REPORT OF THE INDEPENDENT REVIEWER

JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007

THIRTEENTH REPORT 1st August 2019 – 31st July 2020

David Seymour CB

April 2021

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 three year period starting on 1st February 2014. I was re-appointed to this post for a further period of three years ending on 31st January 2020 by the then Secretary of State for Northern Ireland, the Rt Hon James Brokenshire. On 23rd January 2020 the then Secretary of State for Northern Ireland, the Rt Hon Julian Smith, re-appointed me to the post for a further period of one year ending on 31st January 2021. 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 contain powers to stop and question, stop and search and to enter premises 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.

Lord Anderson QC, the former Independent Reviewer of Terrorism Legislation for the UK, has said that the value of the Reviewer lies in the fact that he is independent; has access to secret and sensitive national security information; is able to engage with a cross section of the community; and produces a prompt report which informs public and political debate. That is the purpose of this review.

1.2 Under section 40(3) the Secretary of State can require me to include in the Report specified matters which need not relate to the use of the powers in the JSA. In his letter to me of 6th October 2017 the then Secretary of State requested that the issue of 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.

1.3 This Report is divided into 3 Parts –

Part 1 deals with the use of the powers in sections 21 to 32;

Part 2 examines the operation of the NJT system. **The main analysis of NJTs is set out in Part 2 of the 10th Report and Part 2 of this Report (and of the 11th and 12th Reports) is supplementary to that analysis**;

Part 3 sets out some general conclusions which have emerged over the past 7 years.

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

1.5 The previous 12 Reports covering the years 2008 to 2019 can be found on the Parliamentary website. www.gov.uk/government/publications

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

1.7 All references to “mainstream criminal justice legislation” are references to the Police and Criminal Evidence (Northern Ireland) Order 1989, the Misuse of Drugs Act 1971 and the Firearms (Northern Ireland) Order 2004.

1.8 Any comments on this or previous Reports can be submitted to -

thesecretary@nio.gov.uk

2. EXECUTIVE SUMMARY

2.1 The **methodology** adopted for the Report is set out. As a result of the pandemic many meetings were held remotely.

2.2 The **security situation** remains at SEVERE and is summarized in paragraphs 4.1 to 4.6. It fully justifies the retention of these police powers. The **public order situation** continues to improve (paragraphs 4.7 to 4.12).

2.3 The PSNI's response to the **Ramsey** judgment in the Court of Appeal is examined. The PSNI responded promptly to the requirement that the basis for the search be recorded but there is still more work to do (paragraphs 5.2 to 5.5). The PSNI have been less responsive so far in relation to the requirement to monitor the **community background** of those affected by the use of the power (paragraphs 5.6 to 5.12).

2.4 There has again been a **general decrease in the use of the powers** even when the impact of the pandemic is taken into account (paragraphs 6.1 to 6.12). **Daily spikes** are often attributable to particular police operations (paragraph 6.13). **Force is rarely used** in the exercise of these powers (paragraph 6.14).

2.5 **Complaints to the Ombudsman** about the use of JSA powers remains low (paragraphs 7.1 to 7.6). There is continuing concern about the use of the powers in relation to **children** (paragraphs 7.7 to 7.11). The use of **BWV** has increased but needs to increase more (7.12 to 7.13). Progress has been made on recording the **basis** of the stop and search (paragraph 7.14). Less progress has been made on the issue of **community monitoring** (paragraph 7.15). **Outcomes following the use of these powers** remain low (paragraphs 7.16 to 7.22). **Retrieving a copy of the stop and search record** still presents problems (paragraph 7.23). Scope now exists for **more robust supervision** of the use of the powers (paragraphs 7.24 to 7.26).

2.6 **Authorisations** continue to be scrutinized carefully (paragraphs 8.1 to 8.3) although **one serious mistake** was made in connection with the authorisation made on 29th July 2020 which was signed by an officer who did not have the authority to sign it. Consequently, the powers were used unlawfully on 127 occasions involving 115 individuals. The PSNI response could have been more prompt. The PSNI made an announcement on 3rd December 2020 admitting the error; took the appropriate action; and apologized to the individuals concerned (paragraphs 8.4 to 8.15).

2.7 No actions were taken in relation to **road closures and land requisitions** (paragraphs 9.1 to 9.3).

2.8 The **Army** were involved in **226 EOD incidents**. Public concern about the Army's role in respect of such incidents remains low (paragraphs 10.1 to 10.3). There was **only one complaint** about low flying aircraft which was resolved informally (paragraph 10.4 to 10.7).

2.9 **PSNI responses to recommendations in earlier reports** are set out. No new recommendations are made but **outstanding issues which need to be addressed** are set out in paragraph 13.3 below (paragraph 11.1 to 1.13).

2.10 There were **only 11 occasions when a certificate for a NJT was considered by the DPP.** He refused to issue a certificate on 2 occasions. This is a small number of cases and not all of them involved terrorist offences. Two involved actions by British troops during the Troubles. No new recommendations are made in relation to NJTs but note conclusions relating to NJTs in paragraphs 13.6 to 13.8 below (paragraphs 12.1 to 12.9).

2.11 A number of **conclusions** are set out in Part 3 namely –

(a) the JSA powers are needed and are exercised fairly and professionally by the PSNI (paragraph 13.1);

(b) Considerable progress has been made over the past 7 years in a number of areas (paragraph 13.2;

(c) there are 6 outstanding issues which need to be addressed (paragraph 13.3);

(d) safeguards have to be kept under constant review and will need to change from time to time (paragraphs 13.4 to 13.5);

(e) serious consideration now needs to be given by those in the criminal justice system as to whether the provisions in the JSA relating to NJTs need to be retained (paragraphs 13.6 to 13.8).

3. METHODOLOGY

3.1 I only visited Northern Ireland on 2 occasions - in September and October 2020. The pandemic resulted in many of my meetings being held remotely – see **Annex B**. Again, I met with PSNI officers at all levels at PSNI Headquarters in Knock Road and also in Lurgan and Garnerville. It is unfortunate that my visits to Northern Ireland were curtailed this year. However, after 7 years, I have become familiar with the issues and my remote meetings were productive. I made two visits to the DPP's office to examine papers relating to the grant of certificates for NJTs.

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

4. SECURITY AND PUBLIC ORDER

Security

4.1 The threat to Northern Ireland from NIRT remains at SEVERE which means that an attack is highly likely. This reflects the threat posed by DR groups the most significant of which are the New IRA and the Continuity IRA. Other smaller groups (Oglaigh na Eirann (ONH), Arm na Poblachta (ANP) and the Irish Republican Resistance (IRR)) continue to engage in paramilitary style attacks which have a harmful effect on communities but their intent and/or capability to conduct national security attacks is comparatively low and they pose a smaller threat. All DR groups are opposed to the political process and committed to the use of violence to advance their cause. It is clear that, even in Republican areas, community support for these groups remains low.

4.2 The first Covid lockdown led to an overall decrease in terrorist activity. However, in the latter part of this reporting period, DRs conducted two attacks and attempted or aborted a further three attacks with the PSNI and security forces disrupting two additional DR attack plots. DRs continue to target and/or attack police officers, prison officers and members of the armed forces in an effort to undermine the normalisation process within Northern Ireland.

4.3 A representative list of incidents during this period is as follows –

- on 19th August 2019 there was an attack against PSNI and the army in Wattlebridge, Co. Fermanagh. This was a two-stage attack with a hoax improvised IED used to lure officers into the area and a secondary device positioned nearby in an attempt to target the first responders. Responsibility for the attack was claimed by the CIRA. The then Deputy Chief Constable said at a press conference that " Today we have seen another example of the intent dissident republicans have as they attempted to murder police officers and army personnel in Co. Fermanagh. They are reckless and indiscriminate and this morning's attack had the potential to kill anyone in the immediate vicinity".

