases-

(a) where a child is involved (whether or not searched);

(b) where an unexpected incident has occurred;

(c) which are otherwise likely to be controversial;

some written record should be kept of what triggered the stop and search. This is **not** a legal requirement. The purpose of keeping such a record would be to-

(a) assist in the internal monitoring and supervision of the most appropriate use of these powers; and

(b) place the PSNI in a stronger position in the event of a subsequent challenge or complaint.

The roll out of BWV (see paragraphs 6.14 to 6.19) may well demonstrate that the stop and search is conducted professionally and with courtesy – but if the police have no contemporaneous record of what caused the person to be stopped in the first place then they remain in a vulnerable position. The search record and the BWV will not provide that explanation.

Progress on use of body worn video (BWV)

6.14. I recommended in my last Report that the PSNI should make an annual assessment of the use of BWV which will cover not only the anticipated advantages but also the challenges and risks (see paragraphs 6.31 and 6.32 of the Ninth Report). The PSNI have accepted this recommendation.

6.15 The roll out of BWV in Northern Ireland is now complete (with the exception of the Armed Response Unit (ARU)) and 2053 cameras have now been deployed. As of July 2017 3678 officers have been trained to use body worn cameras. Training has been provided by PSNI District Trainers in advance of go-live dates. Use of BWV is now covered in the Student Officer Training Programme. Work is still progressing on a service wide BWV Instruction Manual. “Mop up” training was planned for those officers who were unable to be trained

initially. In every District there was consultation with the local Police and Community Safety Partnership before the BWV was rolled out. The PSNI made co-ordinated press releases as each District went “live”. There has also been a PSNI wide network infrastructure upgrade to ensure that loading, storing and viewing footage can take place. If a subject access request is made this can be processed and the information provided on an encrypted DVD to ensure compliance with the Data Protection Act. Research is also being carried out at Queen’s University, Belfast into the use of BWV and the Police Federation of Northern Ireland have been asked to address the impact of BWV on their assault survey. This work will inform the PSNI’s first annual assessment of BWV which is expected in the summer of 2018.

- 6.16. This assessment will be important because, as was noted in the last Report, the use of BWV presents some challenges of a technical, operational and legal nature. There is concern amongst some officers that although there will be advantages in using BWV (eg better behaviour, better evidence, reduction of complaints to the Ombudsman) it does carry the risk of greater officer recognition in a community where the police are under constant threat. Moreover, there is some scepticism about the value of BWV. The Times reported (August 15th 2017) that police forces in the UK had spent nearly £23M on BWV “even though trials have raised questions about their effectiveness and suggested that they do little to reduce crime”. The article went on to say –

“..Big Brother Watch found a series of studies cast doubts on what impact the technology had on crime. An evaluation by North Wales police said it had seen ‘no increase in detection rates’ and that ‘ the current effect of [BWV] on complaint volumes appears very marginal’. A report for Durham Constabulary said it was ‘unlikely any impact could actually be attributed to body cameras’ in regard to a reduction in crime figures. A Metropolitan Police trial covering the use of 500 cameras by 814 officers found no overall impact on the number of stop and searches carried out, no effect on the proportion of arrests for violent crime and no evidence that the cameras had changed the way officers dealt with either victims or suspects”.

The Times report quotes Renate Samson, the Chief Executive of Big Brother Watch as saying-

“Police trials of the technology have proven inconclusive. If the future of policing is to arm all officers with wearable surveillance, the value of the technology must be proven and not just assumed. It is not enough to tell the public they are essential policing tools if the benefits cannot be shown”.

The Times also reported (July 15th 2017) that –

“Durham Constabulary has become the first force to routinely gather videos of regular offenders so that officers can study their gait and mannerisms, as well as facial features. It means they are no longer reliant on finding suspects using old mugshots. Officers use the relatively new body worn video technology to film suspects when they are stopped and searched and also during arrests. While videos are normally deleted after a month unless they are needed for criminal prosecution they are kept longer in Durham in the case of suspects who have committed previous offences”.

It will be important that the annual assessment of BWV addresses all these issues (together with the issues identified in paragraph 6.31 of the last Report) and is clear about the impact of BWV on the use of JSA powers.

- 6.17 The availability of BWV to supervising officers will assist in the quality assurance checks (see paragraphs 6.9 and 6.10) and it will be important that the PSNI take the opportunity, when appropriate, to post BWV on their website (in a pixilated form) to rebut the allegations that the powers in the JSA have been used inappropriately. The PSNI are considering whether to allow members of the police community safety partnership to view BWV footage of stop and search on a random basis in the interests of transparency.
- 6.18 The one area where BWV has not been rolled out is in the Armed Response Unit (ARU). Work is progressing to find a solution to the problem of chest mounted BWV footage being obscured when an officer uses a firearm. Trials have been conducted and the intention, following consultation, is for a pilot deployment in due course. In a public order situation, for those in a shield line, the camera will be mounted on the helmet.
- 6.19 It is important to note that the PSNI are not solely reliant on BWV. They have for many years used ordinary footage from CCTV, hand held video and video taken from helicopters. This footage remains a valuable policing tool particularly in public order situations.

Is the use of the powers “heavy handed”?

- 6.20 In this year I made a point of seeking views on whether the perception of “heavy handed policing” had changed. The general view, shared by community leaders and politicians in both PUL and CNR communities, was that this is not the concern that it was a few years ago. This is the result, in part, of the improved public order situation and community based initiatives.
- 6.21 It is also the result of initiatives taken by the PSNI themselves and, in particular, the TSG. The TSG have used social media and community engagements to explain their role more fully to the public. There are 13 TSG units and each unit carries out 3 engagements per year. I was briefed extensively by individual members of the TSG about these engagements. These included –
- (a) an engagement with a youth summer scheme in Dunmurry and Poleglass which are CNR communities in Belfast;
 - (b) giving a presentation on public order policing to juvenile offenders at Fire Service HQ;
 - (c) an engagement with children aged 5 to 11 in Claudy near Cookstown which is a Republican area;
 - (d) a climb in the Mourne Mountains sponsored by the Fire Service involving 400 youths from across the community. The TSG officers assisted two youths as the weather closed in and, by the evening, the youths, who previously had not spoken to the TSG officers, were engaging with them at a BBQ;
 - (e) an event on the Creggan Estate in Derry to inform young people on community safety involving a power point presentation and a Q and A session. After a slow start the young people engaged heavily with the officers. Feedback was very encouraging;
 - (f) in Armagh TSG officers teamed up with members of the Grace Generation Church to participate in the Belfast Marathon Relay to raise funds for a community food bank.

The returns from each engagement are recorded and collated centrally within Operational Support Department. The events are shared on social media. This has had a significant

reach. On Facebook 25 posts relating to such engagements received 2.01 million views and 600 comments were received. There is a feeling in the TSG that the “barriers are coming down”. It is important that this kind of engagement continues at its current level. The deployment of BWV footage will also be a useful way of dispelling some of the myths surrounding policing. It is to the credit of the TSG that they have embarked on this programme of events. It is the result of a realisation that, following the flags protests and other serious public disorder disturbances, there was a reputational issue to address.

6.22 In this context, it is relevant to note that complaints to the Ombudsman about the use of JSA powers is very low. During this reporting period the Ombudsman only received 22 complaints following a JSA stop and search/question. This represents less than 1% of all complaints received in this period. Most of the complaints that arose following the exercise of JSA powers were in the following Districts – Belfast City (8 complaints); Derry City and Strabane (4 complaints) and Armagh, Banbridge and Craigavon (3 complaints). All other Districts had only one complaint or none (though the District where the alleged incident occurred is not known for 2 complaints).

6.23 The 22 JSA complaints contained 47 allegations. Most of the allegations were about oppressive behaviour and irregularities with the stop and search/question. The full breakdown of the numbers and types of allegation are as follows –

-Irregularity with the stop and search of a vehicle	9
-Oppressive conduct not including an assault	7
-Assault (not including serious or sexual assault)	7
-Harassment	6
-Irregularity with the stop and search/question of a person	5
-Unlawful/unnecessary arrest/detention	3
-Failure or refusal of officer to identify	3
-Mishandling/seizure of property	2
-Other failure in duty	4
-Incivility	1
TOTAL	47

6.24 Of the 22 complaints-

- 2 were closed following informal resolution
- in 12 cases no evidence of police wrongdoing was found and were closed as either “not substantiated” or “ill founded”
- 3 were closed because the complainant did not fully engage with the PONI or the complainant withdrew the complaint
- one was closed as a duplicate
- 4 are still under investigation.

These figures and the types of allegation made are similar to those of the previous year. As with last year most of the complaints are not substantiated. In the previous reporting period only one complaint was substantiated (this concerned the inaccurate recording of time).

6.25 These statistics from the Ombudsman need to be seen in context. Some choose not to complain to the Ombudsman. Some complaints are resolved informally by the PSNI (which is the best way of dealing with complaints). Some potential complainants will seek instant

redress via social media or newspapers. Nevertheless, if the JSA powers were being abused on a significant scale, a higher number of complaints to the Ombudsman would be expected.

- 6.26 It is worth noting that no TSG officers have been identified in these complaints.
- 6.27 These statistics have been provided by the Ombudsman. Where the exercise of JSA powers is recorded the complaint appears in the analysis set out above. However, the Ombudsman's system can only accommodate one category of complaint. So there may be a small number of cases where a JSA complaint has been made along with another complaint and it will not have been recorded as a JSA complaint.

Are the powers used in a discriminatory manner

- 6.28 In my last Report I recommended that the PSNI should continue to work on an effective narrative about the disparity in the use of JSA powers as between different paramilitary groups. Paragraphs 6.44 to 6.46 of that last Report highlighted the fact that these powers are used far more often in relation to DRs and less so in relation to loyalist groups whose activities are equally corrosive of the State. Many people, academics, politicians and community representatives agree with the need for an improved explanation of this disparity. It reflects a concern amongst some that the PSNI have a "pragmatic" relationship with some paramilitaries (whose co-operation can assist in public order situations) and place undue emphasis on preventing "national security" attacks.
- 6.29 The PSNI accept this recommendation. They say that the greater use of JSA powers in relation to DRs merely reflects the fact that DRs have a particular *modus operandi* which the JSA powers are specifically designed to address. DRs use firearms and other munitions more frequently; those munitions are stored in a centralised and systematic way; the munitions often come across the border; DRs move and use munitions across the whole of Northern Ireland. In 2017 (up to October) DRs have carried out 16 paramilitary style shootings compared to 3 carried out by Loyalist groups. During this reporting period 48 firearms, 68.5 kg of explosives and 3810 rounds of ammunition have been found. The majority of these explosives can be attributed to DR activity as a result of the large find linked to Ciaran Maxwell (see paragraph 4.5). So the scale and nature of the DR threat from the use of munitions is different from that of loyalist groups. By contrast the primary loyalist threat from firearms comes from, and is directed at, individuals in one area, namely South East Antrim and, in particular, Carrickfergus. This illustrates the fact that loyalist groups operate in specific localities and are more autonomous than their DR counterparts. Also when they use violence it does not always involve the use of firearms. In the view of the PSNI there are other powers (of a criminal justice nature) which can be used to meet the threat posed by loyalist paramilitaries.

Is the use of JSA effective and necessary to prevent use of munitions?

- 6.30 In the past year there has been considerable public discussion about whether stop and search has any impact on the levels of crime. The Times (17th February 2017) reported that a study by the College of Policing found that it had only a negligible impact on crime rates. The Times report states –

“There are few links between random stop and search and reduced violence such as knife crime while the impact on burglary and drug offences was ‘typically weak’ a study concluded. There also few associations with rates of robbery, theft and vehicle crime. Analysis by the College of Policing, the national standards body, concluded that there was ‘only limited evidence of stop and search having a deterrent effect on crime’ contradicting many officers who have blamed a decline in its use for a rise in violent crime...Many officers blame the fall for a rise in knife crime....The report looked at 10 years of data to 2014 in each of the 32 Met boroughs to see whether high use of stop and search was followed by a reduced crime rate. It said that there was a growing case for intelligence-led stop and search and search, carefully targeted toward specific hotspots. While it found a reduction in total crime linked to stop and search it was ‘typically weak’.

- 6.31 This is a view shared by some academics and NGOs some of whom say that the use of stop and search has no effect on levels of crime.
- 6.32 However, the Times reported (14th May 2017) that Cressida Dick, the new Metropolitan Police Commissioner, had increased the use of stop and search powers to combat soaring levels of knife crime in London. Chief Superintendent John Sutherland of the Metropolitan Police was quoted as saying –
- “There is an absolute connection between levels of stop and search and levels of knife related violence. Some police officers may have lost the confidence to use the powers for fear of recrimination. I am frustrated by the popular narrative that has sought to discourage stop and search as it saves lives”.*
- 6.33 Rachel Sylvester writing in the Times (18th July 2017) said –
- “...the police, as well as victims’ families, are convinced that the fall in the use of stop and search (which is down almost 75% from its highest level seven years ago) is one explanation for the rise in knife crime and acid attacks. Simon Kempton, a member of the Police Federation National Board says ‘I believe there’s a correlation. If we are searching fewer people then we will find fewer illicit items, whether that is drugs, knives or bottles of alkaline and acid. Offenders have become emboldened because they know they are less likely to be caught”.*
- 6.34 The general arguments about the effectiveness of stop and search will go on. So far as the stop and search powers in the JSA are concerned, the clear view of the PSNI is that their use does act as a deterrent to violent paramilitaries who transport munitions. The JSA powers are specific to Northern Ireland. Many of those who are stopped and searched are known to the police to be actively involved in planning attacks using munitions. So the use of stop and search is not random but targeted. Some devices are constructed in the Republic of Ireland and transported across the border to Northern Ireland and members of proscribed organizations have to transport munitions throughout Northern Ireland. The power in the JSA to stop and search individuals and vehicles without reasonable suspicion clearly deters and disrupts that activity and should be retained. As has been noted in previous Reports, nobody in Northern Ireland has argued for the removal of these powers. The concern has always been about the manner and frequency of their use.

7. PERCEPTIONS OF JSA POWERS

- 7.1 Most stops and searches in Northern Ireland are under legislation other than the JSA (see paragraph 6.3). All stops and searches take place in public (in the broadest sense). For the individual concerned a stop and search is intrusive and has been described as the most adversarial contact any individual has with the police. My terms of reference require me to consider the operation of these powers from the perspective of those who use them and also of those who are affected by them. The PSNI look at these powers through the prism of their overarching mantra of “keeping people safe”. The vast majority of those affected by the use of these powers view them through the prism of the conflict. There is a stigma attached to the use of JSA powers which is based on an uncomfortable narrative.
- 7.2 That narrative concerns the fact that although there is a “peace process” it remains a process. There is still a conflict. The peace is, according to Paul Nolan, an independent member of the NIPB, a negative peace where the underlying causes of the conflict are yet to be addressed. In many areas there is no post conflict language so the language of conflict pervades discussion. The security situation, which justifies the powers in the JSA, is analysed by Government very much in terms of the risk of “national security attacks” i.e. attacks by violent DRs on emanations of the (British) State - police, armed forces, prison officers etc. Many in the CNR community regard bail as “internment”. Organized crime is carried on by “paramilitaries” with a military structure. “Peace walls” separate communities on sectarian lines. Some people, on both sides of the community, feel branded by their previous involvement in the conflict even though they have embraced the peace process and moved on. For these members of the community such previous involvement can affect, for example, insurance premiums, access to employment (where the difficulties can skip generations) and the ability to travel abroad. JSA powers are overwhelmingly used in communities where the conflict and its trail still touch daily lives in a number of different ways.
- 7.3 Consequently, the use of these exceptional powers can impact on communities in unique ways –
- (a) it can reinforce a sense that the conflict is ongoing;
 - (b) it is analysed against the backdrop of a community divide and generates allegations against the police of discrimination on sectarian grounds;
 - (c) if the first contact a young person has with the police is a stop and search then that will colour their view of the police well into adulthood and reinforce cultural and historic distrust of the police in that young person’s community;
 - (d) it can result in police officers being intimidated by the person being searched and by bystanders who resent the intrusion into their community;
 - (e) it can be exploited to set the police up on social media and in real time to feed and reinforce sectarian views, distrust of the police and an anti-British narrative;
 - (f) the repeated use of the powers against particular individuals without reasonable suspicion encourages allegations of harassment;

(g) sadly it can be exploited in an attempt to justify violence against the police as happened after the attack on 2 police officers in the Crumlin Road in January 2017. Following that incident the Saoradh website contained the following statement –

*“ A member of the Crown Forces was injured tonight, after his armoured patrol was engaged on the Crumlin Road, in North Belfast, by what is believed to have been Irish Republican resistance fighters. One member of the British Constabulary was struck by gunfire during the action. The Crown forces have intensified their campaign of harassment of Republican working class areas across the North in recent months with British troops deployed last week in West Belfast. **Stop and search and house raids against Irish Republican activists and their families have also been relentless**”.*

7.4 So these are not “ordinary” stop and search powers. Their use can be more toxic in its impact than the use of other powers of stop and search. This is exacerbated by the fact they can be used “without reasonable suspicion”. The PSNI understand this at senior levels. The need for “agility of mind” and development of “soft skills” is often referred to. It is, of course, necessary for the PSNI to exercise these powers to ensure public safety. However, it is clear that more needs to be done to build a service wide understanding of the sensitivity of using these powers. One officer said he would stop and search “just to let them know” and another said he would stop a particular individual every time he saw him. I was told by a leading figure in the CNR community that some of those who are repeatedly stopped and searched can themselves distinguish between a “hard” stop and search and a “soft” one which has a routine element. The role of the PSNI is to “keep people safe” but that has to be tempered by the need for the stop and search powers to be “justified, lawful and stand up to public scrutiny”. There is a role here for supervising officers to ensure that a JSA stop and search only takes place when that test is met. Close monitoring and supervision is essential for the maintenance of public confidence in the use of these powers.

8. RECORD KEEPING

There are three issues relating to record keeping where progress has been.

Obtaining a copy of the stop/search record

8.1 At present if an individual is stopped and searched under JSA powers that person can collect a record of the search record only if he or she visits a local police station to collect it in person. Many are reluctant to do this for a variety of reasons. The PSNI are actively considering the possibility of providing individuals with records electronically. That would be a significant development.

Publishing information about how frequently records are collected

8.2 Last year I recommended that when the PUMA system is updated, the PSNI should publish how many times individuals who are stopped and searched collect a copy of their search record in person. The PUMA system has now been updated. Previously the PUMA only recorded how many times a record had been printed. This could have been for a number of reasons. Since December 2016, PUMA has been able to distinguish whether the record

has been printed for collection by the individual. This information is now published on a quarterly basis on the stop and search webpage under FAQs. Unfortunately, the take up is minimal. At the time of writing, only 178 individuals had collected a copy of their search record since the PUMA system was updated. Of these only 67 related to “terrorism” searches – this represents 0.4% of those searched under section 24/Schedule 3 and section 43/43A of TACT 2000.

Putting the stops database on the general police records management system

8.3 In the Fourth Report of the JSA my predecessor said (paragraph 19.7) –

“One specific area where concerns may be raised is the wider uses to which the data may be put. There is a physical separation between this [PUMA]system and the intelligence data bases [NICHE] which are discreet business systems with their own safeguards.Stops should not be made for the purpose of collecting intelligence. The physical separation of the stops and intelligence databases is an important safeguard in this respect and must be rigorously maintained”.

8.4 This recommendation was made at the high point in concerns about fishing expeditions where the alleged search for munitions was claimed to be a spurious cover for intelligence gathering. That is not its purpose. It is clear, however, that information gained from a stop and search may have an intelligence significance. For example, if a person was stopped on three consecutive nights in three different but close locations that could have an intelligence significance. It would be legitimate to make a note of it and, indeed, it would be remiss not to do so.

