REPORT OF THE INDEPENDENT REVIEWER

JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007

ELEVENTH REPORT: 1st August 2017 – 31st July 2018

David Seymour CB

March 2019

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

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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 appointed 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 the handling of complaints. Sections 21 to 32 are summarized in Part 1 of **Annex C**. 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 for investigating complaints".

David Anderson QC, as the former Independent Reviewer of Terrorism Legislation, 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 in 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 to relate to the use of the powers in the JSA. In his letter to me of 6th October 2017 the Secretary of State requested that the issue of non-jury trials (NJTs) be addressed in my annual Report. The terms of reference for my review of NJTs are at paragraph 14.2 of the 10th Report. 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 relating to NJTs. **The main analysis of NJTs is set out in Part 2 of the 10th Report and Part 2 of this Report is supplementary and addresses more recent developments**.

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

1.4 The previous 10 Reports covering the years 2008 to 2017 can be found on the Parliamentary website:

www.gov.uk.government/publications

The URL to the most recent Report is:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701739/10th_Annual_Report_of_the_Independent_Reviewer_of_Justice___Security__NI__Act_2007.pdf

1.5 Any comments on this or previous Reports can be submitted to:

thesecretary@nio.gov.uk

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

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 Report are set out in paragraphs 3.1 and 3.2.

2.2 The **security situation** remains at "SEVERE" and is summarized in paragraphs 4.1 to 4.5. The **public order** situation has been mainly quiet but in July 2018 there was serious rioting in Derry and localised public disorder in East Belfast connected to loyalist bonfires (paragraphs 4.6 and 4.7).

2.3 On 1st November 2018 the High Court handed down its judgment in the case of **Ramsey**. The challenge to the stop and search regime in the JSA was dismissed save for a ruling that the PSNI were in breach of the Code of Practice by not recording the basis for the stop and search. The use of the powers on the facts of this case was nevertheless held to be lawful (paragraphs 5.1 to 5.3).

2.4 There has been a **general decrease in the use of the powers** during the reporting period. In particular, the use of the stop and question power in section 21 was the lowest since the JSA was passed in 2007. Also, the use of the stop and search power in section 24/Schedule 3 fell by 17%. The highest use of this power was in 3 districts – Armagh, Banbridge and Craigavon, Belfast City and Derry City and Strabane. The number of arrests and seizure of munitions following the exercise of these powers remains very low (paragraphs 6.1 to 6.13).

2.5 **Body worn video** (BWV) was available to the PSNI throughout the reporting period. The PSNI have yet to complete a full assessment of its impact. Initially BWV was used in only 30% of stops/searches (under all legislation) but that figure later rose to 36% (paragraphs 7.1 to 7.7).

2.6 A **number of issues** arose from the use of JSA powers including the use of stop and search powers involving children, the concerns of the CNR community about the use of these powers to contain the security situation, the impact of

social media, the seizure of computers and laptops and the supervision of the use of these powers (paragraphs 8.1 to 8.14).

2.7 A number of issues arose in connection with **record keeping** including the difficulty of obtaining a copy of the stop/search record. A copy was obtained in only 0.5% of cases (paragraphs 9.1 to 9.4).

2.8 Little progress has been made on the issue of **community monitoring.** The use of the global positioning system (GPS) to identify the location of the stop and search was examined as a solution and found to be ineffective. Some senior PSNI officers were receptive to the possibility of community monitoring being achieved by officer recognition (paragraphs 10.1 to 10.6).

2.9 The processing of **authorisations** continues to be done in a thorough and diligent manner (paragraphs 11. to 11.4).

2.10 The **role of the armed forces** remains unchanged. The level of EOD activity remains high. There were only 4 complaints lodged with the Army during the reporting period and these were dealt with properly and promptly (paragraphs 12.1 to 12.5).

2.11 There have been few developments in relation to **road closures and land requisitions**. As in previous years two short lived land requisitions were made in connection with the policing of the Whiterock Parade and 12th July parade in Belfast. A number of roads remain closed on national security grounds (paragraphs 13.1 to 13.4).

2.12 A **review of the last 5 years** demonstrates the progress made in many areas but there are also areas where further progress could be made (paragraphs 14.1 to 14.3).

2.13 An assessment is made of the implementation of **recommendations** made in previous reports. Three new recommendations are made in relation to BWV and children and community monitoring (paragraphs 15.1 to 15.7).

Part 2 – non-jury trials (NJTs)

2.14 Part 2 of the 10th Report[1] contained an analysis of NJTs. Part 2 of this Report **supplements and updates that analysis** (paragraph 16.1 to 16.3).

2.15 The **processing of NJT certificates** continues to be done in a thorough and highly professional manner. The number of NJT certificates issued is consistent with the numbers in previous years, as is the number of refusals by the DPP and acquittal rates in NJT cases (paragraphs 17.1 to 17.3).

2.16 The **concerns of the Bar** in relation to NJTs are set out and addressed (paragraphs 18.1 to 18.2).

2.17 The response to **recommendations** made in the 10th Report are set out. Progress has been made on implementing a number of recommendations but the PPS have reservations about proceeding under the CJA (rather than the JSA) where the CJA option is available. Furthermore, the PPS have not accepted the recommendation that, where it is possible to do so without disclosing sensitive material, they should notify the defendant of an intention to grant a certificate (including an indication of the material relied on) and invite representations (paragraphs 19.1 to 19.10).

2.18 Issues concerning the use of a NJT certificate in **cases involving former British soldiers who served during the Troubles** are set out.

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[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/701739/10th_Annual_Report_of_the_Independent_Reviewer_of_Justice___Security__NI__Act_2007.pdf

PART 1 – THE OPERATION OF THE POWERS IN SECTIONS 31 TO 32

3. METHODOLOGY AND APPROACH

3.1 The approach taken in this Report is the same as in previous reports (see paragraph 3.1 of the 10th Report). I visited Northern Ireland on 8 occasions between June and November 2018. These visits varied in length from 3 to 5 days**.** I visited police officers at their HQ in Knock Road, Belfast and also in Derry and other police stations across Northern Ireland. I was also briefed by the Army at Thiepval Barracks in Lisburn and at Aldergrove. I have been briefed by officials in MI5, NIO and DoJ. Again, I have had meetings with a wide variety of people who are affected by, or have an interest in, the use of these powers and those individuals and organisations are listed at **Annex B**. I have also discussed my Report with Mr John Penrose MP, the Minister of State at the Northern Ireland Office.

3.2 I discussed NJTs with the Lord Chief Justice, the Chairman of the Bar Library, the Chair of the Criminal Bar Association, members of the Bar, solicitors in private practice, the PSNI, the PPS and the Northern Ireland Human Rights Commission. I visited the PPS on 3 separate occasions to examine their files on cases where a NJT was considered by the DPP and spent one day examining PSNI files related to those cases.

4. SECURITY AND PUBLIC ORDER

Security

4.1 The security threat in Northern Ireland emanates from 5 DR groups – the New IRA, the Continuity IRA (CIRA), Arm na Poblachta (ANP), Oglaigh na hEireann (ONH) and the Irish Republican Movement (IRM). The IRM was formed

in late 2017 when, following a period of infighting in ONH, the group split into two rival factions namely IRM and ONH. The new IRA, ANP, CIRA and IRM remain opposed to the current political process and are firmly committed to the use of violence. In 2018, ONH declared a cessation of attacks against the British State but they remained engaged in other paramilitary activity including carrying out paramilitary style attacks (PSAs) against those suspected of involvement in anti-social behaviour and drug dealing within the CNR community. Support for DR activity remains low.

4.2 These groups have continued to target and attack police officers, prison officers and members of the armed forces in efforts to undermine the normalisation process. The threat level in Northern Ireland from Northern Ireland related terrorism has remained at “SEVERE” (an attack is highly likely) throughout the reporting period. In March 2018 the threat from Northern Ireland related terrorism in Great Britain was lowered from “SUBSTANTIAL” (an attack is a strong possibility) to “MODERATE” (an attack is possible but not likely). While all of these DR groups aspire to mount attacks against targets in Great Britain it is not thought that they are in a position to do so. The most recent DR attacks in Great Britain was a series of postal IEDs in 2014.

4.3 Two national security attacks were carried out by DR groups during the reporting period-

(a) in October 2017 a viable IED was deployed in the Poleglass area of West Belfast. The intention was to attack the PSNI. It is likely that the individuals planning to deploy the device were disturbed during their preparation and they were unable to initiate the device;

(b) in July 2018 a number of shots and explosive devices were fired at members of the PSNI while they were on duty during public disorder in Derry.

No injuries were sustained in these attacks but they were reckless and could have led to serious injury or loss of life.

4.4 The threat from these DR groups is constrained by the work of the PSNI, MI5 and their security partners both north and south of the Irish border. In addition to these two attacks a number of attack plots were disrupted during the reporting period. There were over 100 disruptive actions including arrests, charges and seizures carried out against DRs on both sides of the border.

4.5 In addition to these national security threats, there were a large number of paramilitary style attacks by DRs including bombings, shootings, assaults and intimidation directed at their own communities and the level of violence remains extreme. These are not regarded as national security attacks because they are not directed at emanations of the British State. Similarly, paramilitary style attacks take place within Loyalist paramilitary groups but these are not classified as national security attacks for the same reason. A full assessment of the scale and nature of these attacks is set out in the Secretary of State's most recent statement to Parliament which is at **Annex D**. It is important to note that the powers in the JSA are designed to prevent death and injury from the use of munitions generally whether or not they are national security attacks and whether or not they involve paramilitary groups.

Public order

4.6 Rioting took place in Derry between 8th and 13th July 2018. These events were covered extensively by the national media. The PSNI attributed the violence to the New IRA and stated that this group was trying to kill police officers. Some observers said that the violence was provoked, to some extent, by the high profile arrest of DRs at a parade earlier in the year in Lurgan. There were also claims that DRs were manipulating children to get involved in the violence. The PSNI used attenuating energy projectiles (AEPs) and at least 70 petrol bombs were thrown at the police. On 13th July a homemade bomb was thrown at the West Belfast home of Gerry Adams, former leader of Sinn Fein and later that day another bomb exploded at the nearby home of a Sinn Fein official. On 11th July there were localised public disorder and security incidents connected to two loyalist bonfires in East Belfast. Police came under attack from

petrol bombs and other missiles; vehicles were hijacked and set alight; and there were a number of hoax bomb warnings. This violence was confined largely to East Belfast and outlying areas and failed to gain wider traction in other loyalist areas. Earlier in the year there were outbreaks of minor localised disorder during illegal republican Easter Rising parades in Lurgan (on 31st March) and Derry (on 2nd April).

4.7 With the exception of these serious events, there has been very little public disorder. I observed parades in and around Belfast on 12th July and, as with the vast majority of parades during the reporting period, these passed off without incident.

5. LEGAL CHALLENGES

5.1 Judgment in the case of **Ramsey [2018] NIQB 83**, referred to extensively in previous reports, was handed down on 1st November 2018. The case involved a challenge, by way of judicial review, to 7 incidents of stop and search without reasonable suspicion under section 24/Schedule 3 of the JSA between May 2013 and August 2013. The High Court handed down its judgment on 8th May 2014 dismissing the application. On appeal the Court of Appeal was concerned that the applicant was raising new issues which had not been subject to argument or adjudication before the High Court. Consequently, on 11th May 2015 the Court of Appeal remitted the case back to the High Court so that the new issues could be the subject of a first instance decision. The case came before the High Court again on 6th January 2017 and was further adjourned to allow the applicant to make yet more grounds of challenge. The grounds of challenge were extensive and related to the alleged inadequacy of the authorisation process and community monitoring together with the failure by the PSNI to record the basis for the use of the power as required by the Code. The High Court dismissed the application save for a ruling that the PSNI were in breach of the Code by not recording the basis for the stop and search. However, that failure did not, in the circumstances of this case, render the stop and search unlawful because, on each of the 7 occasions when the applicant was stopped, there was evidence for

the basis for the stop (provided by the police officers in affidavits submitted to the Court).

5.2 There are a number of other cases challenging a stop and search which are waiting on the outcome of the **Ramsey** judgment.

5.3 Further discussion of the implications of this judgment are at Chapter 8 (Issues Arising from Use of JSA Powers), Chapter 9 (Record Keeping), Chapter 10 (Community Monitoring) and Chapter 11 (Authorisations).