- on 6th September 2019 there was an attempted attack on the Strabane PSNI station with an improvised weapon. The device failed to detonate. The New IRA claimed responsibility for the attack.

- on 9th September 2019 the components of an IED were recovered during searches in Creggan, Derry.

- on 4th December 2019 police officers in Milltown Row, Belfast were attacked with an explosive device. There were no injuries. CIRA claimed responsibility for the attack.

- on 4th February 2020 CIRA claimed responsibility for placing a VBIED on a vehicle. CIRA claimed that the device was intended to target "Belfast docks". The device failed to detonate.

- on 5th June 2020 an IED and firearm were recovered during searches in NW Londonderry.

4.4 The threat from NIRT is regularly restricted by the actions of security forces north and south of the border. During the reporting period there were over 100 disruptive actions including arrests, charges and seizures carried out against DRs.

4.5 Not all violent DR activity falls in the category of NIRT or “national security attacks” ie attacks against “emanations of the British state”. DR groups continue to be involved in PSAs as a means to control their communities. Attacks include shootings, bombings, assaults and intimidation. Not all incidents are reported but here have been at least 45 such attacks during this period.

4.6 The EU transition period continued to cause uncertainty around the implementation of the Northern Ireland Protocol. DRs will be aware of the increased media attention that will be given to Northern Ireland and the potential which they might gain for their cause.

Public order

4.7 The last reporting period has been quiet in terms of public order. This was partly due to the restrictions that were imposed during the current pandemic.

4.8 In the late summer of 2019 there continued to be tensions around bonfires linked to the annual marching season. Notable incidents occurred in connection with bonfires in the New Lodge area of Belfast and the Apprentice Boys procession in Derry. Such events have the potential to lead to significant public disorder. PSNI operations in connection with these events were subject to public order and public safety structured debriefs and an Independent Operational Review respectively as a result of which a number of recommendations were taken forward. The PSNI also carried an overarching review of the policing of public order and public safety in November.

4.9 Prior to lockdown there were protests linked to

-pro-choice/pro-life issues – such incidents took place at locations throughout Northern Ireland. The most significant incident took place in September 2019 at Stormont and involved a large number of protesters. The protests passed off peacefully;

- environmental protests including protests relating to the Dalradian gold mine near Omagh and also protests relating to animal rights and climate change. These events were relatively low key with only a small number of people involved;

- protests by the republican community relating to prisoners’ rights and protests at banks by Saoradh. These protests took place prior to the lockdown in March 2020 and after that, to a lesser extent, whilst restrictions were in place.

4.10 Since lockdown there have been a small number of public order incidents requiring a police response including Black Lives Matter protests at locations across Northern Ireland. Some Anti Mask protests resulted in small scale public disorder. However, there were no incidents of note in relation the UK’s exit from the EU during the reporting period. There was, however, a small scale protest in Larne in September 2020 and the PSNI anticipate that there will be further protests in the future.

4.11 There continued to be tensions around the bonfires in August 2020 linked to the issue of internment. These were mainly in the greater Belfast area.

4.12 There were almost 250 parades on 12th July 2020. These were muted affairs with much smaller and mainly local participation. The Orange Order cancelled the 12th July parade in Belfast.

5. PSNI RESPONSE TO RAMSEY JUDGMENT

5.1 The Court of Appeal's judgment in the case of **Ramsey** was discussed in paragraphs 5.1 to 5.6 of the 12th Report. The judgment was handed down on 25th February 2020. In the 12th Report I recommended in the light of that judgment that –

(a) the PSNI should make arrangements to ensure that the basis of each stop and search under the JSA is recorded;

(b) the PSNI should now give further consideration to implementing the NIPB's recommendation in relation to community monitoring and to do so on the basis of independent legal advice from Counsel specialising in the highly technical area of GDPR.

Basis for the search

5.2 Some progress has been made in implementing that part of the judgment relating to the recording of the basis of the search. On 28th February 2020, 3 days after the judgment, the PSNI, having taken legal advice, emailed officers directing them to record the basis of the search as required by paragraph 8.61 of the Code. Officers were notified that failure to do this could place them in breach of the ECHR. Initially this had to be done by producing a written record. However, from 6th May 2020 a technical change was made to the officers' mobile devices enabling them to record the basis electronically. Four options were available – namely briefing, incident, subject's behaviour and subject's location.

5.3 The Court of Appeal in its judgment stated that-

The requirement for a basis is absolutely critical. The proper interpretation of the Code requires that the basis be recorded and thereby provides a proper means of carrying out effective monitoring and supervision of the exercise of the power".

There are technical limitations on the mobile devices restricting the amount of detail that can be recorded. Nevertheless these four bases – briefing, incident, subject's behaviour and subject's location - are not very informative. In this context, it is worth remembering that, when the case of **Ramsey** was in the High Court, the officers who carried out the searches swore affidavits which described the basis for each stop and search. The detail is set out at paragraph 62 of the judgment. In summary the bases were –

- individual known to police officer as a result of confidential briefing;

- recognition of the individual as a result of confidential briefing;

- officer had had cause to stop the individual on previous occasions as a result of confidential briefings;

- vehicle check using police mobile device showed car was registered to male with suspected dissident republican links;

- vehicle stopped on the basis of confidential briefing.

5.4 These fuller descriptions were sufficient for Lord Justice Treacy to conclude that *"the affidavit evidence establishes there was a basis for each of the impugned searches"*. They are not detailed but they do indicate that the officers knew or were aware of who they were stopping and that the individual had DR links. It is unlikely that the 4 new bases initially adopted by the PSNI after **Ramsey** would meet the Lord Chief Justice's test that "*the record need not be extensive comprising at most a sentence or two but providing sufficient information to explain that there was a basis".* So this initial response, though prompt, was always likely to prove inadequate.

5.5 The PSNI obtained further legal advice on 26th August 2020 and, on the following day, the decision was taken to require officers to provide a fuller explanation. This additional material had to be recorded in the officer's notebook. The software for the mobile device is shortly to be changed and, by April, 2021, this additional material will form part of the electronic record. So the PSNI are on track to be in a position to implement fully this part of the judgment. Much will depend on how fully and effectively officers provide the necessary additional material. The affidavits sworn in **Ramsey** which were approved by the High Court provide a good indication of what is required. It will be important for the next Reviewer to examine how well officers record the basis for the stop and search in future.

5.5 For the record – though this is not very informative - of the 1,385 stops under section 24 (persons and/or vehicles) between 5th May 2020 and 31st July 2020 the recorded basis was "briefing" (49%), "subject's location" (32%), "subject's behaviour" (23%) and "incident" (6%).

Community monitoring

5.6 The judgment in the Court of Appeal in **Ramsey** was examined in some detail in paragraphs 5.1 to 5.6 of the 12th Report. So far as community monitoring is concerned the Lord Chief Justice said –

"..we are satisfied that the requirements of the Code are that some proportionate measure is put in place in order to ensure that there can be adequate monitoring and supervision of the community background of those being stopped and searched".

5.7 The PSNI wrote to me on 24th November 2020 with their response to this part of the judgment -

" A working group has now been set up to consider various methodologies and explore practical ways of capturing community background information which also respect individuals' privacy and data protection rights and builds on previous learning. The working group comprises of representatives from Operations Support Department and Legal Services is chaired [at Chief Superintendent level]. The group's strategy is as follows:

1) Demonstrate commitment to both the Policing Board and to the courts that PSNI are taking the recommendation forward.

2) Formally engage with the Information Commissioner's Office to discuss the circumstances and legal issues arising.

3) Explore existing good practice both within the PSNI (via CRNs etc) and with other police services;

4) Commence a DPIA;

5) Engage DoJ colleagues to clarify legislative requirements to take the recommendations forward;

6) Explore practical ways to capture the data including follow up contact (email/letter/text), use of postcodes, consent of MOP etc;

7) Engage with and update Policing Board Human Rights Advisor on a regular basis".