8.5 The technology has moved on. NICHE is an international IT solution used by many police forces across the UK. It has a much more robust supervision check system and there is a facility to build in alerts. The NICHE system could, for example, pick up every 10th stop and search by an individual officer and it could then be automatically sent to a supervising officer for checking. On the NICHE system it would be less cumbersome to extract information eg when conducting a search of how many people were arrested as a result of a stop and search. The PUMA system would just come up with a number but the NICHE system could provide further details of who was arrested and why. It could also assist with end to end data – the PUMA system currently will record any arrest that takes place but the eventual disposal will be recorded on NICHE. It would be helpful if the end to end data were to be recorded on the same system. Ironically, at present, if an officer does not stop and search under the JSA but just produces a sightings report that report would, in any event, go on the NICHE system.

8.6 Having consulted my predecessor, I recommend that the time has come to move the automated search record onto the NICHE system – not only for JSA stop/searches but also for stops/searches under PACE, the Misuse of Drugs Act etc. However it is important that the existing safeguards are retained (for example in relation to access, supervision and disposal). There would also be financial advantages – there would be savings on the £250,000 which is spent on the maintenance of the PUMA system which is currently outsourced. The PSNI’s in house NICHE team are fully equipped to maintain the database at no extra cost.

9. COMMUNITY MONITORING

9.1 Little progress has been made on finding a practicable way of recording the background of those who are affected by the use of JSA powers. As one independent commentator observed “there has been a substantial degree of inertia”. There is nothing to add to what was said in my last Report (paragraphs 8.1 to 8.7) other than to mention that the PSNI are conducting another 3 month trial in Lisburn and Castlereagh commencing 1st February 2018 which will be similar to the one run in Derry for 3 months from December 2015.

9.2 The PSNI remain under pressure (for example from SF and the CAJ) to record and publish the community background of those stopped and searched. In its submission to the UN Committee on the Elimination of All Forms of Racial Discrimination in July 2016 CAJ said that-

“CAJ is concerned that Northern Ireland remains the only place in the UK where ethnic monitoring of stop and search powers is not mandatory”.

In summary, the CAJ argument is that the Protestant/Catholic division is an ethnic division. The Oxford English Dictionary defines it as “the fact or state of belonging to a social group that has a common national or cultural tradition”. Police officers in England and Wales are required to record the ethnicity of individuals who are stopped and searched based on the officer’s perception. The CAJ argue that there is no reason why that requirement should not apply to the PSNI in relation to the community background of individuals stopped and searched under the JSA (or indeed any power).

10. AUTHORISATIONS

10.1 The authorisation process under Section 24/Schedule 3 permits the use of JSA powers without reasonable suspicion. My last two Reports dealt with the criticisms of this process and concluded that those criticisms were unfounded. Nothing has changed in this reporting period to alter that view. The impact of Brexit on the land border between Northern Ireland and the Republic has yet to be determined. Whatever the outcome the physical land border will remain as approximately 300 miles of rural and remote terrain. The PSNI estimate that 43% of organized crime groups have a cross border dimension. Whatever changes are made to the border after Brexit they are unlikely to change the porous nature which these groups exploit. So Northern Ireland wide authorisations under the JSA are likely to remain necessary for the foreseeable future.

10.2 Those last two Reports also recommended that the JSA should be amended to allow an authorisation to remain in place for at least 3 months instead of 14 days provided the security situation remains as it is and sufficient safeguards remain in place. Many people have expressed the view that they would be comfortable with this change. The PSNI and NIO have noted the recommendation but have not formally responded to it. There appears to be some concern that increasing the period to 3 months would undermine an important safeguard. However, it is clear from the Secretary of State’s periodic statements to Parliament on the security situation and also from the extensive material set out in the authorisation form (**Annex F**) that the security situation is constant in its nature and does

not fluctuate on a fortnightly basis. The current process remains an unnecessary burden on a police service with limited resources.

- 10.3 This year I examined 12 authorisations - one for each month between August 1st 2016 and 31st July 2017. In each case I examined the authorisation and the covering submission to the Secretary of State. This process continues to be carried out thoroughly with a high degree of internal challenge by the NIO. There have been challenges to the relevance of material in Box 4 of the authorisation form and also to some statistics. On one occasion there was a challenge to some material in Box 4 which referred to criminality without indicating that the use of munitions was involved. At the request of the NIO the PSNI now produce a covering explanatory note in addition to the raw intelligence in Box 4 and this document is attached to each submission to the Secretary of State. Each year the PSNI, the NIO and their legal team meet to review the process.
- 10.4 I remain of the view that these authorisations, once confirmed by the Secretary of State, should remain in force for up to 3 months (see paragraph 9.2 of the Ninth Report). Some concern was expressed in the PSNI that this might result in a different document having to be produced. At present all the relevant intelligence over the previous 2 weeks is put into Box 4 of the authorisation. If the authorisation process were to be extended to 3 months then some sifting of the intelligence would be required. This would involve some more work but it would result in a more refined intelligence assessment. The additional work in producing such a document would be offset by the fact that the PSNI would be relieved of the painstaking task of producing current authorisations every fortnight.
- 10.5 As in previous Reports I am satisfied that this process is carried out properly and diligently by the PSNI and NIO. I reject the criticisms of the process that have been made of this process in the past (paragraph 9.1 of the Ninth Report). It is noticeable that these criticisms have not resurfaced in this reporting period.

11. THE ARMED FORCES

- 11.1 The role of the Army in Northern Ireland has remained the same. They act only in support of the police and there is no role for the armed forces in public order situations. It will be for Parliament to decide in due course, when considering “normalisation” issues in Northern Ireland, whether the residuary powers which the Army have under the JSA (which largely mirror those of the police) should be retained. The Army have not used these powers since the JSA was passed.
- 11.2 There appears to have been no public concern in this reporting period about the role of the Army when deployed to search for and dispose of munitions in support of the police. That level of activity has remained high as is illustrated by the statistics in Table 4 of **Annex E**. The Army were called out during this reporting period on 217 occasions. That figure is broken down as follows (with the corresponding figures for the previous years in brackets) –
- on 25 (35) occasions to deal with an IED – typically an active device such as a pipe bomb;
 - on 13 (12) occasions to deal with an explosion;

- on 20 (42) occasions to deal with a hoax – where an object is deliberately made to look like an IED on occasions accompanied by a telephone warning confirmed by the police the purpose of which could potentially be the prelude to a “come on attack”;
- on 24 (45) occasions the call out was false – ie a member of the public may genuinely have reported a suspect object giving rise to genuine concern but there was no telephone call or attribution;
- there were no (1) occasions when there was a call out to deal with an incendiary device ie a device which is programmed to ignite and cause buildings to burn;
- on 135 (112) occasions the call out, very often acting on intelligence, was to deal with the discovery of munitions or component parts.

I attended the Army training estate in Ballykinler to observe training in IED disposal. The process is necessarily time consuming. This is not always readily understood by residents who are often inconvenienced for some time if a device or suspect device is found in or near their homes.

- 11.3 The number of call outs has fallen steadily from 347 in 2013/2014 to 217 in the last reporting period – a decline of 37%. However, the number of occasions when a call out resulted in the discovery of munitions has remained constant in the last few years and actually rose in the last reporting period. Again, these figures have to be read against the background that they do not take account of the number of attacks which were disrupted before they come to fruition by security force action or which fail for a range of other reasons.

Processing and handling of complaints

- 11.4 Under section 40(1) (b) the Independent Reviewer must review the procedures adopted by the Brigadier for receiving, investigating and responding to complaints about the Army. Section 40(6) provides that the Reviewer shall receive and investigate any representations about these procedures; may investigate the operation of those procedures in relation to a particular complaint or class of complaints; may require the Brigadier to review a particular case or class of complaint in which the Reviewer considers that any of the procedures have operated inadequately; and may make representations to the Brigadier about inadequacies in those procedures. Section 40(7) provides that the Brigadier must provide such information, disclose such documents and provide such assistance as the Reviewer may reasonably require.
- 11.5 It was not necessary in either this or previous reporting periods to exercise any of these powers. They were probably inserted in the JSA at a time when there was much greater concern about the presence of the Army in Northern Ireland than there is now. Indeed there have only been 2 complaints this year. The first complaint was made by a resident in Ballymena who complained about a low flying helicopter over an estate which caused partridges to scatter and grazing calf to be “spooked”. The Army sent a letter to the complainant on 11th October explaining that military flight records had shown that there

were no military flights in that area at the relevant time. The letter explained that the aircraft could have been a private aircraft or a PSNI aircraft and gave the appropriate contact details of the Civil Aviation Authority and PSNI HQ should the complainant wish to contact either of those two bodies. The Civil Representative subsequently visited the complainant and offered the possibility of putting an “avoid” in the vicinity. The second complaint was from a resident in County Armagh in July 2017 who complained about a low flying aircraft. The resident was contacted within a fortnight to inform her that, following an investigation, the Army could confirm that the aircraft was not a military aircraft. Air Traffic control had advised that there were other aircraft in the vicinity at the time and that the matter could be pursued with the Civil Aviation Authority.

- 11.6 Given the historic sensitivities about the presence of the Army in Northern Ireland, it reflects great credit on them that there were no complaints of any substance about their activities in this reporting period. In particular, there were no complaints arising from military exercises as there have been in previous years.

12. MISCELLANEOUS

Road closures and land requisition

- 12.1 There are powers in the JSA for the Secretary of State to close roads and requisition land in certain circumstances. The purpose of these powers is to prevent attacks on public buildings, to prevent disorder and to prevent harassment of, and attacks on, different communities. In line with Agency Arrangements agreed between the Secretary of State and the MoJ in 2011 (see paragraph 10.2 of the Seventh Report) the DoJ made two land requisitions for the Forthriver Business Park on Springfield Road in West Belfast. One was on 24th June in relation to the annual Whiterock Parade and the other one on 12th July in relation to a feeder parade from Whiterock Orange Hall. Both lasted for 24 hours. Otherwise there were no new land requisitions or road closures other than those referred to in the previous Report. Similarly, the road closures made by the Secretary of State on national security grounds remain in place.

Children

- 12.2 JSA powers are sometimes used in relation to children or where children are present. If a child (ie a person under the age of 18) is stopped and searched a record will be kept in the normal way. The police officer will use the scroll down facility on his blackberry and record the name, approximate age, gender and ethnicity of the child. The officer has to complete these details before scrolling down to record other matters eg the address of the child, the power being used and the outcome of any search. So the record will be the same as that of an adult and the same whatever power is used (whether JSA, PACE, Misuse of Drugs Act etc.). If the child is only accompanying a person who is the object of the search (normally a parent and child situation) and that child is not searched details relating to that child will not be recorded. There is no requirement under the JSA or Code of Practice to do so. In both situations the normal police protocols relating to children will apply and, if there is a need to do so, other alternative reports will be made (e.g. a social services referral). The PSNI have established a Youth Champion Forum in which the police discuss with members of the

public various issues relating to children including stop and search. The PSNI have also established an internal group, the Children and Young Person's Forum, to monitor the PSNI's role in relation to children including a review of stop and search.

Views of consultees

12.3 In summary, the points made by those consulted (and not covered elsewhere in this Report) are set out below. Some are more relevant to the use of JSA powers than others but they all have a connection to it.

12.4 The comments included –

- regret that the NIPB had not been fully constituted for much of the reporting period together with a more general concern about lack of accountability in Northern Ireland of national agencies in relation to non-devolved issues;
- continued concern about lack of community policing in many areas and a general feeling that the revised arrangements for local policing had not been the subject of serious consultation and were a backward step;
- some concern was expressed about the quality of the training provided to new recruits particularly in relation to stop and search;
- repeated concern about lack of transparency of PSNI – “communication is not a strategic priority for the PSNI” was one observation;
- concern about the fact there were too few women in the TSG and also that the percentage of people from the CNR community in the PSNI was not higher and might fall;
- concern about the government's analysis of the security situation primarily in terms of “national security” attacks by DRs defined as attacks on emanations of the State i.e. police officers, prison officers, army personnel etc. Some thought that this does not represent the true scale of the threat to society from those paramilitary and criminal groups whose activities are equally undermining of law and order and “security” in its widest sense

13. RECOMMENDATIONS

- 13.1 The reporting period for this review should be changed to the calendar year (paragraph 3.8)*
- 13.2 Consideration should be given to amending the JSA in due course to allow a police officer not only to search a person for munitions but also “to deter, prevent or disrupt their transportation or use” (paragraph 6.8).
- 13.3 The PSNI should monitor the impact which improved supervision has had on the use of JSA powers and provide an assessment for the next reporting period (paragraphs 6.9 to 6.10).
- 13.4 The PSNI should keep an internal record of what triggered any stop/search involving a child or in any case where an unexpected incident has occurred or which would otherwise be controversial (paragraph 6.13).
- 13.5 The PSNI’s annual assessment of BWV should be comprehensive and address the issues referred to in paragraphs 6.16 to 6.18
- 13.6 The powers in the JSA should be retained so long as the current security situation in Northern Ireland continues (paragraphs 6.30 to 6.34).*
- 13.7 The PSNI should move the automated records of the use of JSA powers onto the main intelligence data base (paragraphs 8.3 to 8.5).
- 13.8 Once an authorisation has been confirmed by the Secretary of State it should continue for 3 months rather than for 14 days. (paragraphs 10.1 to 10.4)*

*Denotes recommendation made in previous Reports

PART 2 – NON JURY TRIALS

14. BACKGROUND

- 14.1 Diplock courts were established by the Northern Ireland (Emergency Provisions) Act 1973 to deal, broadly speaking, with terrorist offences during the Troubles. This was in response to a report submitted to Parliament in December 1972 by Lord Diplock which addressed the problem of dealing with terrorism through means other than internment. These offences were termed “scheduled offences”. In layman’s terms they were offences connected to the Troubles. They were to be tried by a single judge without a jury unless, in a particular case, they were “descheduled” by the Attorney General thereby allowing a jury trial to take place. This system came to an end when the JSA was passed in 2007. The JSA substituted a new system of non- jury trials. All cases were now to be tried by a jury unless the DPP suspected that certain specific conditions were met and that, consequently, he was satisfied that “the administration of justice might be impaired if the trial were to be conducted with a jury”.
- 14.2 The provisions in the JSA relating to NJTs are set out in sections 1 to 9 and are at **Annex G** and the PPS’s internal guidance on how those provisions are to be applied is at **Annex H**. Section 9 provides that these provisions shall expire after two years unless the Secretary of State by order extends that period for a further two years. Such an order has to be approved by both Houses of Parliament. The duration of these provisions has been extended by successive orders since 2007. The most recent extension was made in July 2017 by the Justice and Security (Northern Ireland) Act 2007 (Extension of duration on non-jury trial provisions) Order 2017. In the debate on this order in the House of Commons the Parliamentary Under-Secretary of State at the NIO, Chole Smith MP, said that –
- “As an extra and new measure of assurance, the independent reviewer of the 2007 Act will review the non-jury trial system as part of his annual review cycle, the results of which will be made available to the public in his published report. We hope that that gives some extra reassurance to those interested in these issues”.*
- The terms of reference for my review of NJTs are -
- “...limited to a high level engagement with the key stakeholders in this process, to better understand the overall effectiveness of the procedures currently in place to issue a NJT certificate. Broadly therefore, the review could examine:
- a small, retrospective sample of information which has led to a NJT certificate being issued, to understand some of the risks that make the system necessary;
 - instances where a NJT certificate may be deemed necessary (and whether the use of alternative juror protection measures are routinely considered as part of this);
 - other relevant indicators that could provide an insight into how the system is being used, for example, whether there are any noticeable trends in the type of defendants who, or indeed offences, which, routinely receive NJT certificates;

- the views of external parties (for example think tanks, academics, human rights organizations) on the use of NJTs and;
- whether any improvements could be made to existing processes”.

15. METHODOLOGY

- 15.1 During 4 of my visits to Northern Ireland, I have had the benefit of discussing NJTs with members of the judiciary, the Chairman of the Bar, the Chairman of the Criminal Bar, the NIHRC, the PSNI, the PPS (including the Director), the NIO and MI5. I have also discussed NJTs in London with Max Hill QC (the Independent Reviewer of Terrorism Legislation) in London.
- 15.2 I have studied carefully 16 sampled NJT cases. These are listed in **Annex J**. This involved 3 days in the DPP’s office scrutinizing all the paperwork relating to the decision to grant or refuse a NJT certificate. I also discussed the handling of those cases – and cases generally – with senior prosecuting lawyers in the PPS. I also spent one day in the PSNI HQ in Belfast analysing the intelligence which formed the basis of the PSNI recommendations to the PPS in relation to 11 of these sampled cases. The cases covered the period 2012 to 2015. They related to a wide range of offences and proscribed organizations. Certificates were granted in 11 cases and refused in 5.
- 15.3 I also read –
- (a) the Parliamentary debates relating to the passage of the JSA in 2007 and also those relating to the most recent order extending NJTs to 2019;
 - (b) the consultation paper “Non-jury trial provisions Justice and Security (Northern Ireland) Act 2007” published by the NIO in 2016 and the response paper on NJTs published by the NIO in June 2007 entitled “Outcome of the public consultation on non-jury trial provisions Justice and Security (Northern Ireland) Act 2007”;
 - (c) the internal PPS guidance on NJTs and the CPS Guidance on NJTs under the CJA 2003;
 - (d) all relevant High Court and Court of Appeal judgments on NJTs both in Northern Ireland and England and Wales.

16. STATUTORY FRAMEWORK

JSA

- 16.1 Section 1 of the JSA provides that the DPP may issue a NJT certificate if he suspects that one of 4 specified conditions is satisfied and that, as a result, he is “satisfied that...there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury”.

16.2 The 4 conditions (in summary form) are that –

- (a) the defendant is, or is an associate of, a person who is or was a member of a proscribed organization (condition 1);
- (b) the offence was committed on behalf of a proscribed organization or that organization was involved (condition 2);
- (c) a proscribed organization has attempted to prejudice the investigation or prosecution or assisted in the attempt (condition 3);
- (d) the offence was connected (directly or indirectly) with “religious or political hostility” (condition 4).

16.3 The provisions of sections 1 to 9 of the JSA are set out in **Annex G**. The key points to note about this NJT regime are –

- (a) the decision is made by the DPP and not a judge;
- (b) the test is subjective and requires only a suspicion;
- (c) that suspicion does not have to be a reasonable suspicion;
- (d) the threshold is low - “a **risk** that the administration of justice **might** be impaired”;
- (e) for condition 4 to be satisfied there does not have to be any connection with a proscribed organization;
- (f) it is not enough that one of the 4 conditions is satisfied – it is also necessary that, as a result, the DPP is of the view that the administration of justice might be impaired (section 1(2)(b)).
- (g) that impairment to the administration of justice includes the risk of a perverse verdict arising from a fearful or hostile jury;
- (h) no inference may be drawn by the judge from the fact that a NJT certificate has been granted (section 5(4));
- (i) the judge hearing a NJT case must, if he convicts, state the reasons for the conviction (section 5 (6));
- (j) judicial review of a NJT certificate can only be made on grounds of dishonesty, bad faith or other exceptional circumstance (section 7);
- (k) there is no statutory requirement that the DPP considers juror protection measures before issuing a NJT certificate.

16.4 The following organizations are currently proscribed under TACT 2000 –

Continuity Army Council

Cumann na mban

Fianna na hEireann

Irish National Liberation Army

Irish People's Liberation Organization

Irish Republican Army

Loyalist Volunteer Force

Orange Volunteers

Red Hand Commando

Red Hand Defenders

Saor Eire

Ulster Defence Association

Ulster Freedom Fighters

Ulster Volunteer Force

The CJA 2003

16.5 In addition to the JSA, sections 44 to 46 of the CJA 2003 also make provision for NJTs in both Northern Ireland and England and Wales. They are set out in **Annex G**. Under section 44, the prosecution may apply to a Crown Court judge for the trial to be held without a jury. The Court must order a NJT if the judge is **satisfied** that –

(a) there is **evidence** of a **real and present danger** that jury tampering **would** take place; and

(b) notwithstanding any juror protection measures which might reasonably be put in place, the likelihood that it would take place **would be so substantial** as to make it **necessary** in the interests of justice for there to be a NJT.