6. STATISTICS

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 2017 and 31st July 2018 (together with comparison with the previous year) were as follows –

JSA

(a) Section 21, stop and question – **1,426** (down from 2,035) – a **30% decrease**;

(b) Section 23, entry of premises – **6** (the same as last year);

(c) Section 24/Schedule 3, paragraph 4, stop and search for munitions **– 6,202** (down from 7,503) – a **17% decrease**;

(d) Section 24/Schedule 3 paragraph 2, power to enter premises – **173** (up from 169) –a **2% increase**;

(e) Section 26/Schedule 3, power to search vehicles – **15,300** (down from 19,309) – a **21% decrease**.

TACT 2000

(a) Section 43, stop and search of persons reasonably believed to be a terrorist – **72** (down from 143) – **50% decrease**;

(b) Section 43A, stop and search vehicle reasonably believed to be used for terrorism – **20** (down from 47) – a **57% decrease**;

(c) Section 47A 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)**.

Commentary on statistics

6.3 The most significant aspect of these statistics is that they indicate **a marked decrease in the use of the powers since last year**. This is against the background of the PSNI reviewing and encouraging greater use of the power 3 years ago with the result that the use of stop and question and stop of search under the JSA rose considerably in the period 2015/2016. In the past two years there has been a marked decline in the use of those powers and also of the powers under TACT. The reasons for this decline are not clear. There is no indication that it is the result of any particular strategy on the part of the PSNI or an improved security situation. Some have pointed to a combination of factors – policing levels are not as high as they should be; some officers are reluctant to exercise these powers; the use of these powers in connection with road blocks has declined; the PSNI have refreshed and delivered training in the use of stop and search powers to all uniformed officers; and there is much greater focus on those posing the most serious threat. The last factor may explain why, despite the marked reduction in the use of these powers, there is a perception, for example in Derry, that there has been an increase in their use (see paragraphs 8.6 to 8.8 below).

6.4 As regards **stop and question** (section 21), the most stops were in the months of August 2017 (145), December 2017 (153) and May 2018 (155). I have been briefed on the operational activity which caused those months to record the highest number of such stops. The average monthly number of these stops was 119 and the pattern of use was fairly consistent throughout the year. The highest number of stops in one day was 31 and there were 41 days in the reporting period when this power was not used at all.

6.5 This power was most frequently used in Belfast (333), Ards and North Down (242) and Derry City and Strabane (233). This accounts for well over half the use of the power. Despite the decline in the use of this power across Northern Ireland, that trend was reversed in Ards and North Down where the number of such stops rose from 124 to 323. This was due to an increase in operational activity related to loyalist paramilitary activity.

6.6 The 30% decrease in the use of the power follows a 29% decrease in its use in the previous year. So in two years the use of the power has halved in volume. Indeed, it is the lowest use of the power since the JSA was passed in 2007.

6.7 As regards **stop and search** (section 24/Schedule 3) there was a 17% decline in the reporting period. The use of this power was consistent throughout the period and averaged 517 per month. The highest monthly recording was February 2018 (671) and the lowest was June 2018 (389). The highest daily use was 59.

6.8 The three Districts where there was the highest use of the power were Armagh, Banbridge and Craigavon (1,030), Belfast City (1069) and Derry City and Strabane (1,450). This accounts for well over half (57%) the use of the power. The use in Derry City and Strabane accounts for nearly a quarter (23%) of the overall use. Again there was a significant downward trend. In particular in Derry the drop in use was 20% and in Belfast it was 29%. Only in Armagh, Banbridge and Craigavon was there a significant (14%) increase in use. There were 14 days

in the reporting period when fewer than 5 people in Northern Ireland were stopped and searched under this power.

6.9 As for **search of premises** (section 24) the figure of 173 was very similar to that in the previous reporting period (169). The PSNI estimate is that 28% of those searches was generated by the work of the Fresh Start Agreement.

6.10 The power to **stop and search a vehicle** (section 26) has seen a 21% decrease in its use. The power was used consistently throughout the year with the highest monthly use in December 2017 (1,986) and the lowest in August 2017 (878).

6.11 By far the largest drop in the use of the power was in relation to **stop and search with reasonable suspicion** under sections 43 and 43A of TACT - 50% and 57% respectively. A significant drop in the use of TACT powers in Belfast contributes to the overall fall in the use of these powers.

6.12 There are powers to stop and search and to stop and question under other powers including PACE, the Misuse of Drugs Act 1971 and the Firearms Order. The **total number of stops under all legislation in Northern Ireland** was 32,769. So the use of the powers under JSA and TACT to stop and search/question constitutes less than a third of the total use of such powers under all legislation. It is noticeable that although the use of these powers under JSA and TACT have declined considerably over the past year the decline in use of such powers under mainstream criminal justice powers has declined by only 6%.

6.12 The arrest rates following the use of these powers under JSA and TACT are set out in the table below.

Power	Number of persons stopped	Number of persons arrested	Arrest rate
JSA s.21	1426	11	0.8%
JSA s.24	6202	75	1.2%
- with authorisation	6077	67	1.1%
- with reasonable suspicion	125	8	6.4%
TACT s.43	72	9	12.5%
TACT s.43A	20	0	0.0%
TACT s.47A	0	-	-

6.13 Following searches of people and vehicles under section 24/Schedule 3 during this period all that was found was one replica firearm, 2 mobile phones and one 2- way radio. Following one stop under section 43 of TACT, a house was searched under section 24/Schedule 3 and a firearm was found. The overall rate for finding munitions and wireless telegraphy apparatus under these powers is 0.02%. This number of finds is exceptionally low. In the previous reporting period firearms were found on 5 occasions, ammunition on 3 occasions and wireless telegraphy apparatus on 13 occasions. The overall rate on that occasion was low at 1% but was 5 times higher than the rate of finds during the current reporting period.

6.14 Previous Reports have emphasized the preventative nature of these powers and explained that the effectiveness of their use cannot be judged solely in terms of arrest rates and finds. Nevertheless, these consistently low rates inevitably support a view in some communities that the use of these powers is not effective and is a form of harassment.

7. BODY WORN VIDEO (BWV)

7.1 Throughout this reporting period BWV has been available for use by PSNI officers. In the last Report it was recommended that the PSNI should review the use of BWV and produce a comprehensive report on its impact.

7.2 BWV is an important facility for PSNI officers. It is particularly useful in domestic violence cases, public order situations and at crime scenes – situations which are outside the remit of this Report. There are also many issues around the use of BWV which would not be the concern of this Report for example

- does BWV reduce crime levels?

- will it result in more and more early guilty pleas?

- will it assist in offender profiling?

- will it increase the time officers have to spend in court in cases where BWV is used in evidence?

7.3 However, BWV is used in stop and search situations under the JSA and TACT. In that context, any such review should include an assessment of –

- whether the use of BWV has improved the behaviour of those involved in stop and search?

- whether it has it increased confidence amongst the public in the use of those powers and reduced complaints?

- the extent to which it has assisted in the supervision and quality assurance of the use of these powers by senior officers?

- the extent to which the product of BWV been deployed by the PSNI to rebut false or unfair allegations which have been made about the use of the power?

- whether the quality of the BWV product is of a sufficiently high standard?

7.4 The PSNI have not yet produced a full assessment of the impact of BWV. I was briefed on the analysis undertaken so far by the PSNI. Some of the material

to assist in this analysis requires manual retrieval which is labour intensive. However, points to note are –

(a) progress has been made in addressing the challenge presented by BWV to the PSNI's Armed Response Unit where chest mounted BWVs are obscured (see paragraph 6.18 of the 10th Report). A live trial of head cameras started in December 2017 and concluded in November 2018. All ARU officers have now been trained in the use of BWV and a full roll out within that Unit was completed by 20th November 2018;

(b) a BWV usage tool is being developed to monitor the occasions when a BWV is booked in and out and the evidence created. This will assist senior PSNI officers to monitor the use of BWV;

(c) Blackberrys will be re-programmed to enable an officer to scroll down to record whether or BWV has been used;

(d) BWV has not yet been used (in pixelated form) to rebut publicly allegations of police misconduct;

(e) The quality of the BWV can be poor at night, in poor weather conditions or when facing a low sun;

(f) the PSNI undertook an officer survey on BWV and the response from 500 officers was positive.

7.5 Following a recommendation from the Ombudsman, the following guidance has been issued to all officers who use BWV cameras –

"Body worn video users should record any non-intimate searches undertaken on the person. This includes non-intimate searches on juveniles. Members should also consider the value of having another Police Officer present during a search procedure to provide corroboration to the lawfulness and appropriateness of that search. The recommendation on having another member present is on the basis that, in accordance with policy, unless a complaint is received or there is an evidential use to retain the recording it will be deleted after 31 days. If a complaint was made 31 days after the search was carried out, the officer still

has the benefit of their colleague's evidence to support the lawfulness of their actions".

7.6 It is disappointing that the percentage of stops and search where BWV was used under all powers during this reporting period was only 30%. This figure rose to 36% following guidance issued at ACC level and local briefings. The PSNI are reluctant to make use of BWV mandatory. To do so would make failure to use it during a stop and search a disciplinary offence and there may be reasons (eg technical failure) when the use of the power could not be filmed. Given the sensitivity around the use of JSA powers (see Chapter 7 of the 10th Report), it is important that the use of BWV should be not only encouraged but considered to be best practice.

7.7 Preliminary conclusions from the PSNI's work are that -

(a) it is too early to conclude that BWV has had an impact on the number of assaults against the police;

(b) people behave better when BWV is used;

(c) anecdotal evidence suggests that some officers may be reluctant to use BWV because of the need to be "word perfect" when using the powers.

8. ISSUES ARISING FROM USE OF JSA POWERS

Children

8.1 Dr John Topping produced some research in July 2018 about police use of stop and search of children (ie persons under 18) under normal criminal justice act powers eg PACE and the Misuse of Drugs Act 1971. It did not cover stop and search under JSA or TACT. The main points to emerge were that –

- the use of stop and search was used at a higher rate and with poorer outcomes than the rest of the UK;

- that it was used in a repeated and arbitrary manner to control "socio-economically marginal male populations";

-the rate of stop and search in Northern Ireland was now over twice the total rate in England and Wales and 50% greater than in Scotland;

- in 90% of cases, no record was made on an electronic device nor a reference number or receipt given;

- while the power has the potential to harass and punish young people viable sources of redress are marked by their absence;

- consequently, young persons' negative experiences are not gaining sufficient recognition through official policing channels.

The conclusion was that "the basic power to stop and search, as espoused through PACE, has the capacity to evade scrutiny; is seemingly immune to (the lack of) evidence of effectiveness; and remains blind to the damaging impact the power has on police-community relations". The PSNI do not accept this analysis but have not formally responded to it in any detail.

8.2 I had meetings with various organisations namely the Northern Ireland Commissioner for Children, Include Youth, the Children's Law Centre and the Northern Ireland Youth Forum and spoke to a number of young people from across Northern Ireland who had been stopped by the police. I also read surveys of young people's concerns and experiences of stop and search. The concerns expressed by and on behalf of young people were that young people were stopped and searched in disproportionately high numbers; vulnerable and marginalised children were being targeted; the police were often patronizing, rude and disrespectful during the encounter; some senior PSNI officers understand this problem but that concern has not filtered down to officers at street level.

8.3 In a detailed paper the Northern Ireland Catholic Council on Social Affairs submitted a paper in response to this Report. It stated that –

"We would also like to take this opportunity to commend the PSNI for the excellent job that many of their officers do in policing Northern Ireland. We have heard in our consultations in particular about community police officers who, by taking the time to get to know young people and their communities….and by walking around the areas in which they live, have built up strong relationships of trust with young people and communities which has served to foster cooperation, understanding and ultimately a more peaceful community. We strongly urge that community policing is prioritized and adequately funded to ensure that such work can continue to take place. We believe that, given the circumstances and balance needed in policing in Northern Ireland, the PSNI have the opportunity to be world leaders in terms of promoting peace through community engagement and we offer our support to their work in creating a more just and peaceful society for all".

8.4 The paper expressed particular concern about the self-fulfilling feeling of young people of being criminalized after being stopped and searched; that the experience could reinforce distinctively anti-police beliefs, ideologies and identities ensuring that future interactions would have a greater potential to be confrontational; this was unfortunate because in many of the areas where stop and search of young people takes place, the problems are social rather than sectarian; and the PSNI, holding the balance of power, could appear aggressive in their manner and tone to young people. It recommended that stop and search under JSA should not be used to manipulate young people into giving information and jeopardizing their own safety by appearing to be 'touts'.