5.8 A good deal of work has been undertaken by this working group and the PSNI's Police Powers Delivery Group endorsed this approach at its meeting on 8th January 2021. However, given the lack of progress on this subject over the past 7 years, a sceptical observer might view this programme of work as an attempt to "kick the can down the road". Indeed, it could be argued that this programme of work is unnecessary. All that is required is a separate assessment, after the event, based on intelligence, existing information and officer perception of the individual's background. This should not be difficult because –

(a) the PSNI stress that the powers are used, almost exclusively, on an intelligence led basis, against those who present the greatest threat;

(b) it would be anonymised and generic data – an overarching set of percentages indicating broad categories;

(c) it would be similar to the information referred to by the Lord Chief Justice in paragraph 26 of his judgment which referred to statistics for the 2013/2014 period in relation to repeat stop and searches - 81% DRs, 7% criminal associations, 3% loyalist associations, 1% interface disorder and 8% unspecified;

(d) the PSNI's own security statistics are broken down in this way into Republican/Loyalist categories. For example in the last reporting period the statistics were –

Security related deaths – 2 (Rep) 0 (Loy)

Shooting incidents – 30 (Rep) 14 (Loy)

Bombing incidents – 9 (Rep) 8 (Loy)

Casualties of PSA assaults - 16 (Rep) 36 (Loy)

Firearms found – 8 (Rep) 0 (Loy)

Explosives found (kg) – 1.2 (Rep) 0 (Loy)

Rounds of ammunition found – 125 (Rep) 1 (Loy)

Arrests under section 41 TACT – 72 (Rep) 8 (Loy)

Arrests under section 41 TACT – 8 (Rep) 0 (Loy)

and subsequently charged.

5.9 So the question inevitably arises of why it would be so difficult to do something similar in relation to those stopped and searched under the JSA. The PSNI say that, although sometimes it is quite easy to assign a particular attribution to an incident, where it is not possible confirmation is sought from the investigating officer. The PSNI have a number of other quality assurance measures to ensure that statistics are accurate and as meaningful as possible. The PSNI say that it would be difficult to apply the same methodology for those who are stopped and searched. The key point, however, is that these security statistics are anonymous and generic and have been compiled without the process described in paragraph 5.7 above having to be undertaken.

5.10 There are two other cases of stop and search involving children. The case of **Alise ni Murchu (2019) NIQB 75** was considered in paragraphs 5.7 to 5.9 of the 12th Report. It is a case brought by a 16 year old girl to her stop and search under sections 21 and 24. The challenge was that -

(a) the powers fail to satisfy the "quality of law" test required for the interference with the applicant's rights under Article 8 of the ECHR (right to private and family life);

(b) the police acted contrary to the ECHR because they failed to ensure different treatment for children as opposed to adults when subjected to JSA stop and search powers;

(c) the police failed to meet their obligations under section 53 of the Justice (Northern Ireland) Act 2002 to have the best interests of the child as their primary consideration.

The case was dismissed but it has gone to the Court of Appeal and the judgment is pending.

5.11 On 25th September 2019 the Belfast Telegraph reported that a 14 year old schoolboy had won permission to mount a High Court challenge over claims he was stopped and searched as a terrorist suspect. Mr Justice Colton is reported as having said that the applicant had met the modest test at this stage of establishing an arguable case worthy of investigation. When stopped the boy was with his father and another adult. The searches are reported to have been carried out under section 43 of TACT which allows a police officer to stop and search any person whom he reasonably believes is a terrorist ie a person who has committed one of a number of terrorist offences or a person who is or who has been concerned in the commission, preparation or instigation of acts of terrorism.

5.12 It may be that these two additional cases involving the use of stop and search powers may inform the deliberations of the PSNI's new working group on the use of stop and search powers against children (see paragraph 7.8 below).

6. STATISTICS

6.1 Detailed statistics relating to the use of JSA and TACT powers are at **Annex D**.

6.2 The number of occasions on which the powers were used by the PSNI between 1st August 2019 and 31st July 2020 (together with comparison with the previous year) is as follows-

JSA

(a) Section 21, stop and question – **762** (down from 1,233) – a **38% decrease**;

(b) Section 23, entry of premises – **6** (up from 5) – a **20% increase**;

(c) Section 24/Schedule 3, paragraph 4, stop and search for munitions – **4,540** (down from 5,657) – a **20% decrease**;

(d) Section 24/Schedule 3, paragraph 2, power to enter premises – **92** (down from 206) – a **55% decrease**;

(e) Section 26/Schedule 3, power to search vehicles – **8, 087** (down from 13,747) – **a 41% decrease**.

TACT

(a) Section 43, stop and search of persons reasonably believed to be a terrorist – **29** (down from 52) – a **44% decrease**;

(b) Section 43A, stop and search of vehicle reasonably believed to be used for terrorism – **5** (down from 14) – a **63% decrease**;

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

Consistent decline in use of JSA and TACT powers

6.3 This is the fourth year in a row that the use of these powers in the JSA has fallen. Since last year there has been-

- a 38% drop in the use of stop and question;

- 20% drop in the use of stop and search of a person without reasonable suspicion;

- 55% drop in the search or premises; and

- 41% drop in the search of vehicles.

If the power to enter premises to keep the peace is taken out of the equation (the use of that power increased from just 5 to 6 so is statistically insignificant), **the overall use of the main powers in the JSA has fallen by 37% in the last reporting period**.

6.4 Moreover, compared with the position 9 years ago –

(a) the use of the power to stop and question is 77% lower; and

(b) the use of the power to stop and search a person is 57% lower.

So this year's fall reflects a declining trend over many years. The only time when the use of the power to stop and search a person increased was in the period 1st August 2015 to 31st July 2016 when it rose sharply partly in anticipation of events celebrating the centenary of the Easter Rising.

Impact of the pandemic on use of powers

6.5 The pandemic has been a factor in the substantial decline of the use of the powers this year. The "lockdown" started on 23rd March 2020 and it is significant that -

(a) the power to stop and question was only used 11 times in April 2020 (the average daily use of the power was 2.6 before 23rd March 2020 but only 1.2 after that date);

(b) the power to stop and search a person without reasonable suspicion was at its lowest in late March/April 2020 and on 3 days in late March the power was not used at all (the average daily use of this power before March 23rd was 14 but only 9 after that date);

(c) the power to stop and search vehicles was used only 168 times in April 2020 which was the lowest monthly recording in the reporting period (the monthly average during the reporting period was 674).

6.6 The picture is different in relation to the search of premises. Throughout the reporting period there was a drop of 55% in the use of this power. It was used 92 times during this period - but only 3 times in March 2020 and twice in April 2020. They were the smallest monthly figures but the power was used on fewer than 10 occasions in 9 of the 12 months - and only 3 times in January 2020 (before the lockdown). So the pandemic had slightly less impact on the use of this particular power. This is probably due to the fact that, unlike the other powers, it is not used in public spaces so the lockdown would have been of less significance.

6.7 **However, even if there had been no pandemic, the use of these powers would still have declined**. It is not possible to quantify precisely what the impact has been but using the 12 monthly average use pre-lockdown as a guide –

- the decrease in the use of the power to stop and question would be closer to 20% rather than 38%;

- the decrease in the use of the power to stop and search a person without reasonable suspicion would be closer to 7% rather than 20%;

- the decrease in the use of the power to stop and search a vehicle would be closer to 19% rather than 41%.

The impact of the pandemic was less in relation to –

(a) stop and search powers under mainstream criminal justice legislation where the fall in the use was only 0.2% suggesting that the pandemic had virtually no impact on the use of those powers;

(b) TACT where the number of searches did not drop very much after the lockdown. The number of persons stopped and searched under section 43 of TACT was consistently low every month between August 2019 and March 2020 and there was no notable decrease in April, May, June or July of 2020 – in fact quite the opposite. So the decrease in the number of searches under section 43 in this reporting period (compared to the last) cannot be attributed to the pandemic.