16.6 Section 44(6) of the CJA 2003 gives examples of cases where there may be evidence of jury tampering –

(a) in a retrial when there has been jury tampering at the original trial;

(b) in a case where there has been jury tampering in a previous case involving the defendant;

(c) in a case where there has been intimidation of possible witnesses.

16.7 If an application for a NJT is made under these provisions, it is to be determined at a preliminary hearing where both prosecution and defence can make representations and both sides can appeal to the Court of Appeal against any order that is made.

16.8 If a NJT is ordered the judge must give reasons for the conviction at the end of the trial.

16.9 The conditions in the CJA 2003 are much more stringent than the NJT provisions in the JSA as the highlighted words in paragraph 16.5 indicate –

(a) the decision is not an administrative one taken by an official – it is normally taken by the Presiding Judge on the Circuit who will assign the case to a trial judge;

- (b) there is an objective test to be applied on the basis of evidence (not mere suspicion);
- (c) case law has established that the criminal burden of proof (beyond reasonable doubt) is the correct test to apply to whether these conditions are met. This has recently been confirmed by Thomas LCJ in the Court of Appeal in England and Wales – see **R v McManaman** [2016] EWCA Crim 3;
- (d) the NJT has to be “necessary” in the interests of justice – so even if there is “a real and present danger” of jury tampering the courts will not order a NJT if juror protection measures would address the threat;
- (e) the preliminary hearing to determine the issue can involve sensitive material being protected by a public interest immunity (PII) certificate;
- (f) there is a right of appeal to the Court of Appeal – and no express provision limiting the grounds of judicial review.

- 16.10 It should be noted that the CJA 2003 is specifically concerned with jury tampering. The JSA is not so confined. The “impairment “ to the administration of justice under the JSA is wide enough to cover not only jury tampering but also the possibility that any jury in the case might be biased or hostile (even in the absence of jury tampering).
- 16.11 These stringent tests have resulted in only 2 NJTs taking place in England and Wales under section 44 of the CJA 2003.
- 16.12 Finally, section 46 of the CJA 2003 allows a judge, after giving both the prosecution and defence an opportunity to make representations, to discharge a jury if jury tampering appears to have taken place. He may then either order a retrial or, if he is satisfied that it would be fair to the defendant to do so, continue the trial without a jury.

17. WIDER CONTEXT

The right to a jury trial is deeply entrenched

- 17.1 The right to a jury trial is a key component of the criminal justice system. As Lord Judge LCJ said in **R v T** [2009]3 All ER 1002 (and quoted in **R v Arthurs** [2010]NIQB 75) which was a case involving the discharge of a jury where suspected jury tampering had allegedly occurred -

“In this country a trial by jury is a hallowed principle of the administration of criminal justice. It is properly identified as a right available to be exercised by a defendant unless and until the right is amended or circumscribed by express legislation”.

In the context of whether the criminal standard of proof beyond reasonable doubt applied in relation to proof of the fulfilment of the pre-conditions for removing a jury, Lord Judge said in that case that –

“The right to trial by jury is so deeply entrenched in our constitution that unless express statutory language indicates otherwise the highest possible forensic standard of proof is required to be established before the right is removed. That is the criminal standard”.

In **J,S,M v R** [2010] EWCA Crim 1755 (a case involving the pre-conditions for a NJT under section 44 of the CJA 2003) Lord Judge in deciding that the case should be held before a jury relying juror protection methods, said –

“The trial of a criminal offence without a jury....remains and must remain the decision of last resort, only to be ordered when the court is sure (not that it entertains, suspicions or reservations) that the statutory conditions are fulfilled”.

The right to a fair trial does not equate to the right to a jury trial

17.2 The provisions of the JSA relating to NJTs provide the express statutory basis for applying a lower standard in Northern Ireland. However, the Court of Appeal have made it clear it would be wrong to equate a NJT with an unfair trial. That was, in essence, the case put forward by the applicants in the **Arthurs** case. They argued that the NJT provisions in the JSA were in breach of Article 6 of the ECHR. In that case Girvan LJ held that –

“In the present context a decision that the defendant’s trial before a judge alone will not deprive the defendant of a fair trial. The Director’s certificate is not decisive of any issue that falls to be determined in the trial and it does not in itself undermine the right of the applicant to a fair trial which....can happen before a judge alone without infringing his fair trial rights.”

17.3 Later in that judgment Girvan LJ said –

“While the Human Rights Act 1999 remains in full force, Convention Rights partake of the nature of what in other constitutional environments are considered to be entrenched rights. Thus the right of a defendant to a fair trial before an independent and impartial tribunal cannot be abrogated as long as the Human Rights Act is in force. But, as we have seen, this does not mean that the trial must be before a jury”.

The number of NJTs in Northern Ireland is small

17.4 The number of NJTs in Northern Ireland is very small. In the mid 1980s the number of Diplock court cases reached a peak of 329. The average number of Diplock trials in the 5 years before the JSA was 64. Between 2007 and 2016 the number of NJT certificates issued by the DPP has been as follows (with the number of refusals by the DPP in brackets) –

2007 – 12 (2)	2012 – 25 (3)
2008 – 25 (2)	2013 – 23 (3)
2009 – 11 (0)	2014 – 14 (1)
2010 – 14 (0)	2015 – 15 (0)
2011 – 28 (0)	2016 – 19 (1)

So this an average of 18 NJT certificates (and one refusal) per year over the past decade.

17.5 In the 4 calendar years 2013 to 2016 there were 6,359 cases dealt with in the Crown Court. Of those only 93 were NJTs (just under 1.5% of the total number of cases). In terms of defendants dealt with in the Crown Court during that period, 8,171 defendants were tried. Of those only 168 were tried with a NJT (just over 2% of the total number of defendants).

Acquittal rates in NJTs are similar to those in jury trials

17.6 In those 4 years the acquittal rates in NJTs were as follows (with acquittal rates for jury trials in brackets –

2013 – 13.54% (24.87%)

2014 – 27.45% (25.21%)

2015 – 47.62% (20.80%)

2016 - 11.11% (23.71%)

So the acquittal rate in NJTs in two of those years was higher than in cases tried by a jury and in two of those years it was lower. In 2015 the acquittal rate for NJTs was over twice as high than for jury trials.

Concern about NJTs in Northern Ireland is muted

17.7 In terms of scale, the issue of NJTs is a minor one. In my discussions with many people in Northern Ireland with an interest in the criminal justice system this issue has never been raised as one of concern. By contrast, many concerns were expressed about the slowness of the criminal justice system; the low sentences for serious offences compared with England and Wales and Dublin; the failure of the system to address drug use and other anti- social behaviour; the perceived disappearance of community policing; and the lack of local accountability of MI5 and the National Crime Agency. Indeed there was some anecdotal evidence to suggest that some defendants actually preferred a NJT because there was no risk of a hostile or perverse jury and there was also a belief amongst some defendants that professional judges are more prone than juries to consider possibilities consistent with innocence.

17.8 The purpose of setting out this contextual background in some detail is that it goes to the wider questions of –

(a) the extent to which NJTs are an issue of real concern in Northern Ireland;

(b) whether it is necessary or desirable, to amend or repeal these provisions or otherwise change the system.

18. RISKS TO JURY TRIALS IN NORTHERN IRELAND

18.1 Liberty, in its response to the NIO's consultation document, stated that the Government had not adduced sufficient evidence to demonstrate that the threat to jurors in Northern Ireland is real, present and significant. Nor do they consider that there is a difference, in this respect, between Northern Ireland and other parts of the United Kingdom.

18.2 The security situation in Northern Ireland is well documented (see paragraphs 4.1 to 4.6). However, it is not just the fact that the threat level is SEVERE which poses the risk to jury trials. Northern Ireland is a relatively small jurisdiction. Its population of 1.8 million is under a quarter of the size of the population of Greater London. In many respects it remains a community in conflict with itself. Paramilitary organizations are still active in many communities in Northern Ireland. Those communities tend to be geographically small and

clearly defined. Many paramilitary organizations have turned to crime. They enforce discipline through violence and intimidation in those tight knit communities. Any resident who informed on a member of a paramilitary organization to the police would be at risk. There are many well documented cases of internal feuding resulting in shootings and beatings. Recent figures from 2016/17 indicate that 197 offences of intimidation or threat to harm witnesses and jurors were recorded. Some of these remain undetected. In the same period 56 offences were solved or cleared up by the PSNI. These figures represent those incidents which are recorded. Many are not reported. The Fresh Start Panel Report on the Disbandment of Paramilitary Groups in June 2016 stated that lack of reporting can undermine understanding of the true scale of paramilitary attacks in these communities. I have been briefed by the PSNI about some horrific attacks in these communities which masquerade as “civil administration”. In particular, there was one kneecapping incident as a result of which 150 houses were visited by the PSNI but no evidence or assistance was forthcoming. The Report also referred to the fact that approximately 1,000 people were driven from their homes between 2012/2013 and 2014/2015 by this behaviour. In these circumstances, in any case involving a defendant from these communities who is currently connected with a proscribed organization, there is a risk that there will be jury tampering or a jury which is hostile or fearful. This concern is exacerbated by the knowledge that many proscribed organizations are capable of operating outside the limits of the community in which they are based.

- 18.3 The PPS told me that if, in the past, the higher test in section 44 of the CJA 2003 had been applied instead of the test in the JSA , it would have been extremely unlikely that any NJT certificate would have been issued. This is why the then Attorney General, Lord Goldsmith, when taking the JSA through the House of Lords in 2007 observed that –

“The hurdles in the[CJA 2003] are too high for Northern Ireland. The Act is appropriate for a judicial determination because the issues which are considered are not generally intelligence information. They generally concern whether there is evidence that a case has collapsed as a result of jury intimidation or whether there has been jury tampering. That would normally arise as a result of direct evidence being given. That explains the difference between the two measures”.

He went on to say –

“In all the time I have held this post – nearly six years – I have not heard anyone including anyone in Northern Ireland suggest that the trials before the judges in Northern Ireland are in any sense unfair; indeed if anything it is quite the contrary as a detailed set of reasons is given at the end of the trial. One never has that with a jury trial and it can be tested on appeal.

So the worst that can happen - although I want non- jury trials to apply only in a very limited number of cases – is that if one sets the test too low, the person would be tried before a judge sitting alone and would receive a fair trial. The risk the other way does not come out like that. If one sets the hurdle too high the risk is that a case will fall to be tried before a jury where there is a risk of jury intimidation or something of that sort. The consequence is – and it has happened in Northern Ireland – that the trial cannot take place or that there is not a just verdict. I emphasize I want a robust test; I want fairness. But, if anything, the risk of getting this wrong is a risk of setting this hurdle too high for the DPP...to make that decision”.

- 18.4 The position in Northern Ireland is unique in this respect within the UK and it would be wrong, at this time, to proceed on the basis that the test in section 44 of the CJA 2003 – while it might be appropriate in limited circumstances in England and Wales – should be the sole basis for determining that a case should be heard without a jury in Northern Ireland.

19. NATURE AND ROBUSTNESS OF PROCEDURES

- 19.1 The process whereby a NJT certificate is produced was described by Girvan LJ in the Court of Appeal in the case of **Arthurs** in 2010. He said –

“The police indicate an initial view on the question and if they indicate that the case may require non-jury trial the police are asked to provide a considered view on whether the conditions specified in section 1 are satisfied. The considered view will have regard to the views of the investigating officer, the Detective Superintendent and any material facts or information including intelligence. The prosecution’s report is forwarded to the regional prosecutor or Assistant Director as appropriate and therefrom to the relevant Senior Assistant Director. It is then forwarded with any additional recommendations to the Director. Generally where a certificate is to be issued this will occur in advance of the accused’s committal but in any event it may issue up until arraignment but no later”.

- 19.2 Broadly speaking that appears to remain the process. On the basis of the cases I sampled the input from the PSNI does not routinely come at Detective Superintendent level; the internal channel within the PPS would appear to be-

1. “directing officer” (ie caseworker)
2. Assistant Director (who will add a covering note in marginal cases or cases with an unusual element)
3. The DPP (via the Deputy DPP).

- 19.3 On the basis of an analysis of the sampled cases there are many indications that this system of scrutiny prior to the issuing of a NJT certificate is robust. For example –

- (a) the PSNI provide a full analysis addressing the correct tests in relation to the conditions in section 1 together with the intelligence;
- (b) the intelligence supports the PSNI assessment that one or more of the conditions is met;
- (c) the directing officer’s submission is a substantial and thorough document addressing all the conditions in section 1 with a commentary setting out the reasons he/she agrees or disagrees with the PSNI assessment;
- (d) if the case is marginal or there are unusual features the Assistant Director will attach a covering note to the submission;
- (e) the submission to the DPP is therefore subject to a good deal of scrutiny at both working and senior level before the submission is placed before him;
- (f) although it is not a statutory requirement (as it is under the CJA 2003) the DPP does, in practice, consider all juror protection measures before issuing a certificate;

(g) the PPS scrutinizes and challenges the initial view of the PSNI – further explanation is sometimes called for and, in one case, a meeting was held to discuss the PSNI assessment;

(h) in some cases the Director refuses to issue a NJT certificate despite the initial view of the PSNI;

(i) there are cases where one or more of the four conditions in section 1 is met but, on analysis, the DPP has taken the view that, nevertheless, he is not satisfied that there is a risk that the administration of justice would be impaired;

(j) both the PSNI and the PPS follow the internal PPS guidance on NJTs – in particular paragraphs 5 to 8 of that Guidance deals with cases where the defendant is an “associate” of a member of the proscribed organization. In particular, the guidance requires, where possible, that that member and the organization be identified and a strict interpretation is placed on the definition of “associate”.

(k) the DPP has confirmed that he will spend 30/45 minutes studying the submission before he takes a decision whether or not to grant a certificate.

19.4 The PPS have confirmed that there has never been a case where the DPP has failed to grant a certificate and, subsequently, with the benefit of hindsight, concluded that that was the wrong decision. Also it is also rare for there to be a case where the DPP has rejected the advice of his PPS colleagues on the issue or refusal of a certificate.

19.5 In the debate in the House of Commons on 5th July 2017 on the order to extend the NJT provisions of the JSA for another two years, Chloe Smith (Parliamentary Under-Secretary NIO) said that this process –

“is not about rushed decision making; due care and attention are applied”.

Although there are some concerns about the system as a whole (see paragraphs 22.2 to 22.24 below) and some limited scope for improvement (see paragraphs 23.2 to 23.3 below), the decision making under current arrangements in relation to the issuing of NJT certificates is very thorough and meets high professional standards. In particular, this level of scrutiny and its outcomes indicate that the test of “necessity” (see paragraph 20.2 below) is, in practical terms, properly met.

20. JUROR PROTECTION MEASURES

20.1 There are 3 main methods of protecting a jury where there is a risk of jury tampering –

(a) transferring the trial to another location;

(b) screening the jury from the public in court;

(c) sequestering the jury ie isolating the jury for the duration of the trial.

20.2 There has been some demand that the courts in Northern Ireland make more use of these methods of juror protection in order to reduce further the number of NJTs . In his response to the NIO’s consultation on NJTs the Chief Commissioner of the NIHRC quoted the UN Committee against Torture which recommended in 2013 that –

“The Commission..encourages the State party to continue to moving towards security normalisation in Northern Ireland and envisage alternative juror protection measures. In the light of it, it is disappointing the review does not appear to consider the development of alternative juror protection measures which may be put in place to avoid the necessity of the non- jury trial provisions”.

The Chief Commissioner noted that section 44 of the CJA 2003 makes provision for NJTs where the likelihood of jury tampering taking place would be so substantial “as to make it necessary in the interests of justice for the trial to be conducted without a jury”. He recommended that in reviewing the provisions of the JSA the NIO should consider inserting a similar necessity condition into the process. This, of course, would require primary legislation.

- 20.3 As has been noted (paragraph 19.3(f) above) the DPP routinely considers alternative juror protection measures even though he is not statutorily required to do so. Unfortunately, the particular nature of the risks to jurors described in Chapter 18 above means that these measures are unlikely to be very effective in Northern Ireland.
- 20.4 There is little judicial guidance in this area. In **R v Mackle** [2007] NICA 37 the Court of Appeal in Northern Ireland considered a case of evasion of duty on a substantial quantity of cigarettes. A member of the jury had reported to prosecution counsel that two partly masked men had come to his home and offered him money for information about the case. The jury was discharged. At the retrial an application was made under section 44 of the CJA 2003 for a NJT. Kerr LCJ said –

“Although a history of jury tampering does not give rise to the automatic conclusion that it will recur, it is clearly relevant to an assessment of whether it is likely to happen again. Here the determined nature of the approach made to the first juror, the blatant attempt at bribery and the fact that those involved were prepared to go to the juror’s home are deeply ominous of future interference with any jury empanelled to try this case. When one considers the failed attempt to tamper with the original juror together with the overall circumstances of the case and the nature of the offences that the applicants face, the conclusion that there is a real and present danger that tampering with the jury will take place is irresistible”.

The second part of the test under section 44 of the CJA 2003 requires the court to consider what steps might reasonably be taken to prevent jury tampering before deciding whether the likelihood of it occurring was so great that a non- jury trial should be ordered. Kerr LJ held that –

“Obviously, the feasibility of measures, the cost of providing them, the logistical difficulties that they may give rise to, and the anticipated duration of any necessary precautions are all relevant matters to be considered. But if the steps that might be taken are anticipated to have an adverse effect on the capacity of the jury to try the case may that be taken into account in assessing their reasonableness”.

He concluded that the requirement of reasonableness in this context went not only to the practicality of the measures but also the potential to compromise the jury’s fair and dispassionate disposal of the case.

- 20.5 In response to the defence argument that the ordering of a NJT in this case would lead to the ordering of a NJT in the vast majority of cases Kerr LJ concluded –

“..the precedent value of a decision in an individual case where a non-jury trial has been ordered will be very slight.”

The Court of Appeal held that the trial judge was correct to order that the trial should proceed without a jury. However, it is clear that each case will turn on its own unique circumstances.

- 20.6 This case illustrates just one example of jury tampering in Northern Ireland. It also illustrates the difficulty of putting in place effective juror protection measures in this jurisdiction. This is recognized in the internal PPS guidance which emphasizes the fact that some proscribed organizations have an ability to operate throughout the province which would make the transfer of the case to another part of Northern Ireland of little effect. In **R v Grew** [2008] NICC 6 Hart J observed that in one case being heard by a Belfast jury –

“although the cigarettes had been seized in the Coalisland area and some of the defendants were in Armagh nevertheless there were determined attempts to tamper with the jury”.

Moreover, in that case, Hart J made it clear that jury trials should, in accordance with normal practice, take place in the Crown Court division in which the offence was committed. The reasons for, exceptionally, transferring a case to another division would include –

- (a) the court is satisfied that the prosecution or defence will not receive a fair trial in the Crown Court division concerned;
- (b) there is inadequate courtroom accommodation to try the case in the division concerned;
- (c) to avoid an unacceptable delay in dealing with the case because of pressure of business in the division concerned.

In the **Grew** case the prosecution’s application for a transfer was based on –

- (a) the element of risk to witnesses giving evidence in Armagh;
- (b) the impact on police resources in the area by whatever steps were necessary to protect witnesses when they travel to and from the Armagh Courthouse.

The judge concluded that although there was an element of risk, the increased risk did not justify transferring the trial to another venue. He concluded that –

“In the absence of more specific evidence than that put forward by the police in the present case, and I have not overlooked what has been alleged about the background of some of the present accused, I am not satisfied that the prosecution have established that it would be appropriate to transfer this trial to another division outside the division of Armagh and South Down”.

- 20.7 Similarly, although the screening of the jury in court would be effective in terms of protecting the jury’s identity from members of the public it would not protect them from being identified by the defendant. In cases where the defendant is alleged to be a member of a proscribed organization jurors may feel intimidated by the very presence of the defendant. Moreover, some potential jurors who might be in the pool but not called on the day for jury service might recognize those who are and pass that information to the defendants and their supporters.