8.5 This analysis was in the context of stop and search under PACE and Misuse of Drugs Act 1971. However, it has raised the profile of the sensitive issue of stopping and searching children. During this reporting period 247 children were stopped/searched under sections 21 and section 24. This represents 3.4% of the total of 7,190 who were stopped. The number of occasions when people were stopped and searched under sections 43 and 43A of TACT was 75 – but in this reporting period no child was stopped and searched under those powers. By way of contrast the number of occasions involving children where powers under

other legislation were used (eg PACE, Misuse of Drugs Act etc) was 3,583 (ie 17% of the total of 21,599). So far fewer children were stopped and searched under JSA and no child was stopped and searched in this period under TACT. However, the use of these exceptional powers in relation to young people remains a very sensitive issue. Some legal proceedings have been brought and there has been media coverage of cases involving young people being stopped and searched “under the Terrorism Act”. The PSNI have confirmed that a record has been kept of all cases involving the use of JSA and TACT powers. The PSNI should also ensure that BWV is used in all cases involving stops/searches of children under JSA and TACT.

Use of powers to contain security situation

8.6 I received representations about the impact of the current security strategy within CNR communities particularly in Derry and Belfast including concerns about –

(a) the PSNI adopting a heavy handed response to managing the Easter Parade in 2018 in Creggan, Derry. Reference was made to 17 arrests (one resulting in a broken arm);

(b) 7 house “raids” (ie searches) involving heavy tactics to gain access to property;

(c) intimidatory approaches made to individuals by MI5 with enticements to encourage cooperation with security forces with accompanying threats;

(d) the distribution of a leaflet targeting Creggan which was widely regarded by residents as a slur on the entire community and contrary to the spirit of community policing (it was said that if a similar profiling tactic had been employed in a Muslim community in London there would have been widespread condemnation);

(e) over 100 individuals were stopped and searched under JSA and TACT – a level of activity which seems to have increased since the Easter Parade;

(f) consequently, there had been a deterioration in police/community relations.

8.7 These representations also included concern that in Belfast, despite the ONH ceasefire in January 2018, the level of stop and search activity in CNR communities had actually increased; a key player in the ONH transition had been stopped 5 times with police surveillance at his home noted on 32 occasions with two incidents outside his home involving the TSG. It was also said that this showed a poor reward by way of 'peace dividend'. Further concern was expressed about the low level of arrests following this high level of security activity. Reference was also made to outstanding issues involving the treatment of prisoners and the use of remand as a form of 'internment without trial'.

8.8 A copy of this dossier reflecting these concerns was given to the NIO and PSNI but I am unaware of any formal response from them. In any event, most of these concerns are outside the remit of this Report and cannot be addressed in this Report. However, the issue of increased levels of stop and search under JSA and TACT is firmly within it. The analysis in Chapter 6 above shows that, although there has been a general decrease in the use of JSA and TACT powers across Northern Ireland, the use of the power remains highest in both Derry and Belfast. An analysis of the number of such stops/searches by district showed that most were in Derry/Strabane (1,450) and Belfast City (1,069). **However, significantly, in both Derry/Strabane and Belfast the number of stops/searches was actually significantly lower than last year.** In Derry/Strabane the numbers were down from 1,812 to 1,450 and in Belfast from 1,502 to 1,069. The number of individuals stopped twice or more in Derry/Strabane was 103 between January and July 2018 (compared with 114 during the same period in 2017). The general trend in the level of use of stop and search under JSA and TACT since April 2018 is **not** an increasing one. It remains the case, however, that there is clearly a focus on Derry/Strabane and Belfast (together with Armagh, Banbridge and Craigavon which saw a slight increase in the use of the power from 904 to 1,030).

8.9 The PSNI response is that the focus, in particular, on Derry/Strabane demonstrates that JSA powers are being targeted against those who pose the greatest threat. The intelligence picture is worrying and, inevitably, not fully understood by residents in the area. DR activity in the Derry/Strabane area is particularly potent. In terms of population Derry/Strabane is well under half the size of Belfast but there are as many DRs in Derry/Strabane who pose a threat as there are in Belfast. Personal threats against officers who have exercised stop and search powers have, in some cases, caused them to be transferred to other Districts. The PSNI have to be discrete about the situation because the community (and business in particular) do not want to see a negative image of Derry being promoted. One commentator observed that the situation was hampered by a lack of effective mechanisms in Derry for police community interaction though the PSNI maintain that there is significant communication with local representatives.

Impact of social media

8.10 Stop and search is intrusive and controversial. It can also be the first occasion when an individual (particularly a young person) comes into contact with the police and that first encounter has the capacity to determine a person's future attitude towards the police. It is also an aspect of policing which is recorded not only by the police using BWV but also by bystanders who are often associates of the individual. So it is a very public exercise of police power. The number of views and shares on social media of stop and search in Northern Ireland run to tens of thousands attracting comments from all over the world. No systematic study of the impact of this phenomenon has been undertaken but there is anecdotal evidence that some officers are increasingly concerned that social media is being used to identify them and to establish where they live thus putting them and their families at risk. Concern has also been expressed that the police now have to be "word perfect" when reciting powers during a stop and search. It is also clear that some exercises of the power have the potential to be exploited on social media for political purposes. It is not clear to what extent, if any, these trends inhibit police use of the powers or whether it is

a factor which has contributed to the decline in its use (along with other factors). However, given the importance that the PSNI attach to the retention of these powers, it would be worrying if the negative impact of social media became an inhibiting factor.

Computers and laptops

8.11 One recurring complaint is the fact that PSNI, during a search under the JSA, will sometimes seize computers and laptops for examination and fail to return the equipment promptly or at all. Sometimes the equipment is retained for over a year causing serious inconvenience. Often there is a wide variety of personal and domestic information on these devices including school homework. There appear to be no charges or convictions arising from any examination of this equipment. These items are seized under a variety of powers and if the item is seized and retained lawfully, no compensation is payable. The PSNI say that retention periods can be lengthy due to the volume of work involved in examining this equipment. If the devices are unlawfully seized, then under section 31 of the Police (Northern Ireland) Act 1998 an application can be made to a magistrates court for its return. It would be helpful if the PSNI could keep a record of the computers and laptops seized under these powers and the period for which they are retained.

Supervision of use of the powers

8.12 In a key passage in his judgment in **Ramsey** Treacy LJ said –

"[49] As previously pointed out the exercise of the stop and search powers is kept under ongoing review involving the annual report of the independent reviewer. Where problems or potential problems emerge it appears the search for solutions to address such problems can yield helpful changes in the operation of the scheme. But the identification of improvements through the process of ongoing review does not mean that the prior system must be condemned as

being in breach of the rights enshrined in Article 8. ***As long as there are effective safeguards in place to prevent arbitrariness the 'quality of law' and 'in accordance with law' requirement of Article 8 will be met. The scheme does not breach Article 8 because a review and/or experience suggest improvement. Amongst the panoply of available safeguards is the effective ongoing review. The identification by these processes of improvement and the willingness to identify and implement such is a measure of how effective safeguards can be.*** *Another safeguard is that if an individual believed, for example, that the stop and search powers were being used for an improper motive or were used in an arbitrary way or for no good reason or to harass ..an action for damages would lie in which proof of justification for the use of the power would lie on the defendant to the claim".*

8.13 In other words it is the cumulative effect of the safeguards and their maintenance and improvement which makes the use of these powers ECHR compliant. One area of potential improvement is supervision. The exercise of these powers is supervised. During the reporting period 10% of the use of stop and search/question was monitored by a supervising officer. However, it is not clear that they are supervised systematically, for example, in response to a service wide instruction. Neither is it clear what the outcome of such supervision is or whether lessons are learned and promulgated. The supervision seems to be very much down to local discretion. This concern is what lay behind the recommendation, which the PSNI have not accepted, that records be kept of what triggered any stop and search involving children or in any case where an unexpected incident has occurred which would be controversial (paragraph 13.4 of the 10th Report). If the PSNI could demonstrate that there was effective supervision and a service wide strategy in relation to the use of these exceptional powers that would be a significant additional safeguard. It would demonstrate that the cumulative impact of the safeguards is effective. For example, the PSNI should encourage the use of BWV in all situations of stops and search involving children and require supervising officers to view that video and satisfy themselves that it was an appropriate use of the power.

8.14 In this context it is worth recording that, subject to what is said in relation to young people in paragraphs 8.1 to 8.5 above, there is far less concern expressed about the manner in which these powers are exercised and the "heavy handed" approach of the police. For example, statistics helpfully provided by the Ombudsman show that during the reporting period his office received only 6 complaints following a police stop and search/question (down from 22 in the previous reporting period). This represents 0.25% of all complaints received and only 4% of all complaints following a police search. These 6 complaints involved 16 allegations involving assault (not including serious or sexual assault) (3), harassment (3), oppressive conduct (not involving assault (2), damage to property (2), detention, treatment and questioning (custody) (1), unlawful/unnecessary arrest/detention (1), improper disclosure of information (1), irregularity with the stop and search of a vehicle (1), mishandling/seizure of property (1) and incivility (1). Of these 6 complaints, 3 were closed because the complainant either did not fully engage with the Ombudsman or withdrew the complaint; in 2 cases no evidence of police wrongdoing was found and were closed either "not substantiated" or "ill founded"; the remaining complaint is still under investigation. This is consistent with the anecdotal evidence that oppressive or heavy handed use of these powers is not the issue it was a few years ago. In this context, it is, however, interesting to note that the NIPB's Omnibus survey released on 21st September 2018 showed a **decrease** in the percentage of respondents reporting that the police were doing a very/fairly good job in their area – down from 74% in 2017 to 68% in 2018.

9. RECORD KEEPING

9.1 There were 3 issues referred to in Chapter 8 of the 10th Report relating to record keeping.

(a) obtaining a copy of the stop/search record – at present when a person is stopped and searched the police will give the individual a reference number. The individual then has to go to a police station with that reference number to collect a record of the search. The PSNI have been trying to find a way to

provide that record electronically but progress has been very slow. The reason for this delay is the fact that the search record contains sensitive personal data. To protect such data any record must be password protected. PSNI security systems operate at a high level to prevent hacking from outside. The system does not permit password protected documents leaving the system on account of this high level firewall. This issue now has added significance since the High Court decision in **Ramsey** (under appeal) has made it clear that the police must record the basis of the search and not just the fact that an authorisation is in place.

(b) in paragraph 8.2 of the 10th Report it was recommended that the PSNI should publish the detail of how many times individuals who are stopped and searched collect a copy of their search record at a police station. This information is now published on a quarterly basis on the PSNI's website. During this reporting period of all those stops and searches under section 24 and sections 43 and 43A of TACT there were only 89 records collected at the police station as of 11th October 2018 – 0.5% of all records.

(c) in paragraphs 8.6 of the 10th Report I recommended that the automated search record be moved onto the NICHE system not only for stops and searches under JSA and TACT but also for those under PACE, the Misuse of Drugs Act etc. subject to the maintenance of existing safeguards in relation to access, supervision and disposal. The PSNI accepted this recommendation and have held a number of workshops with managers and practitioners on the new system. It is expected that it will be in place across the whole of the PSNI by March 2020.

9.2 A further issue in relation to record keeping has arisen following the judgment in **Ramsey**. The PSNI have consistently taken the view (supported by Independent Reviewers) that they were only required to record the basis of the search (in practice the authorisation) and not the grounds (reasonable or otherwise) which prompted it. The PSNI maintained that this was in accordance

with paragraph 8.61 of the Code. The High Court disagreed with the PSNI analysis. It held that –

"[58] In my judgment, the distinction drawn by the PSNI between the basis for a search is misconceived and not in accordance with the Code of Practice. Reliance on the authorisation simpliciter as the "basis" for the search is inconsistent with the express requirements of the Code. The authorisation is the legal foundation for the Constable's ***power*** *to stop and search. However, the basis for the* ***use*** *of this power will vary from case to case. As paragraph 8.61 of the Code makes clear the basis could include but is not limited to:*

- *That something in the behaviour of the person or the way 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.*

[59] I consider that paragraph 8.61 and 8.75 of the Code plainly envisaged a process where the basis for the use/exercise of the power would be recorded. The mischief that this safeguard was intended to address and to mitigate was the risk of improper use of the power of stop and search by enabling greater transparency and accountability in respect of its exercise".