Stop and question

6.9 It was noted in paragraph 6.4(a) of the last Report that the use of the power to stop and question was the lowest (1233) since the JSA was passed in 2007. In this last reporting period it is even lower at 762. Based on the analysis in paragraph 6.6 above it would have been 1,000 (a 19% decrease) even if the pandemic had not occurred. This power was not used at all on 128 days during the last reporting period. There were daily spikes in the use of over 20 on 4 occasions. This was caused by incidents such as vehicle checkpoints (eg in Newtownabbey).

6.10 One factor in this decline is likely to be the fact that the identity of the individual will very often be known to the police. So, for example, the power was only used 42 times in Derry City and Strabane accounting for only 6% of the total use of the power. It was used more frequently in 5 other police districts including Belfast (172).

Stop and search of person without reasonable suspicion

6.11 As might be expected, this power is most often used in 3 police districts – Belfast City, Derry City and Strabane and Armagh, Banbridge and Craigavon.The use of the power in those 3 police districts accounts for almost half (49%) of the use of the power across all 11 police districts. But that is against the background of a decline in the overall use of the power. In Belfast it is down 46% on the previous period and in Derry City and Strabane it is down 30% on the previous period. The use of the power in Armagh, Banbridge and Craigavon is up only marginally (from 669 to 676).

6.12 The use of the power in two police districts goes against this trend of continuing decline –

(a) in Mid and East Antrim district there was an increase in the use of 51% (from 415 to 630). This was in part due to the police response to loyalist paramilitary activity;

(b) in Antrim and Newtownabbey district there was an increase in the use of 86% (from 116 to 216). This was in part due to increased patrolling aimed at combating violent DR activity in that district.

6.13 As in previous years there were **daily spikes** in the use of this power of stop and search. On 18th February there was a major ANPR operation and also a police response to a threat to prison officers and prison staff in the general area of Magilligan. So on that day 38 people were stopped and searched.

6.14 The PSNI are entitled to use **reasonable force** in the discharge of their powers. The IOPC has recommended that when force (eg handcuffs) is used that fact should be recorded in the stop/search record. This does not happen in Northern Ireland. Instead, whenever a PSNI officer uses force (whether during a stop and search or otherwise) he or she has to complete a Use of Force form on a different standalone system. This form details the force used, the name of the individual on whom the force is used and a brief summary of the incident. Unfortunately, because the PSNI run two independent systems of recording there is no link between them so there is no reliable automated way to identify which stops and searches have involved the use of force (the PSNI are addressing this issue). However, it is clear that the use of force under JSA and TACT stop and search powers is rare. For example, a manual and time consuming exercise

established that no use of force occurred during the 127 incidents recorded in the period 30th July 2020 to 11th August 2020 (when the invalid authorisation was in place (see paragraphs 8.4 to 8.15 below)).

7.1 ISSUES ARISING FROM THE USE OF THE POWERS

Complaints to the Ombudsman

7.1 It is recognized that many people who are aggrieved at having been stopped and searched (particularly under the JSA or TACT) do not always complain to the Ombudsman. This is for two main reasons –

(a) the Ombudsman process is thorough and independent. It inevitably takes time and requires some paperwork. Some individuals are deterred by that formal process;

(b) others seek redress via the media and in particular social media where the element of independent professional scrutiny is lacking.

So the number of complaints to the Ombudsman is not a perfect indicator of the level of dissatisfaction about police conduct in relation to the use of these powers.

7.2 However, it should be noted that during this reporting period –

(a) there were only 3 complaints about a JSA stop and search representing 0.12% of the 2,435 complaints received by the Ombudsman;

(b) there were 141 complaints following a search under all powers and so these 3 complaints account for just 2% of complaints about stop and search.

So these are remarkably low figures particularly as a stop and search under the JSA has historically been seen as very controversial in some parts of Northern Ireland.

7.3 It is instructive to look at the details of these complaints. They concerned searches in 3 separate police districts namely

- Newry, Mourne and Down

- Mid-Ulster

- Causeway Coast and Glens.

These are not the police districts with the highest rates of JSA stop and search.

7.4 The complaints consisted of 4 allegations – 2 were about oppressive behaviour; one was about an alleged irregularity with the search because the person concerned had a disability; and one concerned alleged unlawful detention following a breach of the ECHR.

7.5 Of the 3 complaints, 2 have been closed for non-co-operation because the complainant did not fully engage with the process. The one remaining complaint involves a local police team and is still under investigation.

7.6 This level of complaint follows a consistent pattern. There have been fewer than 10 complaints in each of the last 3 years about the use of JSA stop and search powers. (It should just be noted that the Ombudsman system can only record one category of

complaint so it is possible that, in a multi category complaint, there may have been a complaint about a JSA stop and search recorded in a different category).

Children

7.7 During this reporting period 179 of the 5,147 persons stopped under section 21 and/or section 24 were children (3.5%). Items were found on 7 of them but they were not munitions. Of the 30 people stopped under sections 43/43A of TACT only one person was a child. No items were found on that person. Of the 21,008 persons stopped under mainstream criminal justice legislation legislation 2,855 were children (13.6%). (It should be noted that sometimes JSA and TACT powers are used in combination with general stop and search powers and age can sometimes be "officer perceived"). However, the broad conclusion must be that far fewer children are stopped under JSA and TACT (both in terms of numbers and percentage) than under mainstream legislation.

7.8 In response to concern about the use generally of stop and search powers against children (see paragraphs 7.10 to 7.18 of the 12th Report), the PSNI have set up a Working Group "to seek feedback and engagement about how to increase community awareness around stop and search concerning children and young people along with working collaboratively to improve the effectiveness of the use of this power". It is chaired at Inspector level and the group consists of PSNI officers and representatives from the Northern Ireland Commissioner for Children and Young Persons, Northern Ireland Youth Forum, Start 360, Include Youth, Youth Work Alliance, the Health and Social Care Board, the Children's Law Centre, Voice of Young People in Care and Northern Ireland Youth Forum. The first meeting was held on 19th October 2019.

7.9 In this context it should be noted that the HMICFRS carried out an inspection of the PSNI in September 2020 which covered the arrangements for internal and external scrutiny of stop and search. It concluded that –

"Although those forms of scrutiny are welcome, there are gaps. The service doesn't use other means of external scrutiny from people who might have less trust and confidence in the police, or from young people. ***We were pleased to hear that during interviews with senior leaders that the PSNI plans to introduce external scrutiny panels, including a specific young people's independent advisory group (IAG) in the next few months***

Enhancing public scrutiny will help build public confidence in the way the service applies stop and search powers and use of force. When established, the IAG should review specific stop and searches and advise the PSNI on community impact".

7.10 In the 11th annual review of the JSA, I commented at paragraph 15.5 that –

" *The PSNI have not accepted the recommendation that an internal record be kept of any stop and search under 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 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 the 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****".*

7.11 It is unfortunate that the PSNI did not accept this recommendation at least insofar as it applied to children. Fewer than 200 children are stopped etc under JSA and TACT each year. It would not have been burdensome and those records would have informed the work of this new group and been a recognition that there is an issue here which is of concern to many in the community. It may be that the Court of Appeal's judgment in the case of **Alise ni Murchu** (16 year old girl challenging her stop and search under the JSA) may contain some guidance in relation to such stop/searches. The judgment is expected at some time in 2021. It is important that the work of these groups do start to bring about positive and practical change to improve relations between the police and young people in Northern Ireland. Unfortunately, there is some scepticism amongst those working in this area that this will be prioritized and that progress will be made.