- 20.8 It has been recognized by the Court of Appeal in England in the case of **R v Twomey** [2009] EWCA Crim 1035 that a misguided perception is created in the minds of the jury by

the provision of high level protection. Similar consideration applies to sequestration which is a drastic step which may involve 24 hour police protection.

- 20.9 The relevance of these considerations is that, although the DPP routinely considers juror protection measures in forming his view on whether a NJT certificate should be granted, they are invariably considered inappropriate in Northern Ireland as an alternative to a NJT. However, that does not mean that they are not considered properly in every case as part of a robust and diligent process.

21. ANALYSIS OF SAMPLED CASES

- 21.1 My terms of reference require me to examine “other relevant indicators that could provide an insight into how the system is being used, for example, whether there are any noticeable trends in the type of defendants or indeed offences which, routinely receive NJT certificates”.
- 21.2 There are some trends which have emerged from the study of the sampled cases (see **Annex J**) but each case is considered individually following a detailed analysis. So there is no “routine” issuing of certificates in any category.
- 21.3 The sampled cases concerned alleged offences involving both republican and loyalist proscribed organizations; cases involving both the issuing of refusal of a NJT certificate; and cases involving a wide spectrum of offences including murder, explosives, riot, criminal property, drugs, affray, blackmail, false imprisonment, perverting the course of justice, hoax bombs, firearms and collecting information which might be used for terrorist purposes.
- 21.4 Of the 16 cases sampled, 9 resulted in a NJT certificate with the PPS agreeing with the PSNI analysis on the relevant condition(s). Of the remaining 7, 2 resulted in a NJT certificate but with the PPS being satisfied on a different analysis of the conditions being met. The remaining 5 resulted in a refusal to issue a certificate despite the initial PSNI analysis suggesting that one should be issued. This is not a cause for concern because as Girvan LJ pointed out in **R v Arthurs** the role of the police is to form an initial view based on their intelligence. The more rigorous analysis is to be done by the DPP who has to take the final decision taking into account all relevant factors.
- 21.5 In relation to the 9 cases where a NJT certificate was issued it is possible, tentatively, to discern some trends (although all cases are different and are decided on their individual merits). It would be wrong to draw inferences from such a limited sample and a larger sample will be analysed next year. However,
- (a) in relation to Condition 1 greater significance is given to intelligence about current membership of a proscribed organization than to intelligence which suggests that the individual was involved in paramilitary activity some years previously;
 - (b) it is more likely that a certificate is issued if the offence is one of extreme violence though this is not a criterion that PPS apply;
 - (c) if the defendant has previous convictions for violent offences it is more likely that a certificate will be granted but, again, this is not a criterion that the PPS apply;

(d) in the case of an historic case offence committed some time ago at the height of the Troubles, there was a greater likelihood of Condition 4 alone being satisfied because the defendant may no longer be associated with a proscribed organization;

(e) there were 2 cases where the DPP issued a certificate after disagreeing with the PSNI initial analysis. In one case the PSNI reviewed their initial analysis after it became clear that only one of the defendants was going to be tried. The PSNI remained of the view that Conditions 1 and 2 were met but the Director, in issuing the certificate, relied only on Condition 1 – he was not satisfied that the offence was committed on behalf of a proscribed organization. In the other case the issue was whether Condition 2 was met. Following a meeting with the PSNI and PPS it was agreed that the offence was not committed on behalf of a proscribed organization and reliance was placed by the DPP on Conditions 1 and 4 only.

21.6 There are 3 observations to make in relation to refusals to issue a certificate –

(a) where there are multiple defendants (eg in a public order/ riot case) one factor which militated against the issue of a certificate was that the majority of defendants were not associated with a proscribed organization and, in relation to the one defendant with such an association, there was only a remote chance that a juror would be aware of it;

(b) again, where the intelligence relating to such involvement was stale this too was a factor which weighed heavily against the issuing of a certificate;

(c) the second limb of the test in section 1 (namely that in addition to one of the conditions being met the DPP must be “satisfied that in view of this there is a risk that the administration of justice might be impaired if the trial were to be conducted by a jury”) is applied rigorously. In 2 of the sampled cases the certificate was not issued because although in one case Condition 1 was satisfied and in the other case conditions 1 and 4 were satisfied, nevertheless the DPP was not satisfied, taking account of all the circumstances, that there was a risk to the administration of justice if the case were to be tried by a jury.

21.7 Condition 3 was not met in any of the sampled cases. This condition is that an attempt has been made to prejudice the investigation or prosecution of the offence and that attempt had been made on behalf (or with the involvement or assistance) of a proscribed organization. The PPS Guidance confirms that it is rare that there is information that provides the basis for reliance on this Condition. This is largely explained by the fact that –

(a) evidence or intelligence that this has happened is rarely forthcoming; and

(b) where there has been a risk then since 1973 the trial has been conducted without a jury – either in the Diplock courts or under the JSA.

However, the PPS Guidance does refer to one recent case where the Condition was satisfied by the involvement of a proscribed organization in assisting the defendant to escape from lawful custody after he had been previously charged in the 1970s with the same offences.

21.8 Sometimes a Condition can be met by drawing an inference from the fact that another Condition has been met without there being any specific intelligence about the latter. This is recognized in the PPS Guidance. So-

“in the light of the information available in relation to Condition 1 and the nature of the offences being prosecuted, it may still be possible to be satisfied that Condition 2 is met. For example, if there is intelligence that D is a member of the New IRA and he is caught in possession of explosives there is likely to be a proper basis for the Director to be satisfied that the offence of possession of explosives was committed, by, or on behalf of, the new IRA”.

Again the Guidance states that, in relation to republican proscribed organizations –
“such actions directed against members of the security forces, and the associated possession of prohibited items, are connected to political hostility”
thus satisfying Condition 4.

22. CRITICISMS OF CURRENT ARRANGEMENTS FOR NJTs UNDER THE JSA

22.1 In the past 10 years a number of criticisms have been made of the arrangements for NJTs under the JSA.

The arrangements are contrary to the ECHR and principles of fairness at common law

22.2 These arguments were addressed by the Court of Appeal in 2010 in the case of **Arthurs** (see paragraph 17.1 above). The applicant argued that the DPP’s decision to issue a certificate was “substantially flawed, procedurally unfair and contrary to Article 6 of the [ECHR]” because –

- (a) the determination of mode of trial was part of the determination of the criminal charge;
- (b) the DPP’s certificate had a bearing on the defendant’s reputation and thus engaged his civil rights under Article 6.

The Court of Appeal rejected those arguments (see paragraphs 17.2 and 17.3 above).

22.3. The applicant also argued that the DPP’s decision infringed the principles of common law fairness. This required the DPP to give the applicants an opportunity to have at least the gist of the case against them so that they could make representations. Girvan LJ rejected this argument in the following terms –

*“The argument that the Director’s decision must be quashed for procedural unfairness must be rejected. As **R v Shuker** [2004]NI 367 shows, it is not every decision making process which demands procedural fairness in the sense of requiring the decision maker to consult the party affected or to make him aware of the nature of the evidence being relied upon when reaching a decision adverse to him. The nature of the statutory conditions (suspicion and a risk to the interests of justice) involves matters of impression and evaluation and judgment on the part of the Director. A suspicion once formed on the basis of sensitive intelligence material usually of such a nature that it could not in the public interest be disclosed to the defendant will remain unless it can be wholly dispelled. The ipse dixit of the defendant denying any ground for suspicion is not going to dispel a suspicion properly formed on the basis of intelligence emanating from apparently reliable sources. The nature of the exercise to be carried out by the Director does not, as pointed out in **Re Shuker**, lend itself either to the full panoply of judicial review or the implication of a duty to seek or receive representations before the Director forms a suspicion. The Director had to act fairly*

in the sense of reaching a dispassionate decision based on some material which led him rationally to form a suspicion that one or more of the conditions was satisfied and that there was a risk that the administration of justice might be impaired if the trial were conducted by a jury. There is no evidence that the Director failed to approach his task in the correct manner”.

22.4 So the NJT system, as the jurisprudence currently stands, is not in breach of the ECHR or of fundamental principles of the common law.

The test in the JSA for a NJT is too low

22.5 Regardless of the legal position, it has been argued that the test is too low – the DPP only has to **suspect** that a condition is satisfied and that there is a **risk** that the administration of justice **might** be impaired if then trial were to be conducted before a jury. It must, inevitably, follow that a number of trials in Northern Ireland will have been held unnecessarily without a jury simply because the risk (which only has to be suspected) would not have materialised in that case. That is inevitable given the low threshold to be met for a NJT certificate under the JSA. However, the number of such cases would be very low (see paragraph 17.4 above). Moreover, as the then Attorney General said during the passage of the JSA through Parliament there are good reasons why the test has to be that low (see paragraph 18.3 above). The fact that there are a number of refusals of a certificate where one or more of the Conditions is satisfied indicates that the test, though low and subjective, is applied with some rigour.

The term “associate” in Condition 1 is too wide

22.6 During the passage of the JSA through Parliament some concern was expressed about the expression “associate” suggesting that it potentially went very wide. This concern is addressed in section 1(9) which contains a clear definition of that phrase. The only aspect of that definition which would not be a matter of clear fact is the term “friend”. I saw no evidence in the sampled cases that the term “associate” had caused any difficulties in practice. The PPS Guidance makes it clear that if reliance is placed on the defendant’s association with a member of a proscribed organization it will be important that that member – and his seniority in that organization – be identified. The Guidance also makes it clear that the term “friend” would not include a mere acquaintance.

The limited grounds of judicial review are unacceptable

22.7 During the passage of the JSA through Parliament Lord Lester expressed concern about what was then clause 7 of the Bill which contained a provision ousting judicial review of the DPP’s certificate–

“As regards the ouster clause, Clause 7 purports to exclude the jurisdiction of the ordinary courts to entertain challenges to the DPP’s decision to issue a certificate, including challenges to the legality of the decision. Although clause 7 has been revised and is now subject to the Human Rights Act, in our view it still conflicts with section 7 of the Human Rights Act by which proceedings can be brought claiming that a public authority has infringed a convention right. The ouster clause raises the significant issue of the restriction of the right of access to courts recognized as fundamental both to the common law and in the scheme of the convention by the European Court of Human Rights.

The Bill as it stands would permit a legal challenge only on grounds of bad faith or dishonesty or for what are called “other exceptional circumstances” and not because the DPP had no jurisdiction at all to deal with the matter or had committed a serious error of law. For example, if the DPP issued a certificate on the basis that someone belonged to an organization which had in fact never been proscribed it would be impossible to challenge the decision in court.”

22.8 In response the Government said that it was only placing on a statutory basis the current case law established by the **Shuker** case. Lord Lester disputed this –

*“...Clause 7(2) goes far beyond what the High Court actually held in **Shuker** which ruled out judicial review of such decisions on grounds of procedural unfairness and explicitly left open the possibility of judicial review being available on other grounds in circumstances of future casesThe advice in clause 7(2) shows a lack of confidence by the Government in the judges of Northern Ireland who can well be left to deal with the problem on a case-by-case analysis”.*

22.9 On Third Reading in the Lords the Bill was amended to permit applications for judicial review on grounds not only of dishonesty or bad faith but also on grounds of “other exceptional circumstances (including in particular exceptional circumstances relating to lack of jurisdiction or error of law)”. This is a rather esoteric issue. The exceptions to this ouster provision in section 7 are so wide that it is not clear in what circumstances a legitimate judicial review could be prevented in reliance on it. On the other hand, there is no evidence that, in practice, the DPP’s decisions on NJTs are regularly challenged by way of judicial review. It is also clear from the Court of Appeal’s judgment in **Arthur** (see paragraph 22.3 above) that judges would be reluctant to intervene in that decision making process particularly as Article 6 is not engaged.

The DPP has an institutionally vested interest in securing a conviction

22.10 Liberty in its response to the consultation on the renewal of these provisions stated that the system put in place under the JSA jeopardizes the individual’s right to a fair hearing by allowing the DPP, who comes with an institutionally vested interest in securing a conviction, to oust the proper scrutiny of a jury on the basis of broadly defined circumstances and with a low evidential threshold of his personal suspicion.

22.11 I do not accept that characterisation of the DPP’s role. The DPP is independent and the PPS conducts its business strictly in accordance with the Code for Prosecutors which repays careful study. I found no evidence in the papers which I sampled of any tendency to opt for NJTs other than in strict accordance with the conditions set out section 1. It is also worth noting, in this context, that the acquittal rates for trials with and without a jury are broadly similar – see paragraph 17.6 above. Indeed the acquittal rate in NJTs exceeded that in jury trials in 2013 and 2015 (when the acquittal rate in NJTs was well over twice the rate in jury trials). The provisional acquittal rate for 2017 (up to May) is 66.7% (compared with 26.01% in jury trials).

The higher test for NJTs in CJA 2003 should apply in all cases (rather than JSA)

22.12 The PPS have confirmed that if they had to rely exclusively on the higher test in the CJA 2003 then they would be unable to meet that standard other than in a very exceptional case. Indeed in England and Wales there have only been two cases of NJTs under the CJA

2003. The standard is very high and requires **evidence** of a real and present danger that jury tampering **would** take place. It is clear from the examples given in section 44(3) of the CJA 2003 that section 44 contemplates very limited circumstances. The examples given there are where –

(a) there is a retrial and the jury in the previous trial had been discharged because of jury tampering;

(b) jury tampering has taken place in previous criminal proceedings involving the defendant or any co-defendants;

(c) there has been intimidation etc of any potential witness.

22.13 Clearly, in Northern Ireland, if those conditions are met, the NJT should proceed under the CJA 2003. However, that test does not specifically address the social and sectarian situation in Northern Ireland and for the reasons set out in paragraph 18.2 above it would be premature and irresponsible, in current circumstances, for section 44 of the CJA 2003 to be the sole basis for a NJT in Northern Ireland.

The arrangements for issuing a NJT certificate under the JSA are opaque

22.14 This is a concern which is well founded. It reflects the views of some of the individuals I consulted. When a certificate is issued it must, by virtue of section 2, be lodged with the court before the arraignment of the defendant or of any person committed for trial on indictment with the defendant. The certificate which is lodged contains no specific information other than to recite the wording of the JSA requirements and identify the condition (s) relied upon. The certificate reads as follows –

“I, Barra McGrory QC, Barrister-at-law, Director of Public Prosecutions for Northern Ireland, in pursuance of section 1 of the Justice and Security (Northern Ireland) Act 2007 do hereby certify that the trial on indictment of

Name of Defendant

Address of Defendant

for any alleged offence in the attached statement of complaint, or in an indictment founded on the evidence contained in the committal papers relating thereto is to be conducted without a jury. I so certify because I suspect that Condition[s][] in section 1 of the said Act are separately and individually met and I am satisfied that, in view of this, there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.

Signed

Dated this day of 2017”.

22.15 So the defendant is only told that one or more of the conditions has been met. No further details are given. If the intelligence is wrong or the defendant considers that a condition is not met in his case, he has no redress. He cannot make representations. There is no appeal. The only remedy would be an application for judicial review.

23. RECOMMENDATIONS

- 23.1 My terms of reference require me to consider whether any improvements could be made to the existing processes. The existing arrangements work well given the prevailing situation in Northern Ireland. The PSNI, and, in particular, the PPS perform their important roles thoroughly and to a high professional standard. Indeed, I did not detect any great concern in the legal community in Northern Ireland about NJTs other than a general concern about “lack of transparency”.
- 23.2 To address that particular concern, the following minor improvements could be made to existing arrangements without any amendment to the JSA –
- (a) It would be helpful if the PSNI’s letter to the PPS setting out their initial view could be more prompt. In the sampled cases it often took several months for the PSNI to respond to the PPS request. This has, in the past, caused some difficulty for the PPS.
 - (b) The PSNI and PPS should meet annually to discuss the handling of these cases. The NIO and PSNI hold such meetings in connection with authorisations (see paragraph 10.3 above) and this has been helpful in establishing shared learning and a more consistent approach to issues (in particular when there is staff turnover).
 - (c) The NJT certificate which the DPP signs should reflect the fact that juror protection measures have been considered (even though there is no statutory requirement to do so). This has been part of the process for some time and it would be helpful for that to be formally recorded.
 - (d) The PPS maintain a central register of NJT certificates together with the PSNI analysis, the PPS submission to the Director and any associated correspondence. It is important that that register records the PSNI file reference number so that the PSNI can, in future, readily retrieve the relevant files to be sampled by the Independent Reviewer. This year 16 cases were sampled for analysis in the PPS but, in the time available, the PSNI could only retrieve 11 of the relevant files because their reference number was not on the PPS file. Consequently, the assessment of whether there was sufficient intelligence to justify the case for a NJT was based on an incomplete sample.
 - (e) If there is evidence of jury tampering, bearing in mind the examples set out in section 44(6) of the CJA 2003, then, if he considers that a NJT may be in the interests of justice, the DPP should consider proceeding under that Act before considering the issue of a certificate under the JSA.
 - (f) Juror protection measures are less likely to be effective in Northern Ireland than in England and Wales. Nevertheless, it should not be an assumption in each case that they will never be appropriate as an alternative to a NJT. The PSNI and PPS should continue to consider this option in every case. It would be helpful if the PSNI, after consultation with the PPS, could place in the public domain a detailed document explaining the difficulties associated with this option and the reasons why, in the prevailing circumstances, juror protection measures do not provide an easy alternative to NJTs in Northern Ireland. This would inform the legal profession, the wider public and, in due course, Parliament of some of the challenges and concerns involved.
- 23.3 Given that the main concern about NJTs is the inevitable lack of transparency caused by the existing arrangements there is one other adjustment which the PPS should consider.

The PPS could, once they have formed a view that a NJT certificate should be issued but before the submission goes to the DPP, notify the defendant that they are minded to issue a certificate, specifying the condition or conditions and any other material which is in the public domain, and invite representations within a specified period. The advantages giving such an indication would be that it would –

(i) help address the issue of lack of transparency which is the main concern amongst those in the legal profession;

(ii) inform the final decision of the DPP particularly if the defence make coherent and plausible representations that, for example, the conditions relied on are not met;

(iii) reduce the risk of judicial review. Clearly, if the defendant makes no representations or does not oppose a NJT at this stage when it had an opportunity to do so, it would be a significant factor which a judge would take into account before allowing a subsequent judicial review challenge;

(iv) avoid the situation which arose in the **Arthurs** case where the judicial review was sought after arraignment. As Girvan LJ said in that case –

“The application to challenge the decisions was presented after the applicants were arraigned. This was notwithstanding the fact that on the applicants’ case they were aware for some days before arraignment that a certificate under section 1 was to be issued and, in any event, they were aware of it before the actual arraignment took place. If a challenge is made after arraignment a successful challenge to the certificate deprives the Director of the opportunity to review his decision or to take account of fresh material. ... if the decision is quashed, the Director could not issue a fresh section 1 certificate even if it would be in the interests of justice that it should issue”.

(v) provide information (which is totally lacking at present) about whether, and if so to what extent, defendants object to being tried without a jury under the current arrangements.

The arguments against giving such an indication to the defendant would be –

(i) there is no statutory requirement to do this (but neither is there a requirement to consider juror protection measures under the JSA but it is done as a matter of good practice);

(ii) it would threaten sensitive intelligence – in many cases it should be possible, without disclosing sensitive intelligence, to give a fuller explanation rather than rely on a simple reference to a Condition specified in the NJT certificate. A fuller explanation (without jeopardizing intelligence) would be required in any event if there was a challenge by way of judicial review. Moreover, as the PPS guidance makes clear, it can sometimes be inferred from the nature of the offence that a Condition has been met – in which case non-sensitive material could be deployed at this stage to explain the need for a NJT certificate. In some cases it might be difficult to say very much by way of further explanation but that that is not a good reason for not saying more when that is possible;

(iii) it would delay proceedings – this would not be the case if the defence were given a strict time limit (eg 14 days) and the PSNI initial response was prompt (see paragraph 23(2)(a) above);

(iv) it would encourage judicial review – this is an argument which is routinely deployed against all moves towards greater transparency. However, it might, for the reasons given, equally reduce the risk of judicial review.