9.3 The High Court then made two interesting observations –

(a) the failure to record the basis of the stop and search did not **automatically** render the exercise of the power unlawful. In relation to each of the 7 exercises of the power under challenge the police officer was able, by subsequent affidavit evidence, to provide a basis for the stop and search. Consequently, these stops and searches were not unlawful;

(b) each basis provided by the police officers was general in nature eg individual known to police on basis of confidential briefings; individual stopped on previous occasions as a result of confidential briefings; car registered to individual known to have DR links. Reliance on "confidential briefings" without disclosing the content of that briefing appeared, in the High Court's view, to

meet the requirement of "greater transparency and accountability" despite the fact that they were general and formulaic in nature.

9.4 On 12th December 2018 the applicants lodged an appeal against the judgment in the Court of Appeal

10. COMMUNITY MONITORING

10.1 Previous reports have examined this issue at some length. The concern of the NIPB, CAJ and Sinn Fein, amongst others, is that the police should record the community background of people who are stopped and searched (CNR, PUL or other). Nobody disagrees that this information should be available but strong views are held about the method for obtaining it. The PSNI have, in the past, expressed the view that, when exercising the intrusive powers in the JSA, they should not be required to focus on the community background of the individual because that would, post Patten, be a retrograde step. The CAJ argue that the CNR/PUL division is an ethnic division and it is wrong that Northern Ireland should be the only part of the United Kingdom where ethnic monitoring of stop and search powers is not mandatory. They argue that, without it, it is impossible to determine, with any degree of accuracy, whether the powers are used in a discriminatory manner.

10.2 It is clear from previous reports and also from the analysis in Chapter 6 above that the use of these powers has declined and it is targeted in areas where there is both DR and Loyalist paramilitary activity. As Treacy LJ said in **Ramsey –**

"[46] ..the complaint under this heading is one of a group of particulars to support the general complaint that the legislative scheme (including the Code of Practice) does not contain adequate safeguards to prevent abuse. However, given the nature of the threat from dissident republicans it would come as no

surprise to anyone in Northern Ireland that the impact and exercise of these powers is more likely to be felt by perceived Catholics and/or nationalists.

[47] However, the authorisation process, police training, the control and restriction on the use of the powers by the Code of Practice, complaints procedures, disciplinary restraint on police officers including the requirement to act, inter alia, in accordance with the Code, the risk of civil action and/or judicial review together with the independent oversight by various bodies…..in my view constitute effective safeguards against the risk of abuse. The system appears to be carefully designed to structurally ensure that the power is not exercised arbitrarily and is kept constantly under review at least on an annual basis by the independent reviewer whose annual reports are publicly accessible".

10.3 Despite the implication in this judgment that a requirement to monitor the individual use of these powers by recording sectarian background is not legally required, the demand that it should be done will no doubt continue. The independent members of the NIPB suggested that this issue could be addressed by using the GPS of the Blackberry to pinpoint each stop and search followed by the production of maps which would indicate the spatial distribution of the searches. The PSNI have looked at this option but, on the basis of their analysis, are not confident that this is an appropriate solution to the problem because –

(a) around 25% of the stops are recorded at the computer terminal (ie back at the police station). There are a number of reasons for this - eg signal or equipment malfunction; Blackberry dropped in the course of the search; need to leave the area of the search for safety reasons;

(b) while it may be possible to 'spot check' the accuracy of the geocode with the address recorded by the officer, only around 25% of cases sampled had a high degree of accuracy. The rest had discrepancies between the two locations because of a loss of signal or the final submission to the terminal being completed after the police had left the location;

(c) the location of the stop and search is not, in any event, a reliable indicator. For example, the presence of a known DR outside the locality where he lived could be a basis for stopping and searching him under paragraph 8.61 of the

Code (one complaint that is often made is that people are stopped and searched in their own locality when they are just going about their daily business).

10.4 Even if a GPS solution could be found it would not satisfy the demand based on the need for the PUL/CNR background to be recorded on an individual basis consistent with practice in the rest of the UK. On that basis, general indicators of non-discriminatory use in the reports of independent reviewers or the safeguards outlined in the **Ramsey** judgment are not enough.

10.5 During this reporting period some senior PSNI officers have indicated that they would be relaxed about a system of community monitoring, based on officer perception, recorded after the event. That perception would be based on personal knowledge of the individual, location, address and other identifying features. It would not involve the individual being asked about his or her community background.

10.6 Individual recording of community background would almost certainly only illustrate what is clear already namely that the use of these powers is directed at dangerous paramilitary organisations. Given that the JSA was passed to address the harm caused by the use of munitions by such organisations this would not be surprising. It would be evidence, not of discrimination, but of operational necessity. Nevertheless, the issue of monitoring is one which needs to be addressed and cannot be left unresolved.

11. AUTHORISATIONS

11.1 There is nothing of substance to add to the analysis of the authorisation process set out in Chapter 10 of the 10th Report. I examined carefully authorisations signed in all of the 12 months of this reporting period. The Authorisation Form is at **Annex F**. The process is carried out thoroughly and

diligently both in the PSNI and NIO. It is a painstaking process. Since the current arrangements for making these authorisations came into effect in 2012 this process has now been carried out on more than 200 occasions.

11.2 The only additional observations to make are –

(a) this year I had the benefit of discussing the authorisation process with Joanna Hannigan, a member of the Northern Ireland Bar, who was instructed by the independent members of the NIPB to examine the authorisations signed at ACC level in the PSNI.

(b) the covering note which the PSNI submit to the NIO when seeking confirmation of the authorisation is helpful and, together with some improved continuity of personnel, has given rise to fewer incidents of internal challenge and discussion;

(c) there were examples of the Minister seeking further advice on receipt of the submission from NIO officials before signing the authorisation.

11.3 As was mentioned in paragraph 5.1 above, there was extensive analysis of the authorisation process in the High Court's judgment in the case of **Ramsey**. The applicant had argued that –

(a) the test for the grant of an authorisation is insufficiently robust;

(b) the Executive oversight of the authorisation is insufficiently robust;

(c) there is no independent oversight of the process;

(d) authorisations are continuous and Northern Ireland wide;

(e) there is no effective means of challenging an authorisation;

(f) the authorisation regime lacks transparency.

11.4 In rejecting these arguments, the High Court placed reliance on the detailed process, level of scrutiny and constraints which govern the process; the detail placed before Ministers before a decision is made; the scrutiny of

successive independent reviewers; the NIPB's Thematic Review of Stop and Search in 2013; and the "SEVERE" threat level which has been in place since 2009. There were effective means of challenging the grant of the authorisation. It could be challenged by way of judicial review on public law grounds and it was open to the applicant to sue for damages for trespass arising from the stop and search in which case the onus would be on the police to justify the exercise of the power. In particular he rejected the criticisms that –

(a) the authorisations were simply done on a "rolling basis";

(b) they cover the whole of Northern Ireland and should be limited to those parts where risk of harm from the use of munitions is greatest;

(c) the authorisation was a "rubber stamp" exercise;

(d) there was no independent element in the process.

12. The Armed Forces

12.1 The role of the Army remains unchanged and as described in previous Reports.

Explosive Ordnance Disposal Activity

12.2 Again there appears to have been very little public concern 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 on 198 occasions compared with 217 occasions in the previous reporting period. That figure of 198 is broken down as follows (with the corresponding figures for the previous years in brackets) –

- on 20 (25) occasions to deal with an IED – typically an active device such as a pipe bomb;

- on 10 (13) occasions to deal with an explosion;

- on 22 (20) 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 14 (24) occasions to deal with a false alarm ie a member of the public may genuinely have reported a suspect object giving rise to a legitimate 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 132 (135) occasions the call out, very often acting on intelligence, was to deal with the discovery of munitions or component parts.

12.3 The number of call outs to deal with the discovery of munitions has remained remarkably consistent over the past 5 years – ranging between 112 and 135 call outs per year.

Processing and handling of complaints

12.4 Section 40(6) requires me to investigate the manner in which complaints are dealt with by the Army (see paragraph 11.4 of the 10th Report). The Army has provided all the files relating to complaints as they have done in previous years and I am satisfied that the few complaints that were received were handled promptly and properly.

12.5 There were 4 complaints during the reporting period –

(a) Solicitors wrote to the Army on 3rd October 2017 complaining about injury to their client's livestock caused by a low flying helicopter over Crossmaglen on 21st July. On 14th February, following a thorough investigation, the MoD replied

to confirm that military aircraft were not operating in the vicinity of Crossmaglen at that time;

(b) on 30th December 2017, a complaint was received by the Army about an incident at a pre-wedding party in 1997 in which it was alleged that a former soldier with the Ulster Defence Regiment placed a loaded handgun in the complainant's stomach, pulled the trigger 3 times, said "you're dead", laughed and walked out of the house, unloaded the gun and put the magazine in his pocket. The complainant assumed that the weapon had not been cocked. The complainant said that he had suffered from mental trauma ever since. He also explained the family reasons why he had delayed so long in bringing the complaint. The Army replied by email on 10th January 2018 that, given the passage of time there was little that the Army could do in response to the complaint. As the incident had occurred outside a military establishment this would, in any event, have been a matter for the police and any subsequent action would only have been taken by the military after a police investigation;

(c) on 12th February a local MLA reported that a number of complaints had been made that day about low flying military jets over Armagh City. It was alleged that the jets were flying dangerously low and the noise upset residents. The file shows that two Tornado jets were in that area at the time on an agreed low level route not below 500ft. The following day the pilot confirmed that neither aircraft flew below the agreed level. On that day the Army replied to the MLA asking for details of the individuals who had contacted him so that the complaints could be dealt with effectively. The file shows that the Army realised that the complainants might not want to deal direct with the Army so the MLA was offered the services of the Civil Representative as a neutral conduit. The complaint has not been pursued;

(d) on 6th June a complaint was received concerning injury to livestock which had been startled by Tornado jets participating in a Flypast over Omagh as part of the RAF's centenary celebrations on 2nd June. The complaint was from a local farmer who said that one of his calves had suffered two broken legs and had to be put down. On 7th June the complaint was referred to the MoD's Common Law Claims and Policy Unit Directorate in London and the complainant was written to on the same day confirming receipt of the complaint and the action

taken. The Civil Representative visited the complainant and helped him complete the claim form. The claim is currently being considered.

13. Road Closures and land requisition

13.1 There are powers in sections 29 to 32 for the Secretary of State to close roads and requisition land for the preservation of peace or the maintenance of order. In line with the Agency Arrangements agreed between the Secretary of State and DoJ (see paragraph 10.2 of the 7th Report) the requisition power in section 29 and the road closure power in section 32 can, in respect of devolved matters, be exercised by the DoJ. There have been few developments during this reporting period and these closures and land requisitions are not controversial at the present time.

13.2 The DoJ made two land requisitions in Belfast under section 29 – one for the annual Whiterock Parade on 30th June 2018 and one for the feeder parade from Whiterock Orange Hall for the 12th July Parade. Both requisitions were for the Forthriver Business Park on the Springfield Road and both expired on the same day after the parades were completed.

13.3 On 27th March the DoJ made 4 de-requisition orders under section 29 revoking orders which had been made by the Secretary of State prior to the devolution of justice functions –

(a) a security wall, situated on a development site opposite New Barnsley police station in Springhill Avenue, West Belfast was removed;

(b) a fence adjacent to land occupied by the Department for Communities in Springhill Parade, West Belfast was reclassified as a boundary fence and ownership transferred to the Department;

(c) a fence in Charles Street, Portadown surrounding a privately owned site was reclassified as a boundary fence and ownership transferred to the landowner;

(d) a fence in Curran Street, Portadown, surrounding a vacant site, was removed due to the development of a park and ride facility by Translink.

The DoJ made one order under section 32 on 12th April to close alleyways in East Belfast in response to sectarian anti-social behaviour.

13.4 The following roads remain closed on national security grounds

(a) Lower Chichester Road (next to the Law Courts in Belfast);

(b) the Shore Road (next to the Army training estate in Ballykilner);

(c) Magheralave Road in Lisburn;

(d) Crumlin Road/Killead Road and Crosshill Road in Aldergrove.