Use of BWV

7.12 The use of BWV by the PSNI is improving. In relation to stop and search under section 24 BWV was used in 61% of cases in August 2019. This figure had increased to 88% by July 2020. The IOPC has found that BWV was not used "consistently from initial contact". This is borne out by the statistics. In relation to vehicle only searches under section 24 BWV was used in 37% of cases in August 2019 rising to 63% in July 2020. In relation a stop and question under section 21 the statistics show that BWV was used in only 28% of cases in August 2019 and remained at 28% in July 2020. In between the usage fluctuated considerably with BWV being used in only 15% of cases in September 2019 and 70% of cases in April 2020.

7.13 There were issues during the pandemic caused by longer shifts resulting in battery failure but there is still some room for improvement in relation to the use of BWV in relation to these powers. It should be added that since the end of the reporting period the PSNI have rolled out 400 more BWVs. Continued progress on this front is an issue which the next Reviewer should examine.

Recording the basis of the search

7.14 The PSNI are in the process of responding to this part of the **Ramsey** judgment - see paragraphs 5.2 to 5.5 above. Progress has been made but more still needs to be done

Community monitoring

7.15 The PSNI are considering how to respond to this part of the judgment (see paragraphs 5.6 to 5.9 above) but progress is slow.

Outcomes following exercise of powers

7.16 Following a stop and search of a person or vehicle stop –

- on one occasion 2 (legally held) firearms were found;

- on one occasion 1 (legally held) firearm was found;

- on one occasion a replica firearm was found.

- on 2 occasions wireless telegraphy apparatus was seized (mobile phones).

The overall rate of finds was 0.5% which is similar to previous years.

7.17 Following a search of premises –

- on 3 occasions firearms, explosives and/or ammunition were seized;

- on 44 occasions wireless telegraphy apparatus was seized/retained;

- on 19 occasions laptops/tablets were seized and retained.

7.18 These statistics exclude those occasions when replica firearms were seized and also those occasions when anything capable of being used in the manufacture of an explosive, a firearm or ammunition (eg timers, pipes etc) was found. It should also be noted that more than one laptop/tablet may have been seized during a single search. Of the 92 premises searched during this period nothing was found on 29 occasions.

7.19 The arrest rates under the JSA (with last year's arrest rates in brackets) were –

- following a stop and question - 1% (1%);

- following a stop and search without reasonable suspicion – 1% (1%);

- following a stop and search with reasonable suspicion - 2% (4%).

7.20 The arrest rates under TACT (with last year's arrest rate in brackets) were –

- following a stop and search of a person reasonably suspected of being a terrorist - 17% (10%);
- following a search of a vehicle reasonably suspected of being used for the purpose of terrorism - 0% (7%).

7.21 The total number of persons arrested under these powers was 65 (51 of whom were arrested following a stop and search without reasonable suspicion). It should be noted that, however, that other powers, in addition to JSA and TACT, may also have been used on these occasions and the reason for the arrest may not be related to the initial reason for the stop. So, for example, if, following a search under the JSA, large quantities of drugs were found in an individual's car the police might proceed under the Misuse of Drugs Act 1971 and he would be arrested for possession of drugs.

7.22 The issue of low arrest rates and levels of finds and seizures has been examined in previous reports – see paragraphs 6.7 and 6.8 of the 8th Report, paragraphs 6.7 to 6.14 of the 9th Report and paragraphs 6.6 to 6.8 of the 10th Report. The basic point is that a senior police officer can only make an authorisation if he reasonably suspects that the safety of a

person may be endangered by the use of munitions. **He must also reasonably consider that that the authorisation is necessary to prevent such danger**. So the power is a preventative one and its use should be assessed by whether harm has been prevented rather than by the number of formal criminal justice outcomes it generates. It is not easy to measure "what hasn't happened" but the PSNI are clear that these powers play an essential role in the containment of the security situation.

Retrieving the search record

7.23 The mobile devices which the police use when exercising JSA and TACT powers have no printing capacity. So after being stopped and searched the individual is given a reference number. If that reference number is presented by the individual at a police station he will be given a copy of the search record. There are many reasons why, in Northern Ireland, a person would not want to go to – or be seen going to – a police station. As a result, the number of search records collected following a stop and search in this reporting period was only 54 – which represents 0.6% of cases. In the previous two years those figures were 66 (0.4%) and 89 (0.5%). The PSNI accept that this is not acceptable but it has been the case for a number of years. At present, if queries are raised or challenge is made in relation to a stop and search the PSNI will supply a copy of the record via recorded delivery in a double envelope for security. This will consist of the electronic record plus the entry in the officer's notebook. The notebook entry will be redacted if it contains sensitive information. Work is in progress to try to improve these arrangements. Options being considered include (but are not limited to) printing a copy of the record in the police vehicle and devising a system whereby the individual can log on to a secure website with a password. This work is in its early stages and the next Report should assess what progress has been made.

Supervision

7.24 An effective system of supervision of the JSA powers would be one of most important safeguards to reassure the public and ensure compliance with the ECHR. Previous reports have highlighted the significance of such arrangements. In paragraph 7.42 of the 12th Report I said that -

"This is a potential area for improvement and, although good practice would suggest that 10% of these stops etc must be supervised there is no consistent pattern and in some districts last year the figure was lower than that. In June 2019 an Instruction was issued that 10% of these stops etc must be dip sampled and scrutinized and it is PSNI policy that Chief Superintendents must take responsibility for making that happen".

7.25 The HMICFRS Inspection in September 2020 also came to a similar conclusion –

"The records are then held on a database so internal and external bodies can scrutinize them. The service expects supervisors to dip-sample 10% of all stop and search records to ensure that searches are lawful. ***Most supervisors do that but it isn't consistent across the service. The PSNI is aware of that. It now needs to establish a better regime to dip-sample stop and search records more consistently****".*

7.26 It is important to demonstrate that supervision takes place and is effective. In my last report I recommended that an assessment of how effectively a first line manager has supervised the use of these powers should be part of his annual review. The PSNI did not

accept that recommendation because their current review system was never designed to assess specific operational performance. However, the PSNI will continue to explore other means to ensure supervisors are reviewing the activities of operational constables particularly in relation to the use of JSA powers. One way of demonstrating effective supervision would be to report and publish any corrective action which has been taken to improve performance following such supervision. Effective supervision, together with constructive feedback, would normally result in some adjustment to working practice.

8. SCRUTINY OF AUTHORISATIONS

General

8.1 An authorisation under paragraph 4A of Schedule 3 to the JSA brings into play the "no reasonable suspicion" stop and search powers. The form of the authorisation is at **Annex E**. When completed it is a substantial document which contains all the information to justify –

(a) the making of the authorisation; and

(b) its subsequent confirmation by the Secretary of State which enables the authorisation to continue for up to 14 days.

8.2 This year I examined 12 authorisations and was fully briefed by NIO officials who process the document before it is submitted to the Secretary of State for his signature. As of April 2020 the information/intelligence is presented by reference to 4 areas – the North, the South, Belfast and Derry/Strabane. The PSNI have given an undertaking to alert the NIO to any area where the case for the authorisation may be weaker than other areas.

8.3 The scrutiny of the substance of the intelligence and information is, as in previous years, thorough. It fully justifies the authorisation being made by the PSNI and the subsequent confirmation by the Secretary of State. Clarification of intelligence is often sought –

(a) the relevance of intelligence going back to 2015 was challenged and the PSNI explained that the munitions in question were still in circulation;

(b) a duplicate entry was identified;

(c) intelligence relating to the use of a baseball bat was removed as it did not fall within the definition of "munitions";

(d) material which fell outside the relevant period was removed from the authorisation.

These examples may seem trivial – particularly when set against the many pages of intelligence relating to the use of munitions. However, they do illustrate the care and detailed scrutiny that is given to the substantive content of the authorisation. In previous years this has also been the view of Joanne Hannigan QC who has examined these authorisations in the past on behalf of the NIPB. So, as in my previous 6 reports, my conclusion is that the authorisation process is thorough; the intelligence and information are carefully scrutinized; and they fully justify the making and confirmation of the authorisation.