(v) it would complicate the process – but the issuing of a NJT certificate is an administrative process and inviting representations from the defence at this preliminary stage (when Article 6 is not in play) should not create any greater legal risks than those already present in the system;

(vi) it would create an additional burden on the PSNI and PPS to separate out sensitive and non-sensitive material.

This is not straightforward and it is clear from the Court of Appeal's judgment in **Arthurs** (paragraph 22.3 above) that there is no legal requirement to do this. It is understandable that both the PSNI and PPS will have reservations. However, this would appear to be the best method of securing greater transparency under existing arrangements.

23.4 If these recommendations were to be accepted then when the renewal of these provisions is considered by Parliament in 2019 a clearer picture might emerge about the basis for the continuation of, and the possible legislative alternatives to, the current arrangements.

ANNEX A - ACRONYMS

ACC- Assistant Chief Constable

BWV – body worn video

CARA – Crumlin Ardoyne Residents Association

CAJ – Committee for the Administration of Justice

CJA 2003 – the Criminal Justice Act 2003

CJINI – Criminal Justice Inspectorate (Northern Ireland)

CNR – Catholic/Republican/Nationalist

Code of Practice – Code of Practice issued under section 34

DoJ – Department of Justice

DR – dissident republican

EOD – explosive ordnance disposal

ECHR – European Convention on Human Rights

GARC – Greater Ardoyne Residents Association

JSA – Justice and Security (Northern Ireland) Act 2007

MI5 – Security Service

MLA – Member of the Legislative Assembly

MoD – Ministry of Defence

MoJ – Minister of Justice

NGO – Non Governmental Organization

NIO – Northern Ireland Office

NJT – Non Jury Trial

Ombudsman – Police Ombudsman for Northern Ireland

PACE – Police and Criminal Evidence (Northern Ireland) Order 1989

POFA – Protection of Freedoms Act 2012

PPS – Public Prosecution Service

PSNI – Police Service of Northern Ireland

PUL – Protestant/ Unionist/Loyalist

PUMA – Providing Users Mobile Access

TACT 2000 – Terrorism Act 2000

TSG – Tactical Support Group

ANNEX B – ORGANIZATIONS AND INDIVIDUALS CONSULTED (OR SUBMITTING EVIDENCE)

In relation to PART 1

Alliance Party

Alyson Kilpatrick

British/Irish Intergovernmental Secretariat

Charter NI

Crumlin Ardoyne Residents Association (CARA)

Church Leaders

Ciaran Kearney

Coiste na n-Iarchimi (COISTE)

Committee for the Administration of Justice (CAJ)

Criminal Justice Inspectorate Northern Ireland (CJINI)

Crown Solicitor

Department of Justice officials

Democratic Unionist Party (DUP)

Father Gary Donegan

Garth Stinson (College of Policing)

HQ (38) Irish Brigade

Independent Reporting Commission

Jim Roddy MBE (community representative Derry)

Max Hill QC (Independent Reviewer of Terrorist Legislation)

MI5

Northern Ireland Human Rights Commission

Northern Ireland Office officials

Northern Ireland Policing Board (independent members)

Northern Ireland Youth Forum

Orange Order

Parades Commission Northern Ireland

Police Federation for Northern Ireland

Police Ombudsman for Northern Ireland
Police Superintendents Association
Professor Jonny Byrne University of Ulster
Professor John Topping Queen's University
Professor Richard English, Queen's University
Progressive Unionist Party (PUP)
PSNI officers
Release (London)
Social Democratic and Labour Party (SDLP)
Sinn Fein
STOPWATCH (London)
Ulster Unionist Party (UUP)
Ulster Political Research Group (UPRG) (West and South Belfast)

In relation to Part 2

Chairman of the Bar (NI)
Chairman of the Criminal Bar (NI)
Director of Public Prosecutions
Lawyers in the Public Prosecution Service (PPS)
Max Hill QC
Members of the Judiciary
MI5
Northern Ireland Human Rights Commission
PSNI

*Local solicitors were invited to submit observations but none did so.

Annex C: Summary of Police Powers in the Justice and Security (Northern Ireland) Act 2007 (2007 Act) and Terrorism Act 2000 (TACT 2000)

Part 1

This summary sets out the powers in the **Justice and Security (Northern Ireland) Act 2007 (2007 Act)** which are used by the PSNI and which are covered in the Code of Practice. 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 the 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 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 must reasonably suspect that munitions or wireless apparatus are in the dwelling (ii) he 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 reasonably suspects that the safety of any person may be endangered by the use of munitions or wireless apparatus. He 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>

Section	Power	Overview	Records
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 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>

This summary sets out the powers in the **Terrorism Act 2000 (TACT 2000)** which are used by the PSNI and which are covered in the Code of Practice. For a full description of the powers reference should be made to the relevant section of TACT 2000. More details on how the powers should be exercised are set out at the relevant sections of the Code.

Section	Power	Overview	Records
43	<p>A constable may stop and search a person whom he reasonably suspects to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.</p>	<p>A "terrorist" is defined in section 40 as a person who has committed one of a number of specified terrorist offences or a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism. And the definition of "terrorism" is found in section 1 of TACT 2000.</p> <p>A constable may seize and retain anything which he discovers in the course of a search of a person under subsection (1) or (2) and which he reasonably suspects may constitute evidence that the person is a terrorist.</p>	<p>A written record of each stop and search must be made, preferably at the time.</p> <p>The officer should provide the written record to the person searched or, if this is wholly impracticable, provide the person with a unique reference number stating how the full record of the search can be accessed. The person may request a copy of the record within 12 months of the search.</p> <p>The record is to set out all the information listed at paragraph 10.4 of the Code, including the person's name, the date, time and place of the search, the purpose, grounds and outcome of the search and the officer's warrant or other identification number and the police station to which the officer is attached.</p>
43 (2)	<p>A constable may search a person arrested under section 41 of TACT 2000 to discover whether he has in their possession anything which may constitute evidence that he is a terrorist.</p>	<p>A constable may seize and retain anything which he discovers in the course of a search of a person under subsection (1) or (2) and which he reasonably suspects may constitute evidence that the person is a terrorist.</p>	<p>A written record of each stop and search must be made, preferably at the time.</p> <p>The officer should provide the written record to the person searched or, if this is wholly impracticable, provide the person with a unique reference number stating how the full record of the search can be accessed. The person may request a copy of the record within 12 months of the search.</p> <p>The record is to set out all the information listed at paragraph 10.4 of the Code, including the person's name, the date, time and place of the search, the purpose, grounds and outcome of the search and the officer's warrant or other identification number and the police station to which the officer is attached.</p>

Section	Power	Overview	Records
43(4B)(a)	<p>When stopping a vehicle to exercise the power to stop a person under section 43(1), a constable may search the vehicle and anything in or on it to discover whether there is anything which may constitute evidence that the person concerned is a terrorist.</p>	<p>In exercising the power to stop a person a constable reasonably suspects to be a terrorist, he may stop a vehicle in order to do so (section 116(2) of TACT 2000). The power in section 43(4B)(a) allows the constable to search that vehicle in addition to the suspected person. The constable may seize and retain anything which he discovers in the course of such a search, and reasonably suspects may constitute evidence that the person is a terrorist.</p> <p>Nothing in subsection (4B) confers a power to search any person but the power to search in that subsection is in addition to the power in subsection (1) to search a person whom the constable reasonably suspects to be a terrorist.</p> <p>In other words this power does not allow a constable to search any person who is in the vehicle other than the person(s) whom the constable reasonably suspects to be a terrorist.</p> <p>Where the search takes place in public, there is no power for a constable to require the person to remove any clothing other than their headgear, outer coat, jacket and gloves. The person or vehicle may be detained only for as long as is reasonably required for the search to be carried out. The search should be at or near the place where the person is stopped. A constable may, if necessary, use reasonable force to exercise these powers.</p>	<p>A written record of each stop and search must be made, preferably at the time.</p> <p>The officer should provide the written record to the person searched or, if this is wholly impracticable, provide the person with a unique reference number stating how the full record of the search can be accessed. The person may request a copy of the record within 12 months of the search.</p> <p>The record is to set out all the information listed at paragraph 10.4 of the Code, including the person's name, the date, time and place of the search, the purpose, grounds and outcome of the search and the officer's warrant or other identification number and the police station to which the officer is attached.</p>

Section	Power	Overview	Records
43A	<p>A constable may, if he reasonably suspects that a vehicle is being used for the purposes of terrorism, stop and search (a) the vehicle, (b) the driver of the vehicle, (c) a passenger in the vehicle, (d) anything in or on the vehicle or carried by the driver or a passenger to discover whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism.</p>	<p>The definition of "terrorism" is found in section 1 of TACT 2000.</p> <p>A constable may seize and retain anything which he discovers in the course of a search under this section, and reasonably suspects may constitute evidence that the vehicle is being used for the purposes of terrorism.</p> <p>A constable may, if necessary, use reasonable force to exercise this power.</p>	<p>A written record of each stop and search must be made, preferably at the time.</p> <p>The officer should provide the written record to the person searched or, if this is wholly impracticable, provide the person with a unique reference number stating how the full record of the search can be accessed. The person may request a copy of the record within 12 months of the search.</p> <p>After searching an unattended vehicle, an officer should leave a notice on it recoding the fact it has been searched and how a copy of the record may be obtained.</p> <p>The record is to set out all the information listed at paragraph 10.4 of the Code, including the person's name, the registration number of the vehicle, the date, time and place of the search, the purpose, grounds and outcome of the search and the officer's warrant or other identification number and the police station to which the officer is attached.</p>

Section	Power	Overview	Records
47A	<p>A constable may stop and search a person or a vehicle in a specified area or place for evidence that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism, or evidence that the vehicle is being used for the purposes of terrorism. The specified area or place must be specified in an authorisation made by a senior police officer and where necessary confirmed by the Secretary of State in accordance with section 47A of, and Schedule 6B, to the Terrorism Act 2000.</p>	<p>A senior officer (an assistant chief constable or above) may give an authorisation under section 47A(1) in relation to a specified area or place if that officer (a) reasonably suspects that an act of terrorism will take place; and (b) reasonably considers that the authorisation is necessary to prevent such an act and that the specified area or place and the duration of the authorisation are no greater than necessary to prevent such an act.</p> <p>The authorisation may be given for a maximum period of 14 days, but it will cease to have effect after 48 hours unless the Secretary of State confirms it within that period. The Secretary of State may also restrict the area or duration of the authorisation or cancel it altogether.</p> <p>Whilst and where an authorisation is in place, a constable in uniform may stop and search persons or vehicles for the purpose of discovering whether there is evidence that the vehicle is being used for the purposes of terrorism or that the person is or has been involved in terrorism - whether or not the officer reasonably suspects that there is such evidence.</p> <p>A search may be of a vehicle, the driver, a passenger, anything in or on the vehicle or carried by the driver or passenger, a pedestrian or anything carried by the pedestrian.</p> <p>Where the search takes place in public, there is no power for a constable to require the person to remove any clothing other than their headgear, footwear, outer coat, jacket and gloves. The person or vehicle may be detained only for as long as is reasonably required for the search to be carried out. The search should be at or near the place where the person is stopped. A constable may, if necessary, use reasonable force to exercise these powers.</p>	<p>A written record of each stop and search must be made, preferably at the time.</p> <p>The officer should provide the written record to the person searched or, if this is wholly impracticable, provide the person with a unique reference number stating how the full record of the search can be accessed. The person may request a copy of the record within 12 months of the search.</p> <p>The record is to set out all the information listed at paragraph 10.4 of the Code, including the person's name, the date, time and place of the search, the fact that an authorisation is in place, the purpose and outcome of the search and the officer's warrant or other identification number and the police station to which the officer is attached.</p>

ANNEX D – STATEMENTS BY THE SECRETARY OF STATE

NORTHERN IRELAND OFFICE

Northern Ireland Security Situation - December 2016

The Secretary of State for Northern Ireland (James Brokenshire): This is the tenth statement on the security situation in Northern Ireland and my first statement to Parliament as Secretary of State for Northern Ireland. It covers the threat from Northern Ireland Related Terrorism, rather than from international terrorism, which members will be aware is the responsibility of my Rt Hon Friend the Home Secretary, who updates the House separately.

In the six months since my predecessor's last statement, the same small number of dissident republican terrorist groupings have continued their campaign of violence. Their support remains limited, despite their attempts to seek legitimacy in a wider society which continues to reject their use of violence. Dissident republican terrorists reject the peace process and the progress and benefits which it has brought to Northern Ireland.

The terrorist threat level in Northern Ireland from Northern Ireland Related Terrorism remains SEVERE (an attack is highly likely). Most people are not affected by this threat, but where terrorism, paramilitary style attacks and community attacks endure, so too will our efforts to tackle them. There will be no let-up in our efforts to ensure that terrorism never succeeds.

In Northern Ireland, these terrorists have targeted the brave people who serve the community day in, day out, including the police, prison officers and the military. Dissident republicans are relatively small, disparate and fractional groupings, but they are also determined and have lethal intent. The last statement to this House highlighted the tragic death of prison officer Adrian Ismay, who was attacked and killed by dissident republicans. These attacks often also have potential to injure members of the public who live and work alongside the intended victims. There have been three further attempted attacks on security personnel since then in which, thankfully, no one was seriously injured.

Our strategic response

PSNI and MI5 are unstinting in their work to counter the threat of violence. Numerous dissident republican attacks have been prevented, often through vital support provided by members of the community. Since my

predecessor last reported, PSNI has recovered a large amount of terrorist materiel in Northern Ireland including firearms, high explosives, chemicals and a range of improvised explosive devices. Continued close working with security partners in Ireland has resulted in further significant disruptions and I pay tribute to An Garda Síochána who have diligently pursued terrorists in Ireland with impressive effect. We are all safer for their efforts and because of the strong cross-border working relationship that exists on all security matters.

Similar joint working between PSNI and police in Great Britain led to the arrest and charge of an individual, living in GB, with offences connected to dissident republican terrorism. This enabled the recovery of a significant amount of terrorist materiel in England linked to Northern Ireland Related Terrorism. Legal proceedings are now underway. So far in Northern Ireland this year, there have been 103 arrests, 17 individuals charged under the Terrorism Act and 5 recent convictions linked to terrorist activity. There have been 4 national security attacks in comparison to 16 attacks in 2015 and 40 in 2010. Although there has been a reduction in the overall number of national security incidents so far this year, terrorist attack planning continues with lethal intent and capability as the murder of Adrian Ismay underlines. Vigilance in the face of this continuing threat remains essential.

This Government's commitment to tackling Northern Ireland Related Terrorism remains a high priority. This is supported through the provision of £160m in this Parliament, of Additional Security Funding to the Police Service of Northern Ireland to tackle the SEVERE and enduring threat. On top of this, cross-government spending on counter-terrorism will increase by 30% in real terms over this Parliament.

GB Threat Level

The threat level to Great Britain from Northern Ireland-related terrorism was raised in May to SUBSTANTIAL (an attack is a strong possibility). Although dissident republicans are overwhelmingly focused on carrying out attacks in Northern Ireland, there remains a need to be alert, aware and vigilant.

Paramilitary Activity

Paramilitary activity continues to undermine communities in Northern Ireland. Both republican and loyalist paramilitary organisations carry out violent criminal attacks against people in their own communities. So far this year there have been 6 paramilitary related deaths, 17 casualties of paramilitary style shootings and 57 casualties of paramilitary style assaults. These acts are cowardly, unjustified and damage communities. It is this Government's clear view that paramilitary activity was never justified in the past and cannot be justified today.

Tackling paramilitary activity

This Government is strongly supporting efforts to tackle paramilitarism and organised crime in Northern Ireland. PSNI invests significant resources into both the prevention and investigation of paramilitary activity and we have pledged £25m of funding through the Fresh Start Agreement to help ensure that the relevant agencies are appropriately resourced to fulfil that commitment. Tackling paramilitary activity is an important step in terms of delivering Fresh Start Agreement commitments and provides an opportunity to make a real difference to people's lives.

The NI Executive published an action plan on tackling paramilitary activity, criminality and organised crime in July 2016. This follows the Paramilitary Panel's recommendations which provide for a strategic approach to the disbandment of paramilitary groups in Northern Ireland, including improving criminal justice outcomes in terrorist cases. The Government is working closely with the Northern Ireland Executive to promote progress towards ending paramilitary activity through a range of measures and securing faster and more effective outcomes in terrorism cases.

A Joint Agency Task Force, established under the Fresh Start Agreement to enhance law enforcement co-operation, aimed at tackling organised crime and criminality including that linked to paramilitarism, brings together the expertise of law enforcement agencies involved in tackling organised crime gangs who seek to exploit the border between Northern Ireland and Ireland. UK and Irish Governments' Ministers have recently held positive talks to discuss co-operation between the An Garda Síochána and the PSNI in relation to the progress made by the Joint Agency Task Force.

The Independent Reporting Commission will be charged with reporting on progress towards ending paramilitary activity, including on implementation of measures taken by the UK Government, the Northern Ireland Executive and the Irish Government. The Treaty between the UK Government and the Irish Government, formally establishing the IRC, was signed on 13 September 2016. We aim to have the IRC established by early 2017.

Conclusion

The SEVERE level of threat from violent dissident republicans remains. Good progress has been made but there are still those who wish to attack police, prison and military officers, and some of Northern Ireland's communities live under the constant threat of paramilitarism. Through the excellent work of PSNI, MI5 and security partners including An Garda Síochána, we will continue to bring those who would damage our society to justice, and protect our infrastructure and people from harm. I would like to thank them for their service to the people of Northern Ireland. There never has been, and there never will be any place for

terrorism or paramilitary activity in Northern Ireland. We must all play our part in ensuring that Northern Ireland continues to flourish, free of any such pernicious activity.

NORTHERN IRELAND OFFICE

Northern Ireland Security Situation - October 2017

The Secretary of State for Northern Ireland (James Brokenshire): This is the eleventh written statement on the security situation in Northern Ireland since the Independent Monitoring Commission concluded its work in July 2011. It covers the threat from Northern Ireland Related Terrorism, rather than from international terrorism, which members will be aware is the responsibility of my Rt Hon Friend the Home Secretary, who updates the House separately.

In the ten months since my last statement, a small number of dissident republican terrorist groupings have continued their campaign of violence. They have planned attacks to murder people who work on a daily basis to serve the public. The vast majority of people in Northern Ireland have consistently demonstrated, through the democratic process, their desire for peace. They reject these groups and want a future free from violence. They recognise and value the increase in foreign direct investment, the enhanced job opportunities and the reduction in the number of victims of terror that has come about as a result of the peace process. Despite this overwhelming support for peace, dissident republican terrorists continue in their pursuit of violence.

The threat from Northern Ireland Related Terrorism in Northern Ireland remains SEVERE, which means an attack is highly likely. Dissident republican terrorist groups have continued to attack officers from the Police Service of Northern Ireland (PSNI), prison officers and members of the armed forces. There have been four attacks so far this year. In one sickening attack a police officer was shot at a busy petrol station in Belfast and sustained life changing injuries. These attacks, endanger the public and harm communities. In Great Britain, the threat from Northern Ireland-related terrorism is SUBSTANTIAL (an attack is a strong possibility).

Violent dissident republican terrorist groupings are fluid and they change regularly for a number of reasons. Firstly, the investigative effort of PSNI and MI5 has disrupted the activity of people and groupings who want to commit acts of terror in our community. Secondly, there is a desire for power amongst the individuals involved and this leads to fallouts and fractious relationships. There will be no let-up in our efforts to pursue these small groups.

Our strategic response

As our Northern Ireland manifesto at the General Election made clear, for this Government there is no greater responsibility than the safety and security of the people of Northern Ireland and the United Kingdom as a whole. To this end we are providing £160 million of additional ring-fenced funding to support the PSNI's work to tackle the SEVERE threat from terrorism during the current spending round, £25 million to tackle paramilitary activity; and a 30 per cent real term increase in cross-government spending on counter-terrorism.