14. The last five years

14.1 This is my fifth report as Independent Reviewer and over the past 5 years there have been many positive developments in relation to the use of JSA powers –

(a) the existence of these powers is widely regarded as necessary to deal with the residual threat from violent DRs and loyalist paramilitaries;

(b) their use has been upheld in the courts as lawful and the JSA regime has been held to be ECHR compliant;

(c) the powers are used far less frequently than in the period after the JSA was first passed suggesting a more targeted approach to their use;

(d) although the powers are used more frequently in relation to violent DR activity they are also used in relation to loyalist paramilitary activity. The imbalance can be explained by reference to the magnitude of threat from DRs. It is also relevant that ordinary criminal justice powers are normally sufficiently effective in relation to loyalist paramilitary activity;

(e) the roll out of BWV is complete and the benefits (not only in relation to the use of JSA powers) are beginning to become apparent;

(f) the PSNI have become more willing to share information about their use of JSA powers and to engage more with the public (eg the TSG programme of community engagement, PSNI use of social media and PSNI website);

(g) the authorisation process which triggers the ”without reasonable suspicion” stop and search power has always been, and continues to be, undertaken thoroughly and carefully and each authorisation (together with its terms) is fully justified by the intelligence;

(h) road closures and land requisitions are kept to a minimum and are not controversial.

14.2 This represents considerable progress and is even more encouraging when seen against the improved public order situation (eg resolution of Twaddell) and the vastly reduced number of complaints in relation to Army activity (reduced from 110 in 2009 to a trickle in the last 3 years).

14.3 However, there are areas where further progress is needed –

(a) BWV is only deployed at present in around 30% of stop and search incidents and it is important to move to a situation where it is only in exceptional circumstances that these incidents are not recorded;

(b) this, along with other measures, would enable closer supervision of the use of the powers particularly in cases where young people under 18 are involved. It is important that the PSNI are able to demonstrate that these intrusive and exceptional powers are supervised closely and that lessons are learned;

(c) in some CNR communities there is a clear perception that the use of the powers can be counterproductive and heavy-handed with the result those communities feel stigmatised. This is perhaps inevitable in current circumstances but failure to demonstrate restrained, effective and necessary use of the power gives rise to either legitimate grievances or perceived grievances that can then be exploited for political reasons. Lack of positive outcomes following a stop and search, eg. low arrest rates (even if explicable in terms of the pre-emptive nature of the power) exacerbate this situation. Hence

the need for greater use of BWV, more effective supervision and the articulation of a strategic approach to the use of the JSA powers;

(d) the use of social media to record and broadcast stop and search in public places puts additional pressure on the police and there is some anecdotal evidence this can inhibit stop and search and undermine police confidence in the use of the powers;

(e) no progress has been made on the issue of individual community monitoring of the use of these powers;

(f) people who are affected by the use of JSA powers are entitled to receive a copy of the record of the stop/search. However, they cannot obtain that copy without going to a police station with a reference number. Consequently, only 0.5% of persons affected do this (for a variety of reasons).

(g) the authorisation process, though thorough and painstaking, is time consuming and labour intensive.

15. Recommendations

15.1 Of the 8 recommendations made in the 10th Report-

15.2 Three recommendations would require primary legislation and no progress has yet been made. These recommendations relate to the reporting period, amending the search power and the duration of the authorisation allowing stop and search without reasonable suspicion. The recommendation to amend the search power attracted some comment by some who thought that this was a backward step, would lead to more use of stop and search and would be seen as oppressive in some parts of the community. This is not the intention. The power has been exercised lawfully and, on the whole, appropriately but when phrased in terms of a power “to search for munitions” rather than a power to “deter, prevent or disrupt their transportation or use” it fails to recognize the real benefit and outcome of the search. It may, however, be too late in the day to persuade Parliament to amend that provision.

15.3 Three recommendations have been accepted and some progress to full implementation has been made by the PSNI. These relate to –

(a) assessing the impact of improved monitoring. Officers of the rank of sergeant or above conduct regular checks on all stop and search powers not just those under TACT and JSA. This is done by logging on to the PUMA system and selecting stop and search records at random. Where BWV has been used there is the option to cross reference to the footage to ensure that the person has been treated, with courtesy, fairness and respect. During the reporting period 10.4% of stops and search/question were examined. The PSNI report that in the vast majority of cases no further action is taken although some instances of incorrect record keeping were noted. There are two observations to be made. First these findings are not consistent with Dr Topping's research (paragraphs 8.1 to 8.5 above) into the way young people are treated on the streets during a stop and search/question (although Dr Topping's research concerned stop and search under PACE and the Misuse of Drugs Act). Second, the supervision has not led to any thematic or strategic conclusions which one might expect to emerge in the longer term.

(b) providing an annual assessment of the impact of BWV. This still remains work in progress and the PSNI do not propose to produce an annual assessment as such. A document will be produced and placed on the PSNI website when it is completed. A draft of a Service Instruction is being produced and this will, when in final form, be placed on the PSNI website.

(c) moving the automated records on the use of JSA powers onto the main intelligence base. This, too, is work in progress and the process should be completed by March 2020.

15.4 The recommendation that the powers in the JSA should be retained so long as the current security situation in Northern Ireland continues has attracted no adverse comment. The concerns have always related to the manner in which these powers are used, the frequency of the use and the perception that they are used disproportionately in the CNR community.

15.5 The PSNI have not accepted the recommendation that an internal record be kept of any stop and search under the JSA or TACT involving children or where an unexpected incident has occurred which might prove controversial. The purpose of this recommendation is to aid collective learning and best practice, to improve training; to avoid unnecessary repetition of avoidable mistakes; and put the PSNI in a better position to respond to allegations that children have been stopped and searched unnecessarily. This recommendation is made against the background that there is a concern, in some quarters, about the way children are stopped and searched/questioned in Northern Ireland. It can be the first encounter that a child has with the police and it can have an adverse impact on a young person and reinforce hostile attitudes to the police which may be prevalent in their community. The PSNI have considered this recommendation carefully and concluded that it is not feasible to accept it. Their view is that these powers are "without reasonable suspicion" powers and, accordingly, police officers should not be required to articulate reasons why a particular person should be stopped and searched. In their view, 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. The PSNI have a number of stop and search governance groups one of which is the Children and Young Persons Forum where stop and search is examined to ensure fair and effective use and, as a result of these meetings, the PSNI are satisfied the powers are being used appropriately.

15.6 In addition to these recommendations –

(a) BWV should always be used in any case where the JSA powers are used in a case involving a child (paragraph 8.5 above);

(b) where it is not so used (eg technical failure) this must be reported to a supervising officer with an explanation (paragraph 8.5 above);

(c) a record should be kept of all computers and laptops seized and retained under JSA powers together with the duration of the retention (paragraph 8.11);

(d) senior management in the PSNI, having looked at other ways of delivering community monitoring, should now consider whether this could be done on the basis of officer perception (paragraphs 10.1 to 10.6).

15.7 Some of these recommendations may seem pedantic and bureaucratic. However, good policing is based on trust and confidence. As Treacy LJ said in **Ramsey** it is the cumulative effect of various safeguards against arbitrariness which enables the the JSA regime to meet the 'quality of law' test. Moreover, this is not a static process. As technology, attitudes and circumstances change so these necessary safeguards have to develop. These are exceptional powers and a demonstrable willingness to adapt and respond is in itself a significant safeguard.

PART 2 – NON-JURY TRIALS (NJTs)

Background

16.1 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 these 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. Unless renewed by a further order these provisions will therefore expire on 31st July 2019. In the debate on the 2017 order in the House of Commons the then Parliamentary Under-Secretary of State at the NIO, Chloe 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 gives some extra reassurance to those interested in these issues".

16.2 Accordingly, Part 2 of the 10th Annual Report[2] addressed this issue. It sets out my terms of reference, the statutory framework and the wider context. It also describes the risks to NJTs in Northern Ireland; the nature and robustness of the procedures; and juror protection methods. It also contains an analysis of sampled cases, sets out the criticisms of the current arrangements and makes some modest recommendations for their improvement. **This Report is therefore supplementary to the main analysis in the 10th Report and must be read in conjunction with it**.

16.3 Broadly speaking, the analysis in the 10th Report stands and is not repeated here. The purpose of this part of the Report is to address -

(a) the outcome of a further analysis of more recent cases;

(b) concerns of the Bar

(c) responses to the recommendations that were made in the 10th Report;

(d) the use of NJTs in cases involving former British soldiers who served during the Troubles.

Analysis of more recent cases

17.1 The cases which were sampled for scrutiny are at **Annex J**. Subject to what follows, that scrutiny does not affect the analysis set out in Part 2 of the 10th Report. The decision making process in connection with the grant or refusal of an NJT certificate remains very thorough and meets high professional standards.

17.2 A total of 24 cases were examined covering the period April 2016 to April 2018. The alleged offences included murder, attempted murder, explosive

[2] Ibid

offences, firearms offences, membership of a proscribed organisation, wounding with intent, blackmail, assault, theft, benefit fraud and common assault. With one exception (see paragraph 20.1 below), the cases were connected to the activities of different proscribed organisations. The decision making process was the same in every case following rigidly the procedures set out in paragraphs 19.1 to 19.5 of the 10th Report. The submissions to the DPP, following detailed analysis from the PSNI, were thorough and comprehensive and addressed all the relevant issues. In one case the submission to the DPP ran to 21 pages. In another case the certificate was withdrawn because, on a review, the DPP considered that there was insufficient intelligence to justify a suspicion that one of the conditions was met.

17.3 The only additional observations to be made are -

(a) in 2017 there were 22 NJT certificates issued (including one which was an amended version of an earlier certificate) and one application for a certificate was refused; and in 2018 15 NJT certificates were granted and one application for a certificate was refused. These figures are similar to those for 2007 to 2016 where the average annual number of NJT certificates was 18 with one refusal (see paragraph 17.4 of the 10th Report);

(b) some of the more recent sampled cases are still ongoing. It is therefore not possible to give a comprehensive analysis of acquittal rates for the last two years. However, the Northern Ireland Court Service have been able to provide the following statistics based on acquittals in Crown Court cases where the defendant pleaded not guilty. In 2017 the acquittal rate in NJTs was 44% compared with 25% in jury trials. Between January 2018 and June 2018 the acquittal rate in NJTs was 30.8% compared with 24.6% in jury trials. So in both 2017 and (so far) in 2018 the acquittal rate was higher in NJTs than in jury trials. These statistics are not dissimilar to those for 2013 to 2016 where in two of those years the acquittal rate was higher in NJTs than in jury trials (see paragraph 17.6 of the 10th Report);

(c) concern remains about the time taken by the PSNI to respond to the PPS's request for information to assist the DPP's consideration of whether to grant a NJT certificate. The PSNI response is comprehensive and addresses all relevant

issues but the average response rate in the sampled cases is 7 months. The shortest response time was 6 weeks and the longest was 12 months;

(d) in one case the DPP recused himself from taking the decision to grant a certificate because the defendant was known to the DPP from his previous work as a defence solicitor;

(e) a certificate was refused in 2 cases. In one case, the defendant was charged with benefit fraud. Condition 1 was met (membership of a proscribed organisation) but the DPP considered that the administration of justice would not be impaired if the case was heard before a jury. In the second case, the intelligence that Condition 1 was met was insufficient and there was nothing to indicate that the theft was other than for personal gain;

(f) in paragraph 21.7 of the 10th Report, it was noted that in none of the cases was condition 3 met. This condition is that an attempt had been made to prejudice the investigation or prosecution and that attempt had been made on behalf (or with the assistance) of a proscribed organisation. However, in one of the sampled cases listed in Annex J, Condition 3 was met because there was intelligence that several attempts had been made by a proscribed organisation to force the defendant to recant the admissions he had made.

Concerns of the Bar

18.1 In the 10th Report I commented that concern about NJTs in Northern Ireland is muted. This generally remains the case. However, the Bar of Northern Ireland is concerned that the JSA gives the DPP a power to act on suspicion and there is no requirement for him to give reasons for his decision. They also expressed concern about limited grounds for challenging the DPP's decision and urged the Secretary of State to consider aligning the system with that which prevails in England and Wales under the CJA. These points were made in their submission of 2nd February 2017 in response to the Secretary of State's public consultation on the future of NJTs in Northern Ireland. It was also pointed out that there is no evidence of jury tampering or witness intimidation in Northern Ireland. There was also concern that, in deciding that there was a risk that the

administration of justice would be impaired, too much reliance was placed on generic material relating to the activities of paramilitaries rather than on case specific indicators.