The authorisation signed on 29th July 2020

8.4 The authorisation signed on 29th July 2020 was signed by an Acting Assistant Chief Constable who did not have the authority to sign it and it was therefore invalid. Consequently all stop and search without reasonable suspicion between 0000hrs on 30th July 2020 and 1415hrs on 11th August 2020 was unlawful.

8.5 The background and timeline are as follows. The Acting ACC had been appointed and was in place for a period of 56 days. This appointment had been endorsed by the NIPB. The PSNI did not realise that although the Acting ACC had "all the decision making powers expected of other Assistant Chief Constables" this did not include the power to make an authorisation. Under the JSA (as amended by POFA) the authorisation can only be made by a "senior police officer" and that does not include an Acting ACC.

8.6 Nevertheless, on 29th July 2020 the Acting ACC purported to sign the authorisation and revoke the previous one which was due to expire at midnight that day. The "authorisation" and accompanying submission were presented to the Secretary of State at 0905hrs the next day, 30th July 2020, and the "authorisation" was duly confirmed. However, as the authorisation was invalid –

(a) the previous authorisation remained in force till 0000hrs on 30th July 2020 when it expired;

(b) the Secretary of State's "confirmation" was of no effect;

(c) an invalid "authorisation" remained in place from 0000hrs on 30th July 2020 until 1615hrs on 11th August 2020 when it was revoked and a fresh authorisation was made.

8.7 During this period

- there were 127 incidents involving 115 individuals (12 females and 103 males);

- 9 individuals were stopped more than once. One individual was stopped 4 times; one individual was stopped 3 times; and 7 individuals were stopped twice;

- 3 of the 115 individuals were children – aged 14, 15 and 17;

- no use of force was recorded in any case ;

- no arrests were made;

- on one occasion drugs were found and this was dealt with by a CRN which has since been rescinded;

- on one occasion a mobile phone was seized and this was returned.

No other interventions were recorded.

8.8 The PSNI made a public statement explaining what had happened on 3rd December 2020. All those affected were notified and, in the case of the 3 children, their parent or guardian was informed. The letters provided an email address as a single point of contact should an individual or their representative require more detail. Each letter contained the individual reference number for the incident and an apology.

8.9 The PSNI recognize that this was a serious error. An authorisation under the JSA is a legal document which impacts on individual liberty and triggers the use of exceptional powers of stop and search. Moreover, it is a document which is placed before the Secretary of State for him to confirm its continuance for up to 14 days. It has been described as a technicality and in one sense it was. However –

(a) paragraph 5 of the Authorisation Form (**Annex E**) states in bold font immediately above the box for the ACC's signature that

" **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**".

The authorisation passes through a number of hands both in the PSNI and NIO and this document - and this requirement – should have been familiar to all those with responsibility for processing it;

(b) the authorisation form is in the public domain and has been annexed to all my previous annual reports. So this requirement is not an esoteric point of employment law – it is set out as plainly as it could be just above the place where the document is signed;

(c) on receipt of the authorisation on 29th July 2020, an NIO official contacted the PSNI and asked what "A/ACC" meant and also asked for the first name of the officer who had signed it because it was unfamiliar to him. Despite this being identified the significance of the signature was not appreciated.

So it would appear that this was a collective and systemic error. Collective – because a number of people had the opportunity to spot it and it should have been spotted. Systemic – because the frequency with which these authorisations are made (and the logistics of ensuring that there is a Minister on hand to consider the intelligence and confirm the authorisation) inevitably generates a time pressure which causes the focus of the scrutiny to be on the substance of the document rather than the more formal "routine" aspects. If the error had been spotted promptly a fresh one could have been made which would have reduced the number of unlawful stop/searches or even prevented them. As it was, the error was not identified until 11th August 2020 when the authorisation was revoked and a fresh one made.

8.11 In all of my previous 6 annual Reports I have recommended that the period of the confirmed authorisation should be extended to 3 months. This has never been implemented (it would require primary legislation) but nobody has ever objected to it provided other safeguards are in place and are robust. If these authorisations were processed less frequently, it would give greater opportunity for thorough examination and also close scrutiny by senior officers and officials.

8.12 The PSNI have embarked on a programme of work to include a review of what happened; an assessment of the community confidence impact; and an identification of lessons learned. This will be actioned by the Police Powers Delivery Group which is chaired at ACC level.

8.13. It is of concern that it took so long for the PSNI to appreciate the significance of this issue and their response could have been quicker. On the 11th August it must have been

clear to the PSNI – and NIO – that there was at least some doubt about the legality of the stop/searches. A number of meetings took place in the PSNI in August but it was not until 2nd September that legal advice was commissioned. Counsel's advice - that the authorisation was invalid - was only received on 29th September 2020 - 2 months after the signing of the 29th July. The PSNI appeared to proceed on the basis that, as there had been no arrests or charges following these stop/searches, there was no urgency. Admittedly, there was a lot of work to do before the PSNI could make an announcement – individual details had to be checked - but it took over 4 months before one was made and letters were sent to those affected. The Secretary of State was not advised that his confirmation of the 29th July authorisation was invalid until 15th October 2020.

8.14 In mitigation it can be said that –

(a) once the significance of the error was fully appreciated, the PSNI, to their credit, did all the right things. I was formally informed by the Deputy Chief Constable on 16th October 2020 although I had been briefed about it by the NIO on 22nd September. In due course they informed the NIPB, the Ombudsman, the DoJ, the Children's Commissioner and other civic stakeholders including the NIHRC and CAJ. The announcement was comprehensive. All the relevant facts were put in the public domain and an apology was made to all the individuals affected. As a result the public and media reaction was muted. It was a good example of proactive communication.

(b) the authorisation of 29th July 2020 was the 249th authorisation to be made by the PSNI since the JSA came into force and this is the first time that the process has been defective;

(c) the substance of the document contained ample intelligence and information to justify the authorisation being made.

8.15 There are no recommendations in relation to this incident because the PSNI already have an action plan to address all the issues. It will, however, be important for the next Independent Reviewer to be fully briefed in due course about the outcome of any further deliberation by the Police Powers Development Group and the arrangements in place in both the PSNI and NIO to ensure that there is no further failure of the authorisation process.

9. ROAD CLOSURES AND LAND REQUISITIONS

9.1 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 Agency Agreements agreed between the Secretary of State and the 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.

9.2 Normally there would be a requisition order for a site on the Forthriver Business Park in West Belfast (which is owned by Invest NI) in connection with the Whiterock Parade and then for the 12th July parade. However, due to the Covid restrictions and their impact on the parades these requisitions were not necessary.

9.3 The 4 road closures made by the Secretary of State under section 32 for national security purposes remain. They are

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

- the Shore Road (next to the Army Training Estate in Ballykinler)

- Magheralave Road in Lisburn;

- Crumlin Road/Killead Road and Crosshill Road at Aldergrove.

10. THE ARMY

10.1 The role of the Army in Northern Ireland remains unchanged and as described in previous reports.

EOD activity

10.2 Public concern about the role of the Army in relation to EOD activity continues to remain at a low level. However, the level of activity has remained high as is illustrated by the statistics in the table at **Annex D**. There were 226 EOD incidents during the last reporting period. That figure is broken down as follows (with the figures for the previous years in brackets)

- on 18 (19) occasions to deal with an IED – typically an active device such as a pipe bomb;

- on 11 (8) occasions to deal with an explosion;

- on 25 (37) occasions to deal with a hoax – where an object is deliberately made to look like an IED and sometimes accompanied by a telephone warning confirmed by the police the purpose of which could potentially be a prelude to a “come on” attack;

- on 32 (20) 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;

- on no (1) occasion was the Army called out to deal with an incendiary device ie a device which is programmed to ignite and cause a building to burn;

- on 101 (144) occasions the Army had to deal with the discovery of munitions.