MI5, which this month marks ten years since it assumed responsibility from PSNI for national security intelligence work in Northern Ireland continues to work hand in hand with PSNI, An Garda Síochána and other security partners in this task. Several dissident republican terrorist attacks have been prevented this year and PSNI have recovered a large amount of terrorist material - firearms, explosives and a range of improvised explosive devices - which has undoubtedly helped to keep communities safe.

In July, we saw the sentencing of Ciaran Maxwell, to 23 years in prison (the last 5 of which are to be served on license), for producing bombs and other munitions in Great Britain and Northern Ireland which were destined for use by dissident republican terrorist groups in Northern Ireland. I pay tribute to the police and other agencies in successfully bringing this case before the courts. This has undoubtedly saved lives and this significant jail sentence is an indication of the harm he posed.

As of 30 September 2017, in Northern Ireland, there have been 121 arrests and 6 individuals charged under the Terrorism Act this year. There have been four national security attacks, the same as the total number in 2016. This compares to a total of 16 attacks in 2015 and 40 in 2010. Although there has been a reduction in the number of national security incidents in recent years, terrorist attack planning continues with lethal intent and capability. Vigilance in the face of this continuing threat remains essential.

Tackling Paramilitary Activity

Paramilitary activity by both republican and loyalist paramilitary organisations, continues to be a blight on the communities in which they operate. So far this year there have been 2 paramilitary related deaths, 19 casualties of paramilitary style shootings and 57 casualties of paramilitary style assaults. Paramilitary activity was never justified in the past and cannot be justified today. These people target the most vulnerable members of their communities. The stark reality is that they are not helping but instead exerting control and fear over them. The perpetrators are criminals who use the cloak of paramilitary activity to line their own pockets and impoverish communities.

This Government is strongly supporting ongoing efforts to tackle the scourge of paramilitarism and organised crime in Northern Ireland. Through the Fresh Start Agreement, of November 2015 we are providing £25m over five years to support a Northern Ireland Executive programme of activity. This resource is being matched by the Executive, giving a total of £50 million over five years 2016-2021. We are working closely with Executive Departments and its statutory partners to deliver commitments set out in the Executive's action plan on tackling paramilitary activity, criminality and organised crime, to rid society of all forms of paramilitary activity and groups. Progress on the implementation of the Executive Action Plan on tackling paramilitary activity, criminality and organised crime will be monitored by the Independent Reporting Commission (IRC), which was established under the Fresh Start Agreement and legally constituted in August. The IRC's overarching objective is to promote progress towards ending paramilitary activity, support long term peace and stability and enable stable and inclusive devolved Government in Northern Ireland.

Good progress has been made during the last year. Projects and interventions have been developed to provide mentoring support for young men; to promote lawfulness among young people; and to enable more women to become involved in community development work. An Indictable Cases Process was implemented from May 2017 with the aim of speeding up the justice system in certain serious cases often linked to paramilitary groups. In addition to this, the PSNI has made significant progress with regard to the number of arrests and seizures from those involved in organised crime linked to paramilitary groups. It is now working with the National Crime Agency and HM Revenue & Customs through a co-located, dedicated Paramilitary Crime Taskforce.

As of 26 September 2017, investigations had resulted in just under 100 arrests and 200 searches. 66 people had been charged or reported to the Public Prosecution Service. Around £450,000 worth of criminal assets were seized or restrained including over £157,000 in cash. Drugs with an estimated street value of around £230,000, guns, ammunition and pipe bombs and other goods including a range rover and a number of mobile food stalls were all seized.

Conclusion

Significant progress has been made, but the SEVERE threat from violent dissident republican terrorist groups remains and we must be vigilant to this. There are still those who wish to murder public servants and commit acts of terror. Many people still live in fear of paramilitaries. Through the excellent work of PSNI, MI5 and security partners including An Garda Síochána, we will continue to bring those who seek to cause harm in our society to justice. I would like to thank everyone who works to protect the public for their ongoing service. There never has been, and there never will be any place for terrorism or paramilitary activity in Northern Ireland. We all must play our part in helping to rid Northern Ireland of this blight on our society, so that we can continue to build a brighter, more prosperous future and a stronger Northern Ireland for everyone.

Annex E: Statistics

Table 1: Police Service of Northern Ireland Summary Sheet

Justice and Security Act – 1st August 2016 - 31st July 2017

	Aug 16	Sep 16	Oct 16	Nov 16	Dec 16	Jan 17	Feb 17	Mar 17	Apr 17	May 17	Jun 17	Jul 17	Total
1. JSA Section 21 - Number of persons stopped and questioned	116	174	172	191	206	207	245	210	174	101	109	129	2,034
2. JSA Section 23 - Power of Entry	0	0	1	0	0	2	1	0	0	2	0	0	6
3. JSA Section 24 (Schedule 3) - Munitions and Transmitters stop and searches													
No. of persons stopped and searched, public place:	430	633	799	670	557	974	634	769	555	440	419	439	7,319
No. of persons stopped and searched, private place:	18	15	12	20	7	22	14	21	22	12	14	6	183
Persons stopped and searched - total	448	648	811	690	564	996	648	790	577	452	433	445	7,502
JSA Section 24 (Schedule 3) - Searches of premises:													
No. of premises searched - Dwellings:	24	4	12	9	7	12	12	23	15	6	13	12	149
No. of premises searched - Other:	9	1	0	4	1	0	1	2	1	1	0	0	20
No. of occasions items seized or retained	3	1	3	0	0	0	0	1	0	0	0	0	8
JSA Section 24 (Schedule 3) Use of Specialists:													
Use of specialists - No. of occasions 'other' persons accompanied police:	1	0	1	0	2	0	0	0	0	0	0	0	4
4. JSA Section 26 (Schedule 3) - Search of Vehicles													
(1) (a) Vehicles stopped and searched under section 24	1,012	1,681	1,69	1,886	1,94	2,769	2,027	1,847	1,298	1,053	1,117	976	19,312
(1) (b) Vehicles taken to another location for search	1	0	1	0	1	1	1	2	1	1	0	1	10

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

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

Table 2: Use of Powers by Police in Northern Ireland under the Justice and Security (Northern Ireland) Act 2007 between 1st August 2016 and 31st July 2017

TABLE 2A	
Section 21 – Stop and Question	
Year	Number of Persons Stopped and Questioned
2016	
August	116
September	174
October	172
November	191
December	206
2017	
January	207
February	245
March	210
April	174
May	101
June	109
July	129
August 16 - July 17	2,034

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

TABLE 2B	
Section 23 – Power of Entry	
Year	Number of Premises Entered
2016	
August	0
September	0
October	1
November	0
December	0
2017	
January	2
February	1
March	0
April	0
May	2
June	0
July	0
August 16 - July 17	6

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

TABLE 2C			
Section 24 (Schedule 3)			
Munitions and Transmitters Stops and Searches			
Year	Number of Persons Stopped and Searched by Police		
	Public	Private	Total
2016			
August	430	18	448
September	633	15	648
October	799	12	811
November	670	20	690
December	557	7	564
2017			
January	974	22	996
February	634	14	648
March	769	21	790
April	555	22	577
May	440	12	452
June	419	14	433
July	439	6	445
August 16 - July 17	7,319	183	7,502

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	
2016					
August	24	9	3	1	
September	4	1	1	0	
October	12	0	3	1	
November	9	4	0	0	
December	7	1	0	2	
2017					
January	12	0	0	0	
February	12	1	0	0	
March	23	2	1	0	
April	15	1	0	0	
May	6	1	0	0	
June	13	0	0	0	
July	12	0	0	0	
August 16 - July 17	149	20	8	4	

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

Table 2E

Section 26 (Schedule 3) – Searches of Vehicles

Year	Searches of Vehicles by Police	
	Vehicles stopped and searched under JSA Section 24 (Schedule 3)	Vehicles taken to another location for search
2016		
August	1,012	1
September	1,681	0
October	1,699	1
November	1,886	0
December	1,947	1
2017		
January	2,769	1
February	2,027	1
March	1,847	2
April	1,298	1
May	1,053	1
June	1,117	0
July	976	1
August 16 - July 17	19,312	10

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

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

Table 3

Number of Uses of Each Stop/Search and Question Legislative Power in Northern Ireland (i.e. under PACE, Misuse of Drugs Act, Firearms Order, Terrorism Act and Justice & Security Act)

1 August 2016 – 31 July 2017

Persons stopped and searched under:	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug 16 -Jul 17
PACE / MDA / F Order**	1,578	2,048	2,447	1,971	1,851	1,857	1,785	1,873	1,988	1,887	1,837	2,013	23,135
TACT S43	7	28	16	15	1	11	12	13	8	12	15	6	144
TACT S43A	3	8	4	5	2	2	5	2	4	2	9	1	47
TACT S47A	0	0	0	0	0	0	0	0	0	0	0	0	0
JSA Section 21	116	174	172	191	206	207	245	210	174	101	109	129	2,034
JSA Section 24	448	648	811	690	564	996	648	790	577	452	433	445	7,502
Other Legislations***	4	4	7	7	58	14	2	7	8	3	2	4	120
Total (Powers Used)*	2,156	2,910	3,457	2,879	2,682	3,087	2,697	2,895	2,759	2,457	2,405	2,598	32,982

* 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 a combination of different legislations e.g. JSA S24 and JSAS21.

** PACE, Misuse of Drugs Act (MDA) and the Firearms Order (F Order) figures are combined, as in previous years.

*** Other Legislative powers' captures stops / searches conducted under the following less frequently used powers: Schedule 5 to the Terrorism Act 2000, Section 139B of the Criminal Justice Act 1988, Schedule 5 to the Terrorism Prevention and Investigation Measures Act 2011, Article 6 Crossbows (Northern Ireland) Order 1988, Article 25 Wildlife (Northern Ireland) Order 1988, Article 23B of The Public Order (Northern Ireland) Order 1987 and the Psychoactive Substances Act 2016

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

1 August 2015 – 31 July 2016

Persons stopped and searched under:	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16	Jul-16	Aug 15 -Jul 16
PACE / MDA / F Order	1,792	2,375	2,991	2,200	1,939	2,079	2,287	2,193	1,621	1,562	1,465	1,818	24,322
TACT S43	15	34	27	19	20	18	16	23	14	38	16	14	254
TACT S43A	5	13	10	13	15	19	10	15	6	32	7	4	149
TACT S47A	0	0	0	0	0	0	0	0	0	0	0	0	0
JSA Section 21	119	221	212	157	188	283	397	602	177	172	107	223	2,858
JSA Section 24	355	674	583	543	428	550	690	1,630	512	580	496	752	7,793
Other Legislations	3	12	9	8	11	1	2	14	2	10	2	23	97
Total (Powers Used)*	2,289	3,329	3,832	2,940	2,601	2,950	3,402	4,477	2,332	2,394	2,093	2,834	35,473

*Please note that this is not the total number of persons stopped and searched/questioned as a stop and search/question can be carried out under two different legislations e.g. JSA S24 and JSA S21.

Table 3A

Longer Term Trend Information

Legislation	2004/05	2005/06	2006/07	2007/08	2008/09 ⁽¹⁾	2009/10 ⁽¹⁾	2010/11 ⁽¹⁾	2011/12 ⁽¹⁾	2012/13 ⁽¹⁾	2013/14 ⁽¹⁾	2014/15 ⁽¹⁾	2015/16 ⁽¹⁾	2016/17 ⁽¹⁾
PACE / Misuse of Drugs Act / Firearms Order	14,434	16,036	16,174	15,362	20,011	23,990	22,785	20,746	20,910	24,428	22,189	25,151	21,876
TACT - Section 84 ⁽²⁾	3,838	3,299	1,576										
- Section 89 ⁽²⁾	2,684	1,906	718										
- Section 44 ⁽³⁾		448	913	3,358	9,548	28,770	9,156						
- Section 43/43A ⁽⁴⁾				13	56	97	375	254	186	173	192	344	265
- Section 47A ⁽⁵⁾								0	0	70	0	0	0
JSA - Section 21 ⁽²⁾				28	112	5,285	5,355	3,511	2,803	2,350	1,922	2,812	2,200
- Section 24 ⁽²⁾				251	372	621	11,721	12,699	7,687	6,239	3,906	6,980	7,935
Other legislative powers ⁽⁶⁾									294	417	190	97	140
Total uses of each legislative power	20,956	21,689	19,381	19,012	30,099	58,763	49,392	37,210	31,880	33,677	28,399	35,384	32,416
Total no. of persons stopped/searched⁽⁷⁾	20,956	21,689	19,381	19,012	30,099	53,885	45,394	35,268	30,502	32,590	27,539	34,171	31,274
PACE / Misuse of Drugs Act / Firearms Order	69%	74%	83%	81%	66%	41%	46%	56%	66%	73%	78%	71%	67%
All Terrorism Act Powers	31%	26%	17%	18%	32%	49%	19%	1%	1%	1%	1%	1%	1%
All JSA Powers	0%	0%	0%	1%	2%	10%	35%	44%	33%	26%	21%	28%	31%
Other legislative powers	0%	0%	0%	0%	0%	0%	0%	0%	1%	1%	1%	<0.5%	<0.5%
All Powers⁽⁶⁾	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

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

- (1) Combinations of powers were not counted pre-08/09 therefore these figures are a count of the number of persons stopped. Figures from 08/09 are a count of the number of times each individual power was used.
- (2) Part VII of the Terrorism Act lapsed from midnight on the 31st July 2007. As a result Section 84 of TACT was replaced by Section 24 of the Justice and Security Act (JSA) and Section 89 of TACT was replaced by JSA Section 21 (power to stop and question).
- (3) Statistics Branch started collating TACT Section 44 data in July 2005. TACT Section 44 ceased on 7th July 2010.
- (4) Statistics Branch started collating TACT Section 43 and 43A during quarter 3 of 2007/08.
- (5) TACT Section 47A has been in place since March 2011 although the power has only been authorised for use during one period in May 2013.
- (6) On the 31st October 2012 changes were made to the PSNI's STOPS database to ensure that stop/searches conducted under less frequently used powers would be captured under an 'Other legislative powers' category. 'Other legislative powers' captures stops / searches conducted under the following less frequently used powers: Schedule 5 to the Terrorism Act 2000, Section 139B of the Criminal Justice Act 1988, Schedule 5 to the Terrorism Prevention and Investigation Measures Act 2011, Article 6 Crossbows (Northern Ireland) Order 1988, Article 25 Wildlife (Northern Ireland) Order 1985, Article 23B of The Public Order (Northern Ireland) Order 1987 and the Psychoactive Substances Act 2016.
- (7) The difference between total use of each power and total no. of persons stopped/searched will be due to persons stopped under combinations of powers being counted under each legislation used (i.e. someone stopped under JSA S21 and JSA S24 will have a count of one under each of these powers).
- (8) Percentages may not sum to 100% due to rounding.

Explosive Ordnance Disposal (E.O.D) Activity in Support of the Police

Table 4

EOD Call Outs: 1 August 2016 to 31 July 2017

DATE	IED	EXPLOSION	HOAX	FALSE	INCENDIARY	FINDS	TOTAL
August 2016	7	1	4	3	0	19	34
September 2016	3	1	2	3	0	14	23
October 2016	0	0	1	2	0	11	14
November 2016	1	0	2	1	0	13	17
December 2016	2	2	0	2	0	6	12
January 2017	5	2	0	3	0	11	21
February 2017	3	2	3	4	0	13	25
March 2017	1	4	1	0	0	9	15
April 2017	0	1	1	0	0	14	16
May 2017	0	0	1	0	0	5	6
June 2017	1	0	1	4	0	13	19
July 2017	2	0	4	2	0	7	15
Total	25	13	20	24	0	135	217

ANNEX F – AUTHORISATION FORM

Reference
Number:

Authorisation to Stop and Search – Para 4A, Schedule 3 under the Justice and Security Act (Northern Ireland) 2007

Applicants should retain a completed copy of this form for their own records

1) **Name of Applicant:**

--

2) **Length of Authorisation:**

For the purposes of calculating a 14 day period (**the maximum period available**), the day on which an authorisation is given is deemed to constitute a full day, regardless of the time it is authorised. For example, an authorisation given at 08.00hrs on 1 November must end no later than 23.59hrs on 14 November. It cannot run until 07.59hrs on 15 November (Please see Explanatory Notes for details). Please note that the duration of an authorisation should be “**no longer than is necessary**”.

Authorisations must not be for the full 14 day period unless this is necessary.

Start date:	Number of days :
End date:	End time (if not 23.59):

3) **Location where powers to apply** (please specify):

Entire Area of Northern Ireland	[]	Map Attached	[]
Specific Area	[]	Map Attached	[]

4) **Reason for exercising Para 4A, Schedule 3 powers:**

Authorising Officers should only use the power when they **reasonably suspect** that the safety of any person might be endangered by the use of munitions or wireless apparatus, and he / she reasonably considers the authorisation **necessary** to prevent such danger (Please see Explanatory Notes for more detail).

--

5) **Authorising Officer:**

Authorising Officers must hold **substantive or temporary ACPO rank**. Officers **acting** in ACPO ranks may **not** authorise the use of **Para 4A, Schedule 3 powers**.

4) Assessment of the threat:

Authorising Officers should provide a detailed account of the intelligence which has given rise to reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. This should include classified material where it exists (Please see Explanatory Notes for more details).

5) Relevant Information and/or circumstances over recent period:

If an authorisation is one that covers a similar geographical area to the one immediately preceding it, information should be provided as to how the current situation has changed, or if it has not changed that it has been reassessed and remains relevant (Please see Explanatory Notes for more details).

6) The use of Para 4A, Schedule 3 powers of the Justice & security Act (Northern Ireland) 2007 rather than other powers of stop and search:

Authorising Officers should explain how the use of **Para 4A, Schedule 3** powers is an appropriate response to the circumstances and why powers under S.43 and S.43A of the Terrorism Act 2000 or other PACE powers are not deemed sufficient (Please see Explanatory Notes for more details).

7) Description of and reasons for geographical extent of authorisation:

Authorising Officer should identify the geographical extent of the Authorisation and should outline the reasons why the powers are required in a particular area. A map should be provided (Please see Explanatory Notes for more details).

The geographical extent of an authorisation should be “**no greater than necessary**”

8) Description of and reasons for duration of authorisation:

Authorising Officer should identify the duration of the Authorisation and should outline the reasons why the powers are required for this time.

The duration of an authorisation should be “**no greater than necessary**”

9) Details of briefing and training provided to officers using the powers:

Authorising Officers should demonstrate that all officers involved in exercising **Para 4A, Schedule 3** powers receive appropriate training and briefing in the use of the legislation and understand the limitations of these powers (Please see Explanatory Notes for more details).

10) Practical Implementation of powers:

The Authorising Officer should provide information about how the powers will be used and why. This may include the use of vehicle checkpoints, stops and searches of individuals operating in the area of the residences of security force members or security force establishments or other recognised targets of terrorist attack (depending on the nature of the threat). The authorising officer should indicate whether officers will be instructed to conduct stops and searches on the basis of particular indicators (e.g. behavioural indicators, types of items carried or clothes worn, types of vehicles etc), or whether the powers will be exercised on a random basis. If the powers are to be exercised on a random basis, the authorising officer should indicate why this is necessary and why searches based on particular indicators are not appropriate.

--

11) Community engagement:

The Authorising Officer should provide a detailed account on the steps that have been taken to engage those communities that will be affected by the authorisation. Where it has not been possible to carry out community engagement prior to authorisation, the Authorising Officer should carry out a retrospective review of the use of the powers (Please see Explanatory Notes for details).

--

12) Policing Board engagement:

Authorising Officers making **Para 4A, Schedule 3** authorisations should notify and engage with the Policing Board (Please see Explanatory Notes for details).