18.2 It should, however, be noted that –

(a) the CJA is only concerned with jury tampering and witness intimidation. The JSA also contemplates that the risk of impairment to the administration of justice can arise from a fearful or hostile jury (whether or not there is a risk of jury tampering) – see the case of **Hutchings [2017] NIQB 121** (paragraph 20.1 to 20.3 below). So the JSA contemplates the wider range of risks to the administration of justice in Northern Ireland.

(b) it may be that there is little evidence at present of jury tampering (though it does take place) but that must be partly due to the fact that for the past 45 years the cases in which this is most likely to happen have been heard without a jury. The PSNI assessment remains that, in those tight knit communities in which proscribed organisations operate, the risk of jury tampering and witness intimidation would be significant. Indeed, in one recent case (see paragraph 17(3)(f) above) there was intelligence that a proscribed organisation had attempted to influence the evidence to be given in court. Moreover, it is sometimes the jurors' perceptions as to the risks posed to them and their families in a small jurisdiction which is key.

(c) it might be possible to create a system where the decision is taken by a judge on the basis of intelligence after a hearing involving special advocates as an interim stage before moving to the system under the CJA. However, that raises further issues; would require primary legislation; and is outside the remit of this Report which is limited to considering *"whether any improvements could be made to the **existing processes**".*

Responses to recommendations

19.1 A number of modest recommendations were made in paragraph 23 of the 10th Report.

Quicker response times

19.2 On the basis of the sampled cases, the average time it takes for the PSNI to respond to the initial request from the PPS is 7 months (see paragraph 17.3 (c) above). The PSNI and PPS have met to discuss improving this aspect of performance and the PSNI have taken steps to address this issue. This is work in progress and the effectiveness of these steps will not be apparent until next year when a full review of response times can take place. Improvement is necessary because delay in the criminal justice system in Northern Ireland is a major source of concern. The PPS say that, overall, PSNI response times have improved and it is only in a small number of cases, that a delay has been caused.

Closer collaboration between PSNI and PPS

19.3 It was recommended that the PSNI and PPS should meet annually to discuss how to handle these cases to ensure that there is shared learning and a consistent approach in cases where a NJT needs to be considered. The process appeared from the files to be very much conducted at arm's length. The PSNI and PPS have met to discuss issues and process following which it was agreed that the PPS would provide feedback to the PSNI after a decision whether or not to grant a certificate has been taken. Again, the benefits of such approach will not become apparent until next year but clearly there is some scope not only for the prioritisation of this work but also for closer collaboration;

19.4 These recommendations relating to response times and closer collaboration are consistent with the “Indictable Cases Process” which is an inter-agency initiative by the Criminal Justice Board to speed up criminal proceedings in relation to certain indictable offences

NJT Certificate to reflect consideration of juror protection measures

19.5 The NJT certificate should reflect the fact that juror protection measures have been considered even though there is no statutory requirement to do so. It was odd that, although this important consideration had been part of the process for many years, the NJT certificate failed to reflect that important point. This has now been included in the NJT certificate.

PPS central register to record PSNI file reference number

19.6 This recommendation has been accepted.

DPP to consider NJT under CJA in appropriate cases

19.7 It was recommended that if there is evidence of jury tampering, then if the DPP considers that a NJT may be in the interests of justice, he should consider proceeding under the CJA before considering the issue of a NJT certificate under the JSA. It will be rare for such a situation to arise but the following are possible scenarios where the CJA process should be adopted –

(a) there is evidence of jury tampering in a trial; the following year the same defendant in that trial is charged with another offence and the JSA Conditions are met. However, because there is evidence of jury tampering in a previous trial involving the defendant the test in section 44(6)(b) of the CJA is also met;

(b) A murders B in a pub and is arrested next day; the following day witnesses to the murder are threatened if they give evidence in any future trial. The police are called in and find evidence of intimidation of witnesses thus satisfying the test in section 44(6)(c).

Other examples of when the CJA process would have to be followed are –

(a) after arraignment in a jury trial evidence comes to light that there has been jury tampering. It is too late post arraignment to issue a NJT certificate and the judge would have to proceed under section 46 of the CJA;

(b) where the JSA Conditions are not met but the CJA test is satisfied ie where there is evidence of jury tampering or witness intimidation in a case without a paramilitary or sectarian dimension.

In these two cases the CJA procedure would have to be followed because there would be no other option for a NJT under the JSA. However, in the first two

examples the DPP would be faced with a **choice** and the CJA procedure should, arguably, be followed rather than the JSA procedure. This would mean that a judge would take the decision on the basis of evidence and representations rather than the DPP taking it on the basis of suspicion under the exceptional provisions of the JSA. It would, under the current arrangements, be a small "nod" in the direction of normalization. The PPS acknowledge the advantages of the CJA procedure in terms of transparency but have reservations as to whether the prospect of a successful application under the CJA makes it appropriate for the DPP **not** to exercise his JSA powers in the interests of the administration of justice.

Public explanation of why juror protection measures are not used in Northern Ireland.

19.8 Some commentators have argued that the NJT provisions in the JSA should be repealed and that the arrangements for NJTs should be aligned with that in England and Wales. At a CAJ conference in April 2013, a solicitor Niall Murphy said that –

"Trial by jury is a 'symbol of normality 'which generates public confidence in the criminal justice system because of its participatory nature. Indeed, it has been argued that the government's consideration of this jurisdiction as a continuing emergency situation 'perpetuates a lack of confidence' in the Rule of Law. Indeed, Rights Watch UK have observed that 'the current system has the potential to hinder progress towards peace because Northern Ireland is perceived as being in a state of exception', and that non-jury trials only serve to emphasize regression from the peace process and an obstacle to delivering normalisation".

The risks to jury trials in Northern Ireland were set out in Chapter 18 of the 10th Report and the difficulties of putting in place effective juror protection measures were described in Chapter 20 of that Report. The wider policy issue is whether the 'normalisation' should be at the potential expense of the administration of justice. It is important to ensure that all criminal trials are conducted fairly and in the prevailing circumstances in Northern Ireland that means that a small number of cases need to be tried without a jury. However,

those responsible for administering the criminal justice system need to remind the public why NJTs are necessary on an exceptional basis. There has been no formal response to this recommendation by the PSNI but it would be helpful if, for example, the PSNI could put on its website an explanation of the risks to jury trials together with the reasons why juror protection measures remain challenging in Northern Ireland.

Notifying defendant of intention to grant certificate

19.9 It was recommended that, in the interests of transparency, the DPP should, once he has formed a view that the certificate should be issued, consider notifying the defendant that he is minded to issue a certificate, specify the condition or conditions and any other material that is in the public domain and invite representations within a specified period. This is not without difficulty and the arguments for and against such a procedure were set out in paragraph 23.3 of the 10th Report. The PPS have not accepted this recommendation on the following grounds –

(a) it would involve the PSNI in detailed and time consuming work;

(b) it would lead to further applications to the Court for disclosure and/or judicial review;

(c) a time limit placed on the defence would not be successful in preventing a series of further inquiries and disclosure applications;

(d) defence representations are unlikely to be of any assistance to the DPP because his decision is based on intelligence to which the defendant would not be party;

(e) risk of judicial review would be increased;

(f) the decision to issue a certificate is rarely contentious.

19.10 It may be that in some cases it would not be appropriate to notify the defendant with an explanation (suitably framed) and invite representations. It is clear that there is no statutory requirement to do so. However, in some cases it may well be possible and appropriate to do this in the interests of transparency.

It is pertinent at this point to note that in the case of **Hutchings 2017 [2017] NIQB 121** (see paragraphs 20.1 to 20.3 below). Mr Hutchings judicially reviewed the grant of the certificate on the ground that the DPP had failed to provide appropriate reasons for his decision and failed to disclose materials upon which the reasoning was based. In the context of that judicial review the Court dismissed the application but noted that –

"…we have some difficulty understanding why in this case disclosure was not made of matters which were specifically referred to as forming the decision such as the police report (even in summary form) and "the other material" which the Director expressly indicated he had analysed. The duty of candour is an exacting one and we entertain some doubts as to whether sufficient consideration was given in this case by the Director as to what documents could have been provided in the interests of transparency and explanation. In the event, however, given the specific facts of this case, we are not satisfied that anything turns on this…… the background circumstances of this case alone were more than sufficient to provide a solid foundation for the twin decision making process carried out by the Director and we fail to see how any documents could have materially added to the applicant's understanding of the reasoning in question…..However, that is not to say that in the modern spirit of transparency the Director should not have provided at least a summary of the materials before him".

This issue arose after the decision to issue a NJT certificate was taken and in the course of a subsequent judicial review of that decision. However, this does indicate that there may be some cases where a fuller explanation of the decision might be possible. The Court, in dismissing the application, held that there was no impropriety in not affording the applicant an opportunity to make representations before the certificate was granted. The policy issue is whether the demands of greater transparency in those cases where further disclosure or explanation is possible (though not legally required) justifies an additional step in the process with its potential risks.

The use of NJTs in cases involving former British soldiers who served during the Troubles

20.1 Chapter 17 of the 10th Report states that concern about NJTs in Northern Ireland is muted. There are some who press for an alignment with the position in England and Wales but the majority view is that the small number of NJTs is necessary, given the prevailing circumstances in Northern Ireland, to secure fair trials. The decision to prosecute former soldiers in connection with shootings during the Troubles has, however, placed a spotlight on NJTs in Northern Ireland. In the case of **Hutchings** a former soldier, who is being prosecuted in connection with a fatal shooting in 1974, challenged the decision of the DPP to grant a NJT certificate. The DPP's decision was based on Condition 4 ie "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 of one group of persons towards another person or group of persons" and he was satisfied that there was a risk that the administration of justice might be impaired if the trial were to be conducted with a jury. The Court dismissed the application and gave a wide interpretation to Condition 4 (as described in paragraph 11 of the DPP's internal Guidance in relation to Applications for a Director's Certificate for a Non-Jury Trial – see **Annex H**). In particular, the Court held that the wording was wide enough to cover a situation where the British Army engaged with suspected members of the IRA. Counsel for Mr Hutchings argued that this interpretation of Condition 4 would mean that all military personnel who might be prosecuted would, inevitably, face a NJT. However, the Court dismissed that argument on the basis that each case would fall to be considered on its own facts. It is worth noting that the material on which the DPP based his decision in that case was a matter of record and contained no sensitive intelligence.

20.2 There will, potentially, be more prosecutions in the future of former military personnel in connection with shootings etc. carried out during the Troubles and this is a source of concern for many former soldiers. In July 2018

the Supreme Court in London granted Mr Hutchings permission to appeal and is due to hear that appeal on 14th March 2019. The issues in the appeal will be -

"(1) Whether the court below erred in law and fact in holding that the DPP validly issued a certificate under section 1 of the Justice and Security (NI) Act 2007.

(2) Whether the court below failed to give the true construction to Condition 4 in section 1 of the Justice and Security (NI) Act 2007.

(3) Whether there was a breach of natural justice by the DPP in not consulting the Applicant before issuing his Section 1 certificate, failing to make proper disclosure, and failing to give adequate reasons for issuing the certificate".