10.3 The amount of EOD activity has remained constant for many years. It should also be mentioned that the Army has also to deal with finds of conventional munitions dating back to the Second World War. During the last reporting period there were 39 such incidents considerably more than in previous years. These finds occur when tides or soil erosion reveal munitions and, less frequently, in family attics. For example, on 26th May 2020 the Irish News reported that the PSNI and Army attended a discovery of 78 devices at Balls Point, Magilligan. The Army confirmed that the items were air dropped 8lb practice bombs dating back to the War. On 24th May the BBC reported that a war time mortar had been found in the Mourne Mountains and made safe by the Army. Again, a number of mortars have been washed up on beaches at Murlough, Tyrella and Newcastle. Against the backdrop of a marked increase in reporting such call outs, Baroness Ritchie of Downpatrick, and former MP for South Down, raised the issue of public safety with the Ministry of Defence. These mortars are believed to have come from a consignment of

munitions which were dumped in a deep trench in the Irish Sea at the end of the War. The Defence Minister, Mark Lancaster, wrote to Baroness Ritchie explaining the background to these finds. He said that many coastal areas in the UK are susceptible to legacy munitions particularly from the Second World War or fired from local Army firing ranges; the coastguard and local police routinely issue safety warnings; and he believed "the processes in place are appropriate for the preservation of public safety".

Processing and handling of complaints

10.4 There was only one complaint about Army activity during this period.

10.5 A resident in Draperstown in the Sperrin Mountains complained that on the morning of 18th July 2019 an Army helicopter flew at a very low height over his property where he kept cattle and sheep. The issue of low flying military aircraft is a sensitive issue in Northern Ireland and Sinn Fein have previously called for such activity to stop. The Army subsequently confirmed that a Gazelle helicopter had been operating in the area for about 35 minutes on that morning. It was a training exercise involving low flying and "quick stops" ie a manoeuvre used to decelerate from forward flight to a hover. The complainant approached Ms Emma Sheerin, the MLA for Mid-Ulster, who raised the matter with the Minister of Defence. Concern was expressed about the legal authority for flying so low over private land; why this activity could not have taken place elsewhere; and whether this activity would recur. An internal MoD minute described this as "an entirely reasonable complaint against entirely reasonable flying training". On 15th August 2019 the Minister of Defence replied to Ms Sheerin. He explained that in order to operate effectively at low level there has to be appropriate training. The Services try to spread the disruption this may cause to the public as widely and fairly as possible by using the whole of the UK for low flying by military aircraft. He explained that the unit operating in this area had agreed to place a "temporary local avoid" around this property to ensure that no training activity occurred there for the next month. However, there was no commitment to stop such activity in that area on a permanent basis. He also added that under the Belfast Agreement helicopters were permitted to be based in Northern Ireland but with a world-wide deployable role. He concluded that "as a consequence essential flying training will continue in order to maintain the skills of aircrew and, with Northern Ireland designated as Low Flying Area 19, the training emphasis will be similar to other areas".

10.6 On 24th January 2020 the Civil Representative met with the complainant and Ms Sheerin and explained the basis for this military activity over private land. Concern was expressed about the fact that the military could operate in this way and the tone of the Minister's reply which had only exacerbated the situation.

10.7 The Civil Representative recorded the matter as "informally resolved" – but the incident does reinforce the continuing sensitivity about low level flying by the Army and the need to respond appropriately to those concerns.

11. PSNI RESPONSE TO RECOMMENDATIONS

11.1 One senior PSNI officer once told me that he only looked at the recommendations in the Report to find out what action needed to be taken. However, the purpose of the report, under section 40, is to "review the operation of sections 21 to 32" ie the operation of the police powers in the JSA which are unique to Northern Ireland. It is the commentary on

the exercise of the powers, as much as any recommendations, which is important. The Lord Chief Justice' said in the Court of Appeal in **Ramsey** at paragraph 67 that –

"We attach to this judgment a useful analysis of the recommendations made by the Independent Reviewer and the responses of the PSNI. That demonstrates a high rate of acceptance of those recommendations….The role of the Independent Reviewer is not limited simply to reporting on the operation of the scheme. The consideration given by the relevant authorities to the recommendations of the Independent Reviewer is itself part of the safeguards. There is no obligation to accept every recommendation but if the scheme is to operate lawfully it must follow that timely and serious consideration is given to those recommendations and a reasoned response as to whether or not to accept them is provided".

The Schedule to the judgment setting out all the recommendations in the 5th to 11th Reports is at **Annex J.**

11.2 So the review/commentary on the operation of the powers and the response to recommendations are equally important. There are no new recommendations this year but there are 6 outstanding issues which need to be addressed which emerge from the review of these powers set out in previous Reports – see paragraph 13.3 below. I have also flagged up at various points in this Report various issues which need to be followed up by the next Reviewer.

11.3 A number of recommendations were made in the 11th and 12th Reports. The 12th Report was published in April 2020 shortly after the judgment in **Ramsey** was handed down. The PSNI response to the 12th Report was quicker than usual and was sent to me on 29th July 2020.

Recommendations from 11th Report

BWV should always be used when JSA powers are used in relation to a child

11.4 The PSNI accept this recommendation in relation to all stop and search. The new direction is that BWV "must" be used whenever a child is involved. Indeed the direction applies to all stop and search involving a child and not just those under the JSA. The direction makes it clear that *"stop and search encounters must be recorded and any stop and search encounters without a recording will require a reasoned explanation as to why this is so which will then need to be agreed by a supervisor".*

If the power to stop and question under section 21 of the JSA is used then BWV must be used but it does fall within this direction.

If BWV is not used in a stop and search this must be reported to a supervising officer with an explanation

11.5 The PSNI accept this recommendation – see paragraph 11.4 above. As a result of improved technology supervising officers will have an enhanced ability to monitor all stop and search encounters where BWV has not been used. This will be an improvement on current dip sampling which does not capture all such encounters.

A record should be kept of all computers etc seized and retained under JSA powers together with duration of retention

11.6 The PSNI accept this recommendation and this information will be stored electronically from the end of 2020.

PSNI should now consider whether community monitoring could be done on the basis of officer perception

11.7 The PSNI did not accept this recommendation but it is now under further consideration following the outcome of the **Ramsey** judgment – see paragraphs 5.6 to 5.9 above.

Recommendations from the 12th Report

PSNI to provide information to any child stopped and searched under JSA or TACT

11.8 The PSNI accept the spirit of this recommendation and will consider with organizations representing children's interests how best to achieve this.

PSNI should, in light of the Ramsey judgment, record the basis of each stop and search and give further consideration in relation to how to implement community monitoring on the basis of legal advice from Counsel specialising in data protection

11.9 The PSNI accept this recommendation in relation to the recording of the basis for the stop and search – see paragraphs 5.2 to 5.5 above. In relation to establishing a system of community monitoring further work is being carried out – see paragraphs 5.6 to 5.9 above.

PSNI should use annual report to ensure that first line managers are supervising the use of these powers

11.10 The PSNI do not accept this recommendation because their current reporting system is not designed to "assess specific operational performance" (paragraph 7.23 above) but the PSNI will continue to explore other means to ensure supervisors are reviewing the activities of officers in relation to stop and search.

Note from PSNI to NIO about intelligence underpinning authorisation should explain, where necessary, how intelligence relates to use of munitions

11.11 PSNI accept this recommendation.

In relation to NJTs

(a) NIO should set up a working party of all interested parties (including PSNI) to look at feasibility of adopting practical measures to remove need for NJTs;

(b) the DPP should consider using his discretion not to issue an NJT certificate where the very low threshold is only just met

11.12 The PSNI accept the recommendation that there should be a working party as proposed. However, they do not accept the second recommendation.