--	--

13) (If applicable) Senior Officer Cancellation / Amendment:

If at any stage during an authorisation the authorising officer ceases to be satisfied that the test for making the authorisation is met, they must cancel the authorisation immediately and inform the Secretary of State. A Senior Officer may also amend an authorisation by reducing the geographical extent of the authorisation or the duration or by changing the practical implementation of the powers. Where an authorisation is so amended, the Secretary of State must be informed.

Cancellation / Amendment	Date signed.....
Signature.....	Time signed.....
Print Name/Rank.....	
Details of cancellation / amendment:	

Explanatory Notes to Authorisation to Stop and Search under Para 4A, Schedule 3 of the Justice & Security Act (Northern Ireland) 2007

JSA 1

<u>Point 2</u>	<p><u>Length of authorisation</u></p> <p>Start time is the time and date at which the authorising officer gives an oral authorisation or signs a written authorisation, whichever is earlier. The maximum period for an authorisation is 14 days, and authorisations should not be made for the maximum period unless it is necessary to do so based on the intelligence about the particular threat. Authorisations should be for no longer than necessary. Justification should be provided for the length of an authorisation, setting out why the intelligence supports amount of time authorised. If an authorisation is one which is similar to another immediately preceding it, information should be provided as to why a new authorisation is justified and why the period of the initial authorisation was not sufficient. Where different areas or places are specified within one authorisation, different time periods may be specified in relation to each of these areas or places – indeed the time period necessary for each will need to be considered and justified. For the purposes of calculating a 14 day period, the day on which an authorisation is given is deemed to constitute a full day, regardless of the time it is authorised. For example, an authorisation given at 08.00hrs on 1 November must end no later than 23.59hrs on 14 November. It cannot run until 07.59hrs on 15 November. Authorising officers must assure themselves that the Authority does not run for more than the statutory 14 day limit. In the case of a new authorisation, an authorisation can be given before the expiry of the previous one if necessary.</p> <p>PSNI may authorise the use of section Para 4A, Schedule 3 powers for less than forty-eight hours, however, continuous use of 48 hour-long authorisations, whereby the powers could remain in force on a “rolling” basis is not justifiable and would constitute an abuse of the provisions.</p>
-----------------------	--

<u>Point 4</u>	<p><u>Reason for exercising Para 4A, Schedule 3 powers</u></p> <p>The test for authorising JSA powers is that the person giving it: must reasonably suspect that the safety of any person might be endangered by the use of munitions or wireless apparatus and reasonably considers the authorisation necessary to prevent such an act and that the area(s) or place(s) specified in the authorisation are no greater than is necessary and the duration of the authorisation is no longer than is necessary to prevent such an act.</p>
-----------------------	--

JSA 2

<u>Point 1</u>	<p>If an authorisation is one which covers a similar geographical area to one which immediately preceded it, information should be provided as to how the intelligence has changed since the previous authorisation was made, or if it has not changed, that it has been reassessed in the process of making the new authorisation, and that it remains relevant, and why.</p> <p>Whilst it is possible to issue a successive authorisation for the same geographic areas, this will only be lawful if it is done on the basis of a fresh assessment of the intelligence, and if the authorising officer is satisfied that the authorisation is justified.</p>
<u>Point 4</u>	<p><u>Assessment of the threat</u></p> <p>The Authorising Officer should provide a detailed account of the intelligence which has given rise to reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. This should include classified material where it exists. Threat Assessments from International Terrorism and Dissident Irish Republican Terrorism are provided by JTAC and Security Service. Assessments of the threat to various aspects of the UK infrastructure, such as aviation, transport, military establishments are available and if necessary should be sought. If reference is made to JTAC or Security Service assessments, Authorising Officers should ensure that these references are to current material.</p> <p>A high state of alert may seem enough in itself to justify an authorisation of powers; however it is important to set out in the detail the relation between the threat assessment and the decision to authorise.</p> <p>Intelligence specific to particular dates may still be included, even if the relevant date has passed, if it is still believed to be current.</p>
<u>Point 5</u>	<p><u>Information and/or circumstances over the recent period</u></p> <p>Authorising Officers should provide information relating to recent events that are specific to the authorisation. Under this section an Authorising Officer should identify any current situations where terrorist activity may have increased and there is evidence to suggest this.</p>
<u>Point 6</u>	<p><u>The use of Para 4A, Schedule 3 of the Justice & Security Act (Northern Ireland) 2007 rather than other powers of stop and search</u></p> <p>Given they require reasonable suspicion in order to be exercised, Authorising Officers should consider the powers under sections 43 and 43A of the Terrorism Act 2000 and PACE for the</p>

	<p>purposes of stopping and searching individuals for the purposes of preventing or detecting an act of terrorism before the use of the no suspicion powers under Para 4A, Schedule 3 are considered.</p> <p>The powers authorised by Para 4A, Schedule 3 are only to be considered where it is not sufficient to use the powers in sections 43 or 43A or other PACE powers.</p>
<u>Point 7</u>	<p><u>Description of and Reasons for Geographical Extent of an Authorisation</u></p> <p>Authorisations which cover all of Northern Ireland should not be made unless they can be shown to be necessary. The wider a geographic area authorised, the more difficult it will be to demonstrate necessity.</p> <p>An authorisation should not provide for the powers to be used other than where they are considered necessary. This means authorisations must be as limited as possible and linked to addressing the suspected act of endangerment. In determining the area(s) or place(s) it is necessary to include in the authorisation it may be necessary to include consideration of the possibility that offenders may change their method or target of attack, and it will be necessary to consider what the appropriate operational response to the intelligence is (e.g. which areas would be necessary to authorise to intercept a suspect transporting a weapon). However, any authorisations must be as limited as possible and based on an assessment of the existing intelligence. New authorisations should be sought if there is a significant change in the nature of the particular threat or the Authorising Officer’s understanding of it (and in such circumstances it will be appropriate to cancel the previous authorisation). Single authorisations may be given which cover a number of potential threats if that situation occurs. Authorisations should set out the nature of each threat and the operational response.</p>
<u>Point 8</u>	<p><u>Description of and Reasons for Duration of Authorisation</u></p> <p>Authorising Officer should identify the duration of the authorisation and should outline the reasons why the powers are required for this time. The duration of an authorisation should be “No greater than necessary”</p>
<u>Point 9</u>	<p><u>Details of Briefing and Training provided to Officer using Para 4A, Schedule 3 Powers</u></p> <p>Information should be provided which demonstrates that all officers involved in exercising Para 4A, Schedule 3 powers receive appropriate briefing and training in the use of the powers, including the broad reason for the use of the powers on each relevant occasion.</p>
<u>Point 10</u>	<p><u>Practical Implementation of Powers</u></p> <p>The Authorising Officer should provide information about how the powers will be used and why. This may include the use of vehicle checkpoints, stops and searches of individuals operating in the area of the residences of security force members or security force establishments or other recognised targets of terrorist attack (depending on the nature of the threat). The authorising officer should indicate whether officers will be instructed to conduct stops and searches on the basis of particular indicators (e.g. behavioural indicators, types of items carried or clothes worn, types of vehicles etc), or whether the powers will be exercised on a random basis. If the powers are to be exercised on a random basis, the authorising officer should indicate why this is necessary and why searches based on particular indicators are not appropriate.</p>
<u>Point 11</u>	<p><u>Community engagement</u></p>

	<p>Authorising Officers should demonstrate that communities have been engaged as fully as possible throughout the authorisation process. When using the power, PSNI may use existing community engagement arrangements. However, where stop and search powers affect sections of the community with whom channels of communication are difficult or non-existent, these should be identified and put in place.</p> <p>Independent Advisory Groups (IAGs) should be as fully engaged as possible at all stages of an authorisation.</p>
<p><u>Point 12</u></p>	<p><u>Policing Board engagement</u></p> <p>Authorising Officers should notify and engage with the Policing Board. The Policing Board has an essential role in working with the PSNI to build community confidence in the appropriate use of stop and search, and can provide practical advice and guidance to help raise awareness of stop and search.</p>

ANNEX G – NJT STATUTORY PROVISIONS

Sections 1 to 9 of JSA

1 Issue of certificate

- (1) This section applies in relation to a person charged with one or more indictable offences ("the defendant").
- (2) The Director of Public Prosecutions for Northern Ireland may issue a certificate that any trial on indictment of the defendant (and of any person committed for trial with the defendant) is to be conducted without a jury if –
 - (a) he suspects that any of the following conditions is met, and
 - (b) he is satisfied that in view of this there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.
- (3) Condition 1 is that the defendant is, or is an associate (see subsection (9)) of, a person who –
 - (a) is a member of a proscribed organisation (see subsection (10)), or
 - (b) has at any time been a member of an organisation that was, at that time, a proscribed organisation.
- (4) Condition 2 is that –
 - (a) the offence or any of the offences was committed on behalf of a proscribed organisation, or

- (b) a proscribed organisation was otherwise involved with, or assisted in, the carrying out of the offence or any of the offences.
- (5) Condition 3 is that an attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and—
 - (a) the attempt was made on behalf of a proscribed organisation, or
 - (b) a proscribed organisation was otherwise involved with, or assisted in, the attempt.
- (6) Condition 4 is that the offence or any of the offences was committed to any extent (whether directly or indirectly) as a result of, in connection with or in response to religious or political hostility of one person or group of persons towards another person or group of persons.
- (7) In subsection (6) “religious or political hostility” means hostility based to any extent on—
 - (a) religious belief or political opinion,
 - (b) supposed religious belief or political opinion, or
 - (c) the absence or supposed absence of any, or any particular, religious belief or political opinion.
- (8) In subsection (6) the references to persons and groups of persons need not include a reference to the defendant or to any victim of the offence or offences.
- (9) For the purposes of this section a person (A) is the associate of another person (B) if—
 - (a) A is the spouse or a former spouse of B,
 - (b) A is the civil partner or a former civil partner of B,
 - (c) A and B (whether of different sexes or the same sex) live as partners, or have lived as partners, in an enduring family relationship,
 - (d) A is a friend of B, or
 - (e) A is a relative of B.
- (10) For the purposes of this section an organisation is a proscribed organisation, in relation to any time, if at that time—
 - (a) it is (or was) proscribed (within the meaning given by section 11(4) of the Terrorism Act 2000 (c. 11)), and
 - (b) its activities are (or were) connected with the affairs of Northern Ireland.

2 Certificates: supplementary

- (1) If a certificate under section 1 is issued in relation to any trial on indictment of a person charged with one or more indictable offences (“the defendant”), it must be lodged with the court before the arraignment of—
 - (a) the defendant, or
 - (b) any person committed for trial on indictment with the defendant.
- (2) A certificate lodged under subsection (1) may be modified or withdrawn by giving notice to the court at any time before the arraignment of—
 - (a) the defendant, or
 - (b) any person committed for trial on indictment with the defendant.
- (3) In this section “the court” means—

- (a) in relation to a time before the committal for trial on indictment of the defendant, the magistrates' court before which any proceedings for the offence or any of the offences mentioned in subsection (1) are being, or have been, conducted;
- (b) otherwise, the Crown Court.

3 Preliminary inquiry

- (1) This section applies where a certificate under section 1 has been issued in relation to any trial on indictment of a person charged with one or more indictable offences.
- (2) In proceedings before a magistrates' court for the offence or any of the offences, if the prosecution requests the court to conduct a preliminary inquiry into the offence the court must grant the request.
- (3) In subsection (2) "preliminary inquiry" means a preliminary inquiry under the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
- (4) Subsection (2)–
 - (a) applies notwithstanding anything in Article 31 of that Order,
 - (b) does not apply in respect of an offence where the court considers that in the interests of justice a preliminary investigation should be conducted into the offence under that Order, and
 - (c) does not apply in respect of an extra-territorial offence (as defined in section 1(3) of the Criminal Jurisdiction Act 1975 (c. 59)).

4 Court for trial

- (1) A trial on indictment in relation to which a certificate under section 1 has been issued is to be held only at the Crown Court sitting in Belfast, unless the Lord Chief Justice of Northern Ireland directs that –
 - (a) the trial,
 - (b) a part of the trial, or
 - (c) a class of trials within which the trial falls,is to be held at the Crown Court sitting elsewhere.
- (2) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under subsection (1) –
 - (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
 - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).
- (3) If a person is committed for trial on indictment and a certificate under section 1 has been issued in relation to the trial, the person must be committed –
 - (a) to the Crown Court sitting in Belfast, or
 - (b) where a direction has been given under subsection (1) which concerns the trial, to the Crown Court sitting at the place specified in the direction;and section 48 of the Judicature (Northern Ireland) Act 1978 (c. 23) (committal for trial on indictment) has effect accordingly.
- (4) Where –

- (a) a person is committed for trial on indictment otherwise than to the Crown Court sitting at the relevant venue, and
 - (b) a certificate under section 1 is subsequently issued in relation to the trial,
- the person is to be treated as having been committed for trial to the Crown Court sitting at the relevant venue.
- (5) In subsection (4) “the relevant venue”, in relation to a trial, means—
- (a) if the trial falls within a class specified in a direction under subsection (1)(c) (or would fall within such a class had a certificate under section 1 been issued in relation to the trial), the place specified in the direction;
 - (b) otherwise, Belfast.
- (6) Where—
- (a) a person is committed for trial to the Crown Court sitting in Belfast in accordance with subsection (3) or by virtue of subsection (4), and
 - (b) a direction is subsequently given under subsection (1), before the commencement of the trial, altering the place of trial,
- the person is to be treated as having been committed for trial to the Crown Court sitting at the place specified in the direction.

5 Mode of trial on indictment

- (1) The effect of a certificate issued under section 1 is that the trial on indictment of—
- (a) the person to whom the certificate relates, and
 - (b) any person committed for trial with that person,
- is to be conducted without a jury.
- (2) Where a trial is conducted without a jury under this section, the court is to have all the powers, authorities and jurisdiction which the court would have had if the trial had been conducted with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).
- (3) Except where the context otherwise requires, any reference in an enactment (including a provision of Northern Ireland legislation) to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial conducted without a jury under this section, as a reference to the court, the verdict of the court or the finding of the court.
- (4) No inference may be drawn by the court from the fact that the certificate has been issued in relation to the trial.
- (5) Without prejudice to subsection (2), where the court conducting a trial under this section—
- (a) is not satisfied that a defendant is guilty of an offence for which he is being tried (“the offence charged”), but
 - (b) is satisfied that he is guilty of another offence of which a jury could have found him guilty on a trial for the offence charged,
- the court may convict him of the other offence.
- (6) Where a trial is conducted without a jury under this section and the court convicts a defendant (whether or not by virtue of subsection (5)), the court

must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction.

- (7) A person convicted of an offence on a trial under this section may, notwithstanding anything in sections 1 and 10(1) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47), appeal to the Court of Appeal under Part 1 of that Act –
- (a) against his conviction, on any ground, without the leave of the Court of Appeal or a certificate of the judge of the court of trial;
 - (b) against sentence passed on conviction, without that leave, unless the sentence is fixed by law.
- (8) Where a person is convicted of an offence on a trial under this section, the time for giving notice of appeal under section 16(1) of that Act is to run from the date of judgment (if later than the date from which it would run under that subsection).
- (9) Article 16(4) of the Criminal Justice (Northern Ireland) Order 2004 (S.I. 2004/1500 (N.I. 9)) (leave of judge or Court of Appeal required for prosecution appeal under Part IV of that Order) does not apply in relation to a trial conducted under this section.

6 Rules of court

- (1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of sections 1 to 5.
- (2) Without limiting subsection (1), rules of court may in particular make provision for time limits which are to apply in connection with any provision of sections 1 to 5.
- (3) Nothing in this section is to be taken as affecting the generality of any enactment (including a provision of Northern Ireland legislation) conferring powers to make rules of court.

7 Limitation on challenge of issue of certificate

- (1) No court may entertain proceedings for questioning (whether by way of judicial review or otherwise) any decision or purported decision of the Director of Public Prosecutions for Northern Ireland in relation to the issue of a certificate under section 1, except on the grounds of –
 - (a) dishonesty,
 - (b) bad faith, or
 - (c) other exceptional circumstances (including in particular exceptional circumstances relating to lack of jurisdiction or error of law).
- (2) Subsection (1) is subject to section 7(1) of the Human Rights Act 1998 (c. 42) (claim that public authority has infringed Convention right).

8 Supplementary

- (1) Nothing in sections 1 to 6 affects –
 - (a) the requirement under Article 49 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) that a question of fitness to be tried be determined by a jury, or

- (b) the requirement under Article 49A of that Order that any question, finding or verdict mentioned in that Article be determined, made or returned by a jury.
- (2) Schedule 1 (minor and consequential amendments relating to trials on indictment without a jury) shall have effect.
- (3) The provisions of sections 1 to 7 and this section (and Schedule 1) apply in relation to offences committed before, as well as after, the coming into force of those provisions, but subject to any provision made by virtue of—
 - (a) section 4 of the Terrorism (Northern Ireland) Act 2006 (c. 4) (transitional provision in connection with expiry etc of Part 7 of the Terrorism Act 2000 (c. 11)), or
 - (b) section 53(7) of this Act.
- (4) An order under section 4 of the Terrorism (Northern Ireland) Act 2006 may make provision disregarding any of the amendments made by Schedule 1 to this Act for any purpose specified in the order.

9 Duration of non-jury trial provisions

- (1) Sections 1 to 8 (and Schedule 1) (“the non-jury trial provisions”) shall expire at the end of the period of two years beginning with the day on which section 1 comes into force (“the effective period”).
- (2) But the Secretary of State may by order extend, or (on one or more occasions) further extend, the effective period.
- (3) An order under subsection (2) —
 - (a) must be made before the time when the effective period would end but for the making of the order, and
 - (b) shall have the effect of extending, or further extending, that period for the period of two years beginning with that time.
- (4) The expiry of the non-jury trial provisions shall not affect their application to a trial on indictment in relation to which —
 - (a) a certificate under section 1 has been issued, and
 - (b) the indictment has been presented,
 before their expiry.
- (5) The expiry of section 4 shall not affect the committal of a person for trial in accordance with subsection (3) of that section, or by virtue of subsection (4) or (6) of that section, to the Crown Court sitting in Belfast or elsewhere in a case where the indictment has not been presented before its expiry.
- (6) The Secretary of State may by order make any amendments of enactments (including provisions of Northern Ireland legislation) that appear to him to be necessary or expedient in consequence of the expiry of the non-jury trial provisions.
- (7) An order under this section —
 - (a) shall be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

Sections 44 to 46 of CJA 2003

44 Application by prosecution for trial to be conducted without a jury where danger of jury tampering

- (1) This section applies where one or more defendants are to be tried on indictment for one or more offences.
- (2) The prosecution may apply to a judge of the Crown Court for the trial to be conducted without a jury.
- (3) If an application under subsection (2) is made and the judge is satisfied that both of the following two conditions are fulfilled, he must make an order that the trial is to be conducted without a jury; but if he is not so satisfied he must refuse the application.
- (4) The first condition is that there is evidence of a real and present danger that jury tampering would take place.
- (5) The second condition is that, notwithstanding any steps (including the provision of police protection) which might reasonably be taken to prevent jury tampering, the likelihood that it would take place would be so substantial

as to make it necessary in the interests of justice for the trial to be conducted without a jury.

- (6) The following are examples of cases where there may be evidence of a real and present danger that jury tampering would take place—
- (a) a case where the trial is a retrial and the jury in the previous trial was discharged because jury tampering had taken place,
 - (b) a case where jury tampering has taken place in previous criminal proceedings involving the defendant or any of the defendants,
 - (c) a case where there has been intimidation, or attempted intimidation, of any person who is likely to be a witness in the trial.