ANNEX A – ACRONYMS

ACC – Assistant Chief Constable

BWV – Body Worn Video

CAJ – Committee for the Administration of Justice

CJA – Criminal Justice Act 2003

CJINI – Criminal Justice Inspectorate (Northern Ireland)

CNR – Catholic/Nationalist/Republican

Code of Practice – Code of Practice under section 34 JSA

DoJ – Department of Justice

DR – dissident republican

EOD – explosive ordnance disposal

ECHR – European Convention on Human Rights

IED – Improvised Explosive Device

JSA – Justice and Security (Northern Ireland) Act 2007

MI5 – Security Service

MLA – Member of the Legislative Assembly

MoD – Ministry of Defence

NGO – Non Governmental Organisation

NIO – Northern Ireland Office

NJT – non-jury trial

Ombudsman – Police Ombudsman for Northern Ireland

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

PPS – Public Prosecution Service

PSNI – Police Service of Northern Ireland

PUL – Protestant/Unionist/Loyalist

PUMA – Providing Users Mobile Service

Secretary of State for Northern Ireland

TACT – 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, barrister

British/Irish Intergovernmental Secretariat

Charter NI

Catholic Church

Children's Law Centre

Dr Ciaran Kearney

Coiste Na nlarchimi (COISTE)

CAJ

CJINI

Professor Clive Walker

Conal McFeely (Creggan Enterprises)

DoJ officials

Democratic Unionist Party (DUP)

Eamon O'Cuiv TD

Ex Prisoners Interpretative Centre (EPIC)

Falls Community Council

Father Gary Donegan

HQ (38) Irish Brigade

Include Youth

Jim Roddy MBE

Joanna Hannigan, barrister

Michael Brentnall, solicitor

MI5

Northern Ireland Commissioner for Children

Northern Ireland Human Rights Commission

NIPB independent members

Northern Ireland Youth Forum

Police Federation for Northern Ireland

Ombudsman

Police Superintendents Association

Mr John Penrose MP, Minister of State NIO

Professor John Topping, Queen's University

Professor Jonny Byrne, University of Ulster

Progressive Unionist Party (PUP)

PSNI

Minister of State for Northern Ireland

Social democratic and Labour Party (SDLP)

South Belfast Resource Centre

Sinn Fein

Ulster Unionist Party (UUP)

In relation to Part 2

Chairman of the Bar (NI)

Chairman of the Criminal Bar (NI)

Professor Clive Walker

Defence solicitors

Lord Chief Justice

MI5

Northern Ireland Human Rights Commission

PSNI

PPS

ANNEX C - SUMMARY OF POWERS

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.	This power allows a police officer to stop and question a member of the public to establish their identity and movements. 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. 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.	A record of each stop and question must be made. 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. Officers should inform those who have been stopped and questioned how they can obtain a copy of the record if required.
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.	This power allows a police officer to enter premises to keep the peace or maintain order. 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	A record of each entry into a building must be made. Records are not required for any premises other than buildings.

		Superintendent or above) or written (from an Inspector or above). 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.	Records must be provided as soon as reasonably practicable to the owner or occupier of the building. Otherwise the officer should inform the owner or occupier how to obtain a copy of the record. 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).
24/Schedule 3	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.	This power allows officers to enter and search any premises for munitions or wireless apparatus. 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. Officers may be accompanied by other persons during the course of a search. During the course of a search, officers may make requirements of anyone the premises or anyone who enters the premises to remain on the premise.	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. 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

		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 see to frustrate a search of premises. 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.	
24/Schedule 3	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.	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. 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.	A written record of each stop and search must be made. The officer should inform the person how to obtain a copy of the record. 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.
24/Schedule 3	Paragraph 4A(1): A senior officer may give an authorisation under this	This power allows a senior officer to authorise officers to stop and search people for munitions or wireless apparatus in specified locations.	A written record of each stop and search must be made.

paragraph in relation to a specified area or place.

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.

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.

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.

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.

The officer should inform the person how to obtain a copy of the record.

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.

26 and 42	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.	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. A person commits an offence and may be prosecuted if he fails to stop a vehicle when required to do so. 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.	A written record of each stop and search of a vehicle must be made. The officer should inform the person how to obtain a copy of the record. 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.

Part 2

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	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	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	A written record of each stop and search must be made preferably at the time. The officer should provide the written record to the person searched or, if this is wholly impracticable, provide the

	which may constitute evidence that he is a terrorist.	section 1 of TACT 2000. 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.	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. 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.
43 (2)	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.	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.	A written record of each stop and search must be made preferably at the time. 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. 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.
43(4B)(a)	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.	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.Nothing in subsection (4B) confers a power to search any person but the power to search in that	A written record of each stop and search must be made preferably at the time. 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. The record is to set out all the information listed at

		subsection is in addition to the power in subsection (1) to search a person whom the constable reasonably suspects to be a terrorist. 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. 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.	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.
43A	A constable may, if he reasonably suspects that a vehicle is being used for the purposes of terrorism stop and search (a) 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.	The definition of "terrorism" is found in section 1 of TACT 2000. 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. A constable may, if necessary, use reasonable force to exercise this power.	A written record of each stop and search must be made preferably at the time. 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. 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.
47A	A constable may stop and search a person or a vehicle in a specified area or place for	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	A written record of each stop and search must be made preferably at the time.

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, of the Terrorism Act 2000.	suspects that an act of terrorism will take place; and (b) reasonably considers that the authorisation is necessary to prevent such an act. 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. 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 person is or has been involved in terrorism - whether or not the officer reasonably suspects that there is such evidence. 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. 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.	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. 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.

ANNEX D - STATEMENT BY THE SECRETARY OF STATE

Northern Ireland Office

Northern Ireland Security Situation - December 2018

The Secretary of State for Northern Ireland (Karen Bradley): This is the eleventh written statement to Parliament on the security situation in Northern Ireland since the Independent Monitoring Commission concluded its work in July 2011. It covers the security situation and 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 13 months since the last statement on Northern Ireland's security situation, a small number of violent dissident republican terrorist groups have continued to pursue a campaign of violence. Violent dissident republican terrorists are relatively small, disparate groupings. They remain intent on killing and undermining the will of the vast majority of the people of Northern Ireland who have repeatedly and consistently expressed their desire for peace. These groupings choose to pay no heed to this and continue to plan attacks with the purpose of murdering and maiming those who work on a daily basis to uphold the rule of law and protect the whole community. In attempting to impose their unwanted control on people across Northern Ireland, these groupings also choose to ignore democracy, principles that have been, and will continue to be, central to the political process in Northern Ireland.

In 2016, dissident republican terrorists murdered prison officer Adrian Ismay while in 2017 they again demonstrated their lethal intent, including one attack where a petrol station forecourt was sprayed with gunfire and two police officers were wounded. There have been two attempts to murder police officers since the last Written Ministerial Statement, with numerous other plots identified and prevented by the Police Service of Northern Ireland (PSNI) and MI5. These included shots fired at police officers during rioting in Londonderry in July of this year. This incident, like many dissident republican terrorist attacks, posed a risk to members of the public in the immediate area as well as the police officers who were targeted while they were working to keep communities safe.

I wish to pay tribute to all the agencies, including the PSNI, MI5 and the bomb disposal teams, who work on a daily basis to keep people safe. In many cases their work can make them the target dissident republican terrorists. I applaud the work they do across Northern Ireland, their professionalism and the personal sacrifices that so many of them make in support of this vital work. I also commend the work undertaken by An Garda Síochána, and the excellent relationship they have with their counterparts in Northern Ireland. This has

had a significant impact on dealing with the threat. The commitment of such a wide variety of agencies to public service and to the communities they serve, stands in stark contrast to the acts of dissident republicans.

While terrorist attack planning continues, law enforcement pressure has reduced the number of national security attacks. Since the start of 2018 there has been one national security attack, compared to five in 2017, four in 2016 and a total of 16 attacks in 2015 and 40 in 2010. Although there has been a reduction in the overall number of national security attacks in recent years, vigilance in the face of this continuing threat remains essential and the threat level remains SEVERE.

Since October 2017, MI5 has identified a number of violent dissident republican attack plots; 2 attacks were attempted, but were ultimately unsuccessful, and others were disrupted. This success is in no small measure due to the continued close working between PSNI and MI5, as well as with the authorities in Ireland. Each of the main violent dissident republican groups has suffered significant disruption including the loss of personnel and weapons in the past twelve months. During the past 12 month period (1 October 2017 - 30 September 2018) in Northern Ireland, there have been 143 arrests under the Terrorism Act, with 16 people subsequently charged. During the same period, 45 firearms, 0.74kg of explosives and 3157 rounds of ammunition have been seized. This pressure, and other interventions, is a barrier to, and a brake on dissident republican activity of all kinds, although I assess that, in the coming months, dissident republican terrorist groups will continue to seek to attack officers from the PSNI, prison officers and members of the armed forces.

As a consequence of violent dissident republicans' actions and intent, the threat from Northern Ireland Related Terrorism in Northern Ireland remains SEVERE, which means an attack is highly likely. In Great Britain, the threat from Northern Ireland Related Terrorism was reduced in March this year from SUBSTANTIAL to MODERATE, which means an attack is possible, but not likely.

The Government has consistently made it clear that terrorism, including Northern Ireland Related Terrorism, will not succeed and tackling it continues to be of the highest priority. We are determined to keep people safe and secure across the United Kingdom. To support this effort over this Parliament we have provided £160 million of Additional Security Funding to the PSNI to tackle the enduring threat from Northern Ireland Related Terrorism. This is significant funding. It recognises the severity of the terrorist threat; it demonstrates our unwavering commitment to the brave men and women in the police and intelligence agencies, and it is helping to keep people safe.

Paramilitary groups, both republican and loyalist, continue to carry out violent criminal attacks against members of their own communities. So far this year there has been 64 such attacks. This includes 1 paramilitary related death, 16 casualties of paramilitary style shootings and 47 casualties of paramilitary style assaults. The hypocrisy of paramilitary-linked criminals claiming to act to defend their communities from anti-social behaviour and drug dealing, while at the same time profiting from this activity is not lost on affected communities. They are targeting the most vulnerable members in their communities as they try to exert control and fear.

This Government continues strongly to support ongoing efforts to tackle paramilitarism and organised crime in Northern Ireland through the delivery of the commitments made in the Executive's action plan on tackling paramilitary activity, criminality and organised crime. This work is, by design, a collaborative endeavour being taken forward by a partnership of more than 24 organisations, including Executive Departments, statutory bodies and voluntary and community sector partners. Delivery is being achieved through 4 connected and mutually reinforcing approaches, aimed at developing long term prevention measures; building confidence in the justice system; building capacity to support communities in transition; and putting in place the strategies and powers to tackle criminal activity. Supporting the move away from paramilitary activity and promoting a culture of lawfulness are key underpinning themes. Through the Fresh Start Agreement of November 2015 the Government is 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. The Independent Reporting Commission (IRC) is charged with reporting on progress towards ending paramilitary activity, and its first report was published on 23 October 2018.

In the last year significant progress has been made. For example, key initiatives already making a difference include outreach programmes aimed at supporting young people in areas particularly vulnerable to paramilitary activity; a programme delivering mentoring support for young men; and one for women aimed at building their capacity to be involved in community transformation. Work also continues on the speeding up justice programme, and the PSNI is working with communities to implement training and interventions in collaborative problem solving, as well as local initiatives to address issues of visibility and engagement. Young people have also been taking part in a programme on lawfulness being run by the Attorney General for Northern Ireland, and a number of other pilot projects on the theme of promoting a culture of lawfulness are being delivered by a range of partners.

In addition, since the Paramilitary Crime Task Force, which comprises the PSNI, the National Crime Agency (NCA) and Her Majesty's Revenue and Customs (HMRC), became fully operational in 2017, it has carried out a number of high profile operations against organised crime groups linked to paramilitaries. During 2017/18 the Task Force carried out over 110 searches and made over 47 arrests, including 44 people charged or reported to the Public

Prosecution Service. In addition, 21 paramilitary-related organised crime groups were frustrated, disrupted or dismantled.

Conclusion

In conclusion, the SEVERE threat from dissident republican terrorists remains and paramilitary activity continues to have an impact in certain communities in Northern Ireland. Considerable progress has been made but the need for vigilance remains. There are a relatively small number of people who wish to continue to commit acts of terror and who want to control communities through violence for their own criminal ends. Through the excellent work of PSNI, MI5 and other law enforcement agencies including An Garda Síochána, we will continue to bring to justice those who seek to cause harm in our society.

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 so that we can continue to allow Northern Ireland to flourish and ensure a stronger Northern Ireland for everyone free from this harmful and malign activity.

Annex E: Statistics

Table 1: Police Service of Northern Ireland Summary Sheet

Justice and Security Act – 1st August 2017 - 31st July 2018

	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Total
1. JSA Section 21 - Number of persons stopped and questioned	145	91	111	124	153	116	118	133	104	155	101	75	**1,426**
2. JSA Section 23 - Power of Entry	0	0	3	0	0	0	0	0	0	3	0	0	6
3. JSA Section 24 (Schedule 3) - Munitions and Transmitters stop and searches													
No. of persons stopped and searched, public place:	418	392	446	533	597	655	666	548	450	530	380	462	**6,077**
No. of persons stopped and searched, private place:	15	7	11	11	19	4	5	10	14	5	9	15	**125**
Persons stopped and searched - total	**433**	**399**	**457**	**544**	**616**	**659**	**671**	**558**	**464**	**535**	**389**	**477**	**6,202**
JSA Section 24 (Schedule 3) - Searches of premises:													
No. of premises searched - Dwellings:	26	20	17	7	8	7	22	8	17	15	10	13	**170**
No. of premises searched - Other:	0	2	2	0	2	0	0	1	1	0	0	0	**8**
No. of occasions items[(a)] seized or retained	1	0	1	1	2	1	1	0	1	1	1	0	**10**
JSA Section 24 (Schedule 3) Use of Specialists: Use of specialists - No. of occasions 'other' persons accompanied police:	0	0	1	0	0	0	0	0	0	2	0	0	**3**
4. JSA Section 26 (Schedule 3) - Search of Vehicles													
(1) (a) Vehicles stopped and searched under section 24	878	1,138	1,216	1,480	1,986	1,637	1,393	1,250	945	1,207	1,244	926	**15,300**
(1) (b) Vehicles taken to another location for search	1	1	0	1	2	3	2	1	0	6	2	1	**20**

(a) No. of occasions in which firearms, explosives and/or ammunition were seized.

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 2017 and 31st July 2018

TABLE 2A	
Section 21 – Stop and Question	
Year	**Number of Persons Stopped and Questioned**
2017	
August	145
September	91
October	111
November	124
December	153
2018	
January	116
February	118
March	133
April	104
May	155
June	101
July	75
August 17 - July 18	**1,426**

TABLE 2B	
Section 23 – Power of Entry	
Year	**Number of Premises Entered**
2017	
August	0
September	0
October	3
November	0
December	0
2018	
January	0
February	0
March	0
April	0
May	3
June	0
July	0
August 17 - July 18	6

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

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**
2017			
August	418	15	**433**
September	392	7	**399**
October	446	11	**457**
November	533	11	**544**
December	597	19	**616**
2018			
January	655	4	**659**
February	666	5	**671**
March	548	10	**558**
April	450	14	**464**
May	530	5	**535**
June	380	9	**389**
July	462	15	**477**
August 17 - July 18	**6,077**	**125**	**6,202**

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

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

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**
2017				
August	26	0	1	0
September	20	2	0	0
October	17	2	1	1
November	7	0	1	0
December	8	2	2	0
2018				
January	7	0	1	0
February	22	0	1	0
March	8	1	0	0
April	17	1	1	0
May	15	0	1	2
June	10	0	1	0
July	13	0	0	0
August 17 - July 18	**170**	**8**	**10**	**3**

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**
2017		
August	1,012	1
September	1,681	1
October	1,699	0
November	1,886	1
December	1,947	2
2018		
January	2,769	3
February	2,027	2
March	1,847	1
April	1,298	0
May	1,053	6
June	1,117	2
July	976	1
August 17 - July 18	**19,312**	**20**

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 2017 – 31 July 2018

Persons stopped and searched under:	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug 17 -Jul 18[c]
PACE / MDA / F Order[b]	1,792	2,246	2,204	1,786	1,972	1,676	1,675	1,756	1,627	1,659	1,577	1,690	**21,660**
TACT S43	10	6	3	6	7	5	11	2	5	5	7	5	**72**
TACT S43A	3	0	2	1	3	0	3	0	1	4	2	1	**20**
TACT S47A	0	0	0	0	0	0	0	0	0	0	0	0	**0**
JSA Section 21	145	91	111	124	153	116	118	133	104	155	101	75	**1,426**
JSA Section 24	433	399	457	544	616	659	671	558	464	535	389	477	**6,202**
Other Legislations[d]	10	2	2	0	1	6	2	2	10	3	1	3	**42**
Total (Powers Used)[a,c]	**2,393**	**2,744**	**2,779**	**2,461**	**2,752**	**2,462**	**2,480**	**2,451**	**2,211**	**2,361**	**2,077**	**2,251**	**29,422**

(a) 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.
(b) PACE, Misuse of Drugs Act (MDA) and the Firearms Order (F Order) figures are combined, as in previous years.
(c) Following an internal review to assess the PSNI's compliance with PACE legislation governing the recording of stop and searches under Articles 3-5, persons searched under the authority of a warrant and searches that have been carried out after an arrest have been excluded from the April 2017 onwards. In the table above this reduces the number of persons stopped and searched under PACE/MDA/Firearms Order during August 2017 to July 2018 by 3.1%. As a result the Total Powers Used during August 2017 to July 2018 reduced by 2.4% (30,154 to 29,422).
(d) Other Legislative powers' captures stops / searches conducted under the following less frequently used powers: 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
Note: ***The above statistics are provisional and may be subject to minor amendment.***

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[b]	May-17[b]	Jun-17[b]	Jul-17[b]	Aug 16 -Jul 17[b]
PACE / MDA / F Order[b]	1,578	2,048	2,447	1,971	1,851	1,857	1,785	1,873	1,928	1,842	1,792	1,959	**22,931**
TACT S43	7	28	16	15	1	11	12	13	8	12	15	5	**143**
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	102	109	129	**2,035**
JSA Section 24	448	648	811	690	564	996	648	790	577	451	434	446	**7,503**
Other Legislations	4	4	7	7	58	14	2	7	5	1	0	1	**110**
Total (Powers Used)[a,b]	**2,156**	**2,910**	**3,457**	**2,879**	**2,682**	**3,087**	**2,697**	**2,895**	**2,696**	**2,410**	**2,359**	**2,541**	**32,769**

(a) 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.
(b) Following an internal review to assess the PSNI's compliance with PACE legislation governing the recording of stop and searches under Articles 3-5, persons searched under the authority of a warrant and searches that have been carried out after an arrest have been excluded from April 2017 onwards. In the table above this reduces the number of persons stopped and searched under PACE/MDA/Firearms Order during April 2017 to July 2017 by 2.6%. As a result the Total Powers Used during August 2016 to July 2017 reduced by 0.6% from the total published in last year's report (32,982 to 32,769).

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]	2017/18[1,9]
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	22,628
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	118
- Section 47A[5]								0	0	70	0	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	1,505
- Section 24 [2]				251	372	621	11,721	12,699	7,687	6,239	3,906	6,980	7,935	6,245
Other legislative powers[6]									294	417	190	97	140	32
Total uses of each legislative power[9]	**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**	**30,528**
Total no. of persons stopped and searched/questioned[7,9]	*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*	*29,882*

	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
PACE / Misuse of Drugs Act / Firearms Order	69%	74%	83%	81%	66%	41%	46%	56%	66%	73%	78%	71%	67%	74%
All Terrorism Act Powers	31%	26%	17%	18%	32%	49%	19%	1%	1%	1%	1%	1%	1%	<0.5%
All JSA Powers	0%	0%	0%	1%	2%	10%	35%	44%	33%	26%	21%	28%	31%	25%
Other legislative powers	0%	0%	0%	0%	0%	0%	0%	0%	1%	1%	1%	<0.5%	<0.5%	<0.5%
All Powers[8]	**100%**	**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. Searches under Schedule 5 to the Terrorism Act 2000, which are searches under warrant, are excluded from 2017/18 figures onwards. Further details can be found under Comparability on page 3.
(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.
(9) An internal review was carried out to assess the PSNI's compliance with PACE legislation governing the recording of stop and searches under Articles 3-5. The review found that searches under the authority of a warrant and searches carried out after an arrest had been recorded, and subsequently reported, as searches under Articles 3–5 when in fact they are governed by other articles of PACE. In order to fully comply with PACE legislation and more accurately report the usage of stop and search powers, searches under the authority of a warrant and searches that have been carried out after an arrest have been excluded from the 2017/18 figures. This reduces the **Total uses of each legislative power** during 2017/18 by 2.5% from 31,307 to 30,528 and reduces the **Total no. of persons stopped and searched/questioned** during 2017/18 by 2.5% from 30,636 to 29,882.

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

EOD Call Outs: 1 August 2017 to 31 July 2018

DATE	IED	EXPLOSION	HOAX	FALSE	INCENDIARY	FINDS	**TOTAL**
August 17	3	0	1	3	0	9	**16**
September 17	3	1	0	1	0	9	**14**
October 17	1	0	0	2	0	15	**18**
November17	3	0	0	2	0	10	**15**
December 17	1	0	2	0	0	13	**16**
January 18	0	1	1	1	0	10	**13**
February 18	1	3	0	0	0	7	**11**
March 18	0	0	0	1	0	12	**13**
April 18	2	0	4	0	0	10	**16**
May 18	3	1	6	2	0	16	**28**
June 18	1	0	3	2	0	6	**12**
July 18	2	4	5	0	0	15	**26**
TOTAL	20	10	22	14	0	132	**198**

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**.

Signature…………………...………………………………	Date/Time
Print Name/Rank…………………..……………………..	Of Oral Authorisation (If applicable)
Date Signed………………….…………………………..	…………………………..…………....
Time Signed/Authorised from…………...………………	Authorising Officer
	Of Oral Authorisation…………………………..

Reference Number:

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

1) Authorising Officers Rationale

2) Authorising Officer Contact and Telephone Number:

3) PSNI Human Rights Legal Advice

Authorising officers should confirm that they sought legal advice from the Human Rights Legal Adviser that the authorisation complies with the legislative provisions and the Statutory Code of Practice, and should provide a summary below to that effect.

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 Signature………………………………………………………… Print Name/Rank………………………………………………….	Date signed………………………… Time signed…………………………
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

Point 2	**Length of authorisation** 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. PSNI may authorise the use of section Para 4A, Schedule 3 powers for less than forty-eight hours, however, c**ontinuous 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.**

Point 4	Reason for exercising Para 4A, Schedule 3 powers 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.

JSA 2

Point 1	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. **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.**
Point 4	Assessment of the threat 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. 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. Intelligence specific to particular dates may still be included, even if the relevant date has passed, if it is still believed to be current.
Point 5	Information and/or circumstances over the recent period 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.
Point 6	The use of Para 4A, Schedule 3 of the Justice & Security Act (Northern Ireland) 2007 rather than other powers of stop and search 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

	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. 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.
Point 7	**Description of and Reasons for Geographical Extent of an Authorisation** 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. 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.
Point 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"**
Point 9	**Details of Briefing and Training provided to Officer using Para 4A, Schedule 3 Powers** 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.
Point 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.
Point 11	**Community engagement**

	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. Independent Advisory Groups (IAGs) should be as fully engaged as possible at all stages of an authorisation.
Point 12	**Policing Board engagement** 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.

ANNEX G – NJT STATUTORY PROVISIONS

Sections 1-9 of JSA 2007

Trials on indictment without a jury

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.

Section 44-46 of the 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 – PPS GUIDANCE ON NJTs

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:

a. 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.

b. 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.

c. Condition 4 has to be read in its full context, set as it is in close juxtaposition to subsections (7) and (8).

d. In relation to the wording of Condition 4 itself the Court noted that:

   i. It is couched in wide terms;
   ii. 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;
   iii. 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;
   iv. Political hostility can apply to "supposed" political opinion, again widening the reach of the section: para 38.

e. 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.

f. 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 96 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:

a. The risk of a proscribed organisation intimidating the jury;
b. The risk of a fearful jury returning a perverse verdict;
c. The risk of a partial/hostile jury returning a perverse verdict.

15. Risk (a) 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 (b) 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 (c) 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; date of that decision; and description of offence (s)

R v Hutchings; certificate granted April 2016; attempted murder.

R v Bamber; certificate granted January 2017; drugs, blackmail, assault.

R v Rea; certificate granted April 2017; murder.

R v Reilly and Crawford; certificate granted April 2017; directing terrorism.

R v Burke; certificate granted April 2017; firearms.

R v Magee; certificate granted June 2017; explosives.

R v Robinson; certificate granted June 2017; murder.

R v Corr; certificate granted June 2017; firearms.

R v Haggarty; certificate granted July 2017; wounding.

R v McAllister; certificate granted July 2017; perverting course of justice.

R v McVeigh and others; certificate granted August 2017; attempted murder.

R v Clements; certificate granted September 2017 [offence?]

R v Weir; certificate granted October 2017; firearms.

R v Blair and others; certificate granted October 2017; explosives.

R v Campbell; certificate granted November 2017; explosives.

R v Murray; certificate granted November 2017; explosives.

R v Coyle and McClean; certificate granted November 2017; blackmail and assault.

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