45 Procedure for applications under sections 43 and 44

- (1) This section applies—
 - (a) to an application under section 43, and
 - (b) to an application under section 44.
- (2) An application to which this section applies must be determined at a preparatory hearing (within the meaning of the 1987 Act or Part 3 of the 1996 Act).
- (3) The parties to a preparatory hearing at which an application to which this section applies is to be determined must be given an opportunity to make representations with respect to the application.
- (4) In section 7(1) of the 1987 Act (which sets out the purposes of preparatory hearings) for paragraphs (a) to (c) there is substituted—
 - “(a) identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial,
 - (b) if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them,
 - (c) determining an application to which section 45 of the Criminal Justice Act 2003 applies.”.
- (5) In section 9(11) of that Act (appeal to Court of Appeal) after “above,” there is inserted “from the refusal by a judge of an application to which section 45 of the Criminal Justice Act 2003 applies or from an order of a judge under section 43 or 44 of that Act which is made on the determination of such an application.”.
- (6) In section 29 of the 1996 Act (power to order preparatory hearing) after subsection (1) there is inserted—
 - “(1A) A judge of the Crown Court may also order that a preparatory hearing shall be held if an application to which section 45 of the Criminal Justice Act 2003 applies (application for trial without jury) is made.”
- (7) In subsection (2) of that section (which sets out the purposes of preparatory hearings) for paragraphs (a) to (c) there is substituted—
 - “(a) identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial,
 - (b) if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them,

- (c) determining an application to which section 45 of the Criminal Justice Act 2003 applies.”
- (8) In subsections (3) and (4) of that section for “subsection (1)” there is substituted “this section”.
- (9) In section 35(1) of that Act (appeal to Court of Appeal) after “31(3),” there is inserted “from the refusal by a judge of an application to which section 45 of the Criminal Justice Act 2003 applies or from an order of a judge under section 43 or 44 of that Act which is made on the determination of such an application.”.
- (10) In this section –
 - “the 1987 Act” means the Criminal Justice Act 1987 (c. 38),
 - “the 1996 Act” means the Criminal Procedure and Investigations Act 1996 (c. 25).

46 Discharge of jury because of jury tampering

- (1) This section applies where –
 - (a) a judge is minded during a trial on indictment to discharge the jury, and
 - (b) he is so minded because jury tampering appears to have taken place.
- (2) Before taking any steps to discharge the jury, the judge must –
 - (a) inform the parties that he is minded to discharge the jury,
 - (b) inform the parties of the grounds on which he is so minded, and
 - (c) allow the parties an opportunity to make representations.
- (3) Where the judge, after considering any such representations, discharges the jury, he may make an order that the trial is to continue without a jury if, but only if, he is satisfied –
 - (a) that jury tampering has taken place, and
 - (b) that to continue the trial without a jury would be fair to the defendant or defendants;but this is subject to subsection (4).
- (4) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he must terminate the trial.
- (5) Where the judge terminates the trial under subsection (4), he may make an order that any new trial which is to take place must be conducted without a jury if he is satisfied in respect of the new trial that both of the conditions set out in section 44 are likely to be fulfilled.
- (6) Subsection (5) is without prejudice to any other power that the judge may have on terminating the trial.
- (7) Subject to subsection (5), nothing in this section affects the application of section 43 or 44 in relation to any new trial which takes place following the termination of the trial.

ANNEX H Guidance in relation to Applications for a Director's Certificate for Non-Jury Trial

Introduction

1. The decision that a trial should be conducted without a jury is taken by the Director under the provisions of section 1 of the Justice and Security (Northern Ireland) Act 2007. The 2007 Act replaced the former arrangements whereby certain offences were “scheduled” and trials on indictment proceeded without a jury unless the Attorney-General “de-scheduled” them (on the basis that the offences were not connected to the emergency situation within Northern Ireland). Section 1 requires an examination of circumstances potentially pertaining to the accused, the offence and / or the motivation for the offence. Whereas in the past the presumption was that a trial would be a non-jury trial unless the Attorney General certified otherwise, the presumption now is that a trial will be by jury unless the Director takes the positive step of issuing a certificate for a trial to proceed without a jury.
2. Section 1 of the 2007 Act provides for the Director to issue a certificate that any trial on indictment is to be conducted without a jury if he *suspects* that one or more of four statutory conditions are met and he is *satisfied* that, in view of this, there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.
3. The decision to issue a certificate can be challenged by way of judicial review. By virtue of section 7 of the 2007 Act the scope of any such challenge is limited to grounds of dishonesty, bad faith, or other exceptional circumstances (including in particular exceptional circumstances relating to lack of jurisdiction or error of law). See also the case of *Arthurs* [2010] NIQB 75.
4. The decision to issue a certificate is an extremely important one and prosecutors must ensure that applications to the Director contain all relevant details and are accurate. This document is intended to provide some practical guidance in this regard. Whilst there are a number of themes and issues that tend to recur in these applications they often give rise to their own specific issues and it is important that the information and evidence relevant to each particular application is carefully considered and analysed and that recommendations are based upon the merits of the individual case. I set out below what experience indicates are some of the main considerations that most frequently arise.

Condition 1 – the defendant is, or is an associate of, a person who is a member of a proscribed organisation, or has at any time been a member of an organisation that was, at that time, a proscribed organisation.

5. It is important that the information from police makes it clear which sub-condition of Condition 1 is relied upon. On occasion it is not apparent whether police consider that the intelligence indicates that a defendant is a member of a proscribed organisation, or merely an associate. If reliance is placed upon the defendant's association with a member, or members, of a proscribed organisation then that other person should, if possible, be identified. It may be important, for example, to know whether a defendant is an associate of a senior member of a proscribed organisation as this may make it more likely that the proscribed organisation would seek to influence the outcome of the trial than if the defendant is only an associate of a low-ranking member. Police and prosecutors should also be cognisant of the definition of "associate" provided for by section 1(9) of the 2007 Act:

For the purposes of this section a person (A) is the associate of another person (B) if—

- (a) A is the spouse or a former spouse of B,
 - (b) A is the civil partner or a former civil partner of B,
 - (c) A and B (whether of different sexes or the same sex) live as partners, or have lived as partners, in an enduring family relationship,
 - (d) A is a friend of B, or
 - (e) A is a relative of B.
6. Whilst the term "associate" might normally be considered to include a broad range of persons including, for example, acquaintances, the definition in section 1(9) requires that the two individuals are in fact "friends" or have one of the other specific relationships referred to therein.
 7. If possible, the information provided by police should also identify the particular proscribed organisation involved, rather than simply refer, for example, to "dissident republicans".
 8. It is important also that the application is clear as to whether a defendant is a current or past member of a proscribed organisation. In the case of historical membership it will be important to ascertain, to the extent possible, when such membership ceased. Cases of historical membership can give rise to difficult issues in respect of whether a proscribed organisation is likely to seek to interfere with the administration of justice in respect of a past member. There have been cases in which condition 1 (ii) has been met but no risk to the administration of justice has been assessed as arising therefrom. This may be the case, for example, where the suspect is a former member of PIRA but has not subsequently associated himself with any organisation that is actively conducting

a terrorist campaign. If these cases relate to overtly terrorist offences, it is often the position that Condition 4 is met; and that, whilst no risk to the administration of justice arises from a possibility of jury intimidation, it does arise from the possibility of a fearful or partial jury (see below).

Condition 2 – the offence or any of the offences was committed on behalf of the proscribed organisation, or a proscribed organisation was otherwise involved with, or assisted in, the carrying out of the offence or any of the offences.

9. There will be cases where there is specific intelligence that the offences were carried out on behalf of a proscribed organisation and this can obviously be relied upon. There will be cases in which such specific intelligence does not exist. However, in light of the information available in relation to Condition 1 and the nature of the offences being prosecuted, it may still be possible to be satisfied that Condition 2 is met. For example, if there is intelligence that D is a member of the “new IRA” and he is caught in possession of explosives, there is likely to be a proper basis for the Director to be satisfied that the offence of possession of explosives was committed by, or on behalf, of the new IRA. However, care must be exercised in this regard and an automatic assumption should not be made.

Condition 3 – an attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and the attempt was made on behalf of a proscribed organisation or a proscribed organisation was otherwise involved with, or assisted in, the attempt.

10. It is rare that there is information that provides a basis for relying upon Condition 3. The cases in which it should be relied upon are usually readily apparent. The most obvious form of an attempt to prejudice the investigation or prosecution would be the intimidation of a witness. In one previous case Condition 3 was satisfied by the involvement of a proscribed organisation in assisting the defendant to escape from lawful custody after he had been previously charged (in the 1970s) with the same offences.

Condition 4 – the offence or any of the offences was committed to any extent (whether directly or indirectly) as a result of, in connection with or in response to religious or political hostility of one group of persons towards another person or group of persons.

11. The scope of Condition 4 has been considered by the Divisional Court in the case of *Hutchings* [2017] NIQB 121 in which it was held that:

- (i) In principle there is a need to narrowly and strictly construe Section 1 of the 2007 Act in light of the strong presumption in favour of jury trial.
- (ii) Nevertheless, it is important to remain faithful to the wording of the statute and its context notwithstanding the need to narrowly construe Section 1 of

the Act and the statutory conditions are expressed in clear and unambiguous terms.

- (iii) Condition 4 has to be read in its full context, set as it is in close juxtaposition to subsections (7) and (8).
- (iv) In relation to the wording of Condition 4 itself the Court noted that:
 - (a) It is couched in wide terms;
 - (b) It is not confined to the circumstances of Conditions 1, 2 and 3. The wording moves beyond the confines of the accused person being within a paramilitary organisation. It clearly envisages looking at the circumstances leading up to the offence being considered;
 - (c) The significance of the wording that the offence “was committed to any extent (whether directly or indirectly)” cannot be underestimated. This clearly widens the bracket of connective circumstances that can be embraced between the offence itself and the religious or political hostility;
 - (d) Political hostility can apply to “supposed” political opinion, again widening the reach of the section: para 38.
- (v) The phrase “political hostility” is in use daily in Northern Ireland and is easily understood. The most obvious examples of the situation arising out of Condition 4 may be incidents with a sectarian background but the wording of the statute is manifestly wide enough to embrace the scenario of the British Army engaging with suspected members of the IRA.
- (vi) The wording of Condition 4 is such that Parliament clearly intended to include a broad reach of circumstances whilst at the same time recognizing that any legislation removing jury trial needs to be tightly construed.

12. Advice was previously sought from Senior Counsel in relation to the scope of Condition 4 in the context of dissident republicans being prosecuted for possession of firearms or explosives. In relation to the dissident republican organisations (ONH, RIRA and CIRA) referred to in a number of examples considered by Senior Counsel, he noted that “they all have, as one of their aims, the removal of the British presence in Northern Ireland. All have used, and continue to use, violent methods to further that aim and such methods have involved attacks on the security forces, i.e. members of the British army and members of the PSNI. The use of such violent attacks has regularly and routinely involved the possession of firearms and explosive substances by members/associates of such organisations.” In Senior Counsel’s view, “such actions directed against members of the security forces, and the associated possession of prohibited items, are connected to political hostility.”

13. It is often possible for the Director to be satisfied that Condition 4 is met in light of the nature of the offences, the evidence in the case and the information provided

by police in relation to conditions 1 and 2. In terrorist cases it is usually more appropriate to rely upon the connection to political, rather than religious, hostility.

Risks to the Administration of Justice

14. There are three main risks to the administration of justice that regularly arise as a result of one or more of the Conditions being met. They are:
 - (i) The risk of a proscribed organisation intimidating the jury;
 - (ii) The risk of a fearful jury returning a perverse verdict;
 - (iii) The risk of a partial / hostile jury returning a perverse verdict.

15. Risk (i) will have to be considered in circumstances where any of Conditions (i) – (iii) are met. In advising PPS in relation to this risk police should provide an assessment of the threat currently posed by the relevant proscribed organisation. Formerly this was done by reference to the reports of the Independent Monitoring Commission. For some time these have been recognised as outdated and police will provide their own assessment. It is often helpful if police refer to recent incidents for which the particular proscribed organisation is believed to be responsible.

16. Risk (ii) tends to be related to Condition 4 and the evidence in the case. The jury will not, of course, be made aware of the intelligence that forms the basis of the assessment in relation to Conditions 1 and 2. However, in many cases it will be apparent to the jury from the facts of the case and the evidence to be adduced that a proscribed organisation was involved. This is likely to generate fear for their personal safety and/or the safety of their families that may impact upon their verdict.

17. Risk (iii) also tends to be related to Condition 4 and the facts of the case. It will often be the case that it will become apparent to the jury that the offences were committed by or on behalf of a republican or loyalist paramilitary organisation. There is a risk that certain members of the jury would be so influenced by hostility towards the defendant and/or his associates such that their ability to faithfully return a verdict based upon the evidence would be compromised. There may also be a risk that a juror would be biased in favour of the defendant and/or his associates.

18. The risk of jury bias can also arise in cases involving military shootings of suspected terrorists. In the *Hutchings* case referred to above, the Court found no reason to dispute the Director's conclusion that, where the context is of a soldier shooting an innocent bystander against the background of an IRA attack a short time before, this circumstance carries in its wake the risk of a partisan juror or jurors in at least parts of this province with all the attendant dangers of

impairment of the administration of justice if that trial were to be conducted with a jury.

19. It should always be remembered that there needs to be a link between the Condition(s) that is satisfied and the risk to the administration of justice before the Director can issue a certificate.

Jury Measures

20. The Justice and Security (Northern Ireland) Act 2007 does not specifically refer to the potential for jury measures as a means of mitigating the risk posed to the administration of justice that arises from the circumstances in which the statutory conditions are met. However, it has been the practice of police and the Director to assess whether any such risk can be adequately mitigated by either (a) transferring the trial, or (b) screening or (c) sequestering the jury. It is helpful to consider how each of the jury measures might assist in relation to the various risks identified above.

Risk of jury intimidation

21. The transfer of the trial may be helpful if the proscribed organisation only has a very limited geographical reach. However, it is often the case that one is dealing with proscribed organisations with an ability to operate throughout the province and the ability to transfer the trial may be of little assistance in mitigating this risk.
22. Police and prosecutors should also be aware that an application to transfer the trial can be made in the Magistrates' Court at the committal hearing, although the matters which can be considered by the Court at that stage are specified by s.48(1) of the Judicature (Northern Ireland) Act 1978 as: (a) the convenience of the defence, the prosecution and the witnesses; (b) the expediting of the trial; and (c) any directions given by the Lord Chief Justice. Pursuant to s.48(2) of the 1978 Act the Crown Court has broader powers to give direction in relation to the place of trial and may have regard to considerations other than those contained in s.48(1): *R v Morgan & Morgan Fuels and Lubes Limited* [1998] NIJB 52. There is a strong presumption that a trial before a jury should be heard in the division in which the offence was committed, unless there is a statutory or other reason why this should not be the case: *R v Grew & Ors* [2008] NICC 6 at para 47 and *R v Lewis & Ors* [2008] NICC 16 at para 18. The onus will be on the prosecution to adduce evidence in support of an application to transfer. Furthermore, the courts may be reluctant to accept that any risk of intimidation can be materially alleviated by transferring the trial: *R v Grew & Ors* [2008] NICC 6 at para 50 referring to *R v Mackle & Ors* [2007] NIQB 105. Police and prosecutors therefore need to carefully consider the nature of any material that can be placed before a court in support of a potential application to transfer and the likelihood of a successful application in light of same.

23. Screening the jury prevents them from being seen by the public but does not prevent them from being seen by the defendant who could make a record of their appearance and pass that to his associates. Police have highlighted the further risk that jurors may be recognised by others called for jury service but not sworn on to the particular jury and there is a risk that these others could either deliberately or inadvertently pass on details of the jurors which would enable them to be targeted.
24. Sequestering the jury is a very draconian measure and police have often pointed out the potential for this to impact upon the jurors' lives and thereby impair their judgment, either in favour of or, more likely, against the defendant. In addition, police have advised that the parochial nature of Northern Ireland would create a unique difficulty in the provision of anonymity and security of a jury.

Risk of a perverse verdict

25. In general terms it is difficult to see how any risk of a perverse verdict arising from a fearful or hostile jury could be mitigated by any of the available jury measures. Transferring the trial would not address any issues of partiality unless, perhaps, the partiality arises from feelings confined to a local community. This possibility was noted by Stephens J in the context of inquests in *Jordan* [2014] NIQB 11 when he pointed out that the community divisions in our society are such that the exact nature of the danger of a perverse verdict is influenced by the geographic location of an inquest.
26. A transfer of the trial may also be unlikely to address any issue of fear, as the jury would most likely not consider themselves (or their families) to be safe from a proscribed organisation even if the offence happened in another part of the province. Screening may provide some re-assurance but this is imperfect for the reasons referred to above (they can be seen by the defendant and others called for jury service but not sworn). There is also a risk that the highly unusual measure of screening the jury would in fact exacerbate any disposition to be fearful or partial because it would be such an unusual measure and suggest that the defendant and / or his associates are dangerous people who would seek to intimidate the juror or his / her family. The same can be said, perhaps with even greater force, in relation to the sequestration of the jury.
27. In relation to this latter point prosecutors should note two judgments delivered in the context of the power to order non-jury trial under section 44 of the Criminal Justice Act 2003. The first is *R v Mackle and others* [2007] NICA 37. When considering whether to order a non-jury trial in a case of jury tampering a court is enjoined to consider what steps might *reasonably* be taken to prevent jury tampering before deciding whether the likelihood of it occurring is so great that the order should be made. The Court of Appeal held that a consideration of what

was reasonable extends to an examination of the impact any proposed step would have upon the jury's fair and dispassionate disposal of the case. The Court held that the steps proposed in that case (round the clock protection of the jury or their being sequestered throughout its duration) would lead to *an incurable compromise of the jury's objectivity* which could not be dispelled by an admonition from the trial judge.

28. The decision in *Mackle & Ors* was subsequently approved by the English Court of Appeal in *R v Twomey & Ors* [2009] EWCA Crim 1035 where the court agreed that if a misguided perception is created in the minds of the jury by the provision of high level protection, then such a step would not be reasonable. It was also relevant to consider the likely impact of measures on the ordinary lives of the jurors, performing their public responsibilities, and whether, in some cases at any rate, even the most intensive protective measures for individual jurors would be sufficient to prevent the improper exercise of pressure on them through members of their families who would not fall within the ambit of the protective measures.

29. The particular facts and circumstances of the *Mackle* and *Twomey* cases should be noted. In both cases the Court was considering very extensive and expensive measures designed to protect the jury. However, the general point about the potential for measures to undermine the objectivity of the jury is an important one that should be weighed in any assessment of their potential to mitigate the risk to the administration of justice in any particular case.

Part 7 of the Criminal Justice Act 2003

30. When considering the risk of intimidation of jurors and whether a certificate for non-jury trial should issue, police and prosecutors should also note the powers contained within Part 7 of the Criminal Justice Act 2003 (referred to above) which allow the Judge, in certain circumstances where there has been jury tampering, to discharge the jury and direct that the trial be heard by a judge alone, or continue without a jury to hear the trial. However, this potential "safety net" does not relieve the Director from his responsibility to apply the statutory test set out in the 2007 Act based upon the information that is available to him at the time of his decision.

ANNEX I – NJT SAMPLED CASES

With decision on NJT; the date of that decision; and description of offence(s)

1. R v Smyth; certificate refused; November 2012; explosives.
2. R v Back and others; certificate refused; April 2003; riot.
3. R v Airdrie and others; certificate refused; August 2013; riot.
4. R v McDonnell; certificate refused; November 2012; criminal property/drugs.
5. R v Daly; certificate granted; February 2014; murder/affray.
6. R v Vevers; certificate refused; March 2014; blackmail/false imprisonment.
7. R v McLaughlin; certificate granted; October 2014; murder.
8. R v McFadden; certificate granted; October 2014; perverting course of justice.
9. R v Colgan; certificate granted; October 2014; explosives/hoax bombs.
10. R v Connor; certificate granted; December 2014; attempted murder.
11. R v Burns; certificate granted; January 2015; attempted murder.
12. R v Nicholl; certificate granted; March 2015; aggravated burglary.
13. R v Moore; certificate granted; May 2015; blackmail.
14. R v Kelly; certificate granted; July 2015; firearms.
15. R v Pierce; certificate granted; July 2015; collecting information.
16. R v O'Keefe; certificate granted; August 2015; firearms.

CCS041844064

978-1-5286-0332-4