11.13 Some recommendations from previous Reports will need primary legislation which has not been forthcoming in recent years. The legislative programme is always crowded and the JSA regime works well and is not in need of major reform. However, there has

been general agreement that the period of the authorisation under the JSA should be extended to 3 months because the security situation does not fluctuate on a fortnightly basis. The period of 14 days was not given much thought during the progress of the POFA and was just "lifted" from similar provisions in TACT. However, the test in TACT is whether a senior police officer reasonably suspects that an act of terrorism will take place. In those circumstances 14 days is a reasonable period but is not appropriate when assessing a permanent – or at least longstanding – state of affairs.

PART 2 – NON JURY TRIALS (NJTs)

Background

12.1 The provisions relating to NJTs are set out in sections 1 to 9 and are at **Annex F** and the PPS's guidance on how these provisions are to be applied is at **Annex G**. Section 9 provides that these provisions shall expire after 2 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 provisions were most recently extended until 31st July 2021 by the Justice and Security (Northern Ireland) Act 2007 (extension of duration of non-jury trial provisions) Order 2019. In 2017 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 which will be made available to the public in the published report. We hope that gives some extra reassurance to those interested in these issue".

Accordingly, Part 2 of the 10th Report addressed this issue. It set out the terms of reference, the statutory framework and the wider context. It also describes the risk to criminal trials in Northern Ireland; the nature and robustness of the NJT procedures; and juror protection measures. **So this Report (together with Part 2 of the 11th and 12th Reports) is supplementary to the main analysis in the 10th Report**.

Analysis of recent cases

12.2 There were only 11 cases during the reporting period and they are listed at **Annex H**. The cases involved charges of possession of firearms, possession and supply of drugs, blackmail, wounding with intent, possession of explosives, riot, possession of information likely to be of use to a terrorist, gross negligence manslaughter, possession of criminal property and murder/attempted murder. As in previous years the cases involved defendants who were or had been members (or their associates) of a number of proscribed organizations across the political divide. I examined carefully all the papers in 7 of the 11 cases. They were again dealt with thoroughly and in a highly professional manner following at all times the procedure set out in paragraphs 19.1 to 19.5 of the 10th Report. The intelligence from the PSNI was comprehensive and the consideration of the relevant statutory tests was thorough and professional. It is not uncommon for the detailed submission to the DPP to consist of 20 pages of background and analysis.

12.3 In paragraph 14.3 of the 12th Report I commented on the improved response time by the PSNI to the PPS request for information. The 11th Report stated that the average response time was 7 months; in the 12th Report it was 7 weeks. In the current reporting period that trend has continued to improve and most of the requests for information were dealt with in around one month.

12.4 The intelligence in the PSNI reports was given close scrutiny by the PPS. A certificate was refused in 2 of the 11 cases. In one case there was a difference of view between the PSNI and PPS as to whether a condition for the issue of a NJT certificate had been met. This is not unusual because intelligence is often incomplete. It has to be tested and probed and reasonable assessments can sometimes point in different directions. In this case the PSNI thought that the test had been met. However, the PPS disagreed and asked for further enquiries. The upshot was that there was only one piece of intelligence linking the defendant to a proscribed organization. The DPP concluded, after careful consideration, that reliance on that piece of intelligence was "too tenuous" and the risk to the administration of justice "minimal" even though the individual might have some notoriety in the community. This is a good example of the anxious scrutiny that is given to these matters by the DPP's office.

12.5 Yet again the number of these cases (11) is very small. Statistics from the Northern Ireland Court Service show that of the 1403 disposals in the Crown Court on all charges during this reporting period only 11 were of defendants appearing in a NJT.

Commentary

12.6 In paragraph 15.6 and 15.7 of the 12th Report I said that –

"15.6 To sum up, there are conflicting views about the need to continue these NJT provisions. Under the current arrangements it is clear that there is an inbuilt bias against any more "normalization" and the repeal of the NJT provisions because –

(a) the current system is efficient, works well and delivers fair trials;

(b) it can plausibly be argued that nothing should change until the conditions for change are absolutely right ("the perfect being the enemy of the good" in the words of one commentator);

(c) persevering with the current arrangements for NJTs is the easier and safer option – removing NJTs would be a bold step.

15.7 If there is to be a move away from NJTs at some point in the foreseeable future then some proactive measures – not without risk – will have to be taken".

12.7 I went on to make two recommendations –

(a) that the NIO could set up a working party of those involved in the criminal justice system to consider whether there are practical measures which could be taken to minimize any risk to the administration of justice;

(b) in marginal cases which could go either way the DPP should consider not issuing a certificate when the very low threshold is only just met in conjunction possibly with juror protection measures.

12.8 I am not making any further recommendations in this Report. I am pleased that the NIO is minded to take forward the first recommendation later in 2021 if the provisions are renewed again in the summer. In the 4 years that I have been reviewing the operation on NJTs I have been struck by the strength of opposing views and the fact that there appears to have been no meaningful dialogue to address this issue in recent years. These are not issues of law or high policy – they are practical matters which only those working in the criminal justice system can properly address. There has been much discussion and innovation in 2020 about what adjustments should be made to the criminal justice system in the light of the current pandemic. For example, the Criminal Bar Association produced a paper in July 2020 entitled "Proposed Road Map for Re-Opening of the Criminal Courts" to address the challenges presented by the pandemic. It is full of practical ideas to ensure that all those in the justice system (including jurors) remain safe when courts re-open. It would be encouraging if some similar collective effort could now be made to manage the risk of juror intimidation in the few cases in Northern Ireland where it remains a possibility. These NJT provisions were presented to Parliament as temporary measures in 2007. If they are continued beyond July 2021 it will be the 7th time that they have been extended. It may be difficult to find a solution but that is not a reason for not trying to look for one.

12.9 It should just be noted that two of the 9 certificates signed in this period were in connection with trials of British soldiers - Holden and Soldier F. These decisions were taken in the light of the Supreme Court judgment in the case of **Hutchings**. That case concerned a British soldier who is being prosecuted in connection with a fatal shooting in 1974 during The Troubles. The Court held that the DPP was correct in law to base his decision on Condition 4 ie the offence "was committed to any extent (whether directly or indirectly) as a result of, or 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".

PART 3 – CONCLUSIONS

The powers are needed and are exercised fairly and professionally

13.1 In September the HMICFRS produced a report, following an inspection, on how well the PSNI treats its workforce and the people of Northern Ireland and concluded that it was good in its treatment of its work force and the people of Northern Ireland. It stated that –

"The PSNI operates in a particularly complicated social and political environment. This makes it difficult for the service to build a positive relationship with some communities. In this context, it has done well to inspire confidence".

My focus over the past 7 years has been on how the PSNI have used the exceptional powers in the JSA in this challenging environment. These powers are intrusive and their use has in the past generated strong emotions. My first report was written in the immediate aftermath of the flags protest and the public disorder that followed. It is fair to say that, at that point, there was some bad feeling towards the PSNI on both sides of the community in relation to their use of JSA powers and, in particular, the actions of the TSG. However, that concern has largely faded and there is a general acceptance across the community that these powers are necessary to address the security situation described in paragraphs 4.1 to 4.6 above. There is also a general acceptance that they are exercised in a professional and fair way and a general recognition that the use of the power is focussed on those who present the most serious threat from the use of munitions. One former IRA prisoner told me that there has been constant improvement and the young police officers on the ground were doing a good job. Another leading figure in West Belfast told me that there was far more acceptance of policing than is actually said. The concerns which are expressed are less to do with the use of JSA powers than with –

(a) the perceived failure to deal quickly and effectively with drugs and low level anti- social behaviour which, together, have a detrimental impact on the quality of life in many parts of Northern Ireland. In the words of one community leader this failure "creates a sense of lawlessness";

(b) the loss of neighbourhood policing – a matter which is currently in the process of being addressed;

(c) apparent inconsistencies in public order policing and a failure to explain them adequately.

Progress over the past 7 years

13.2 There has been considerable progress in a number of specific areas over the past 7 years –

(a) there have been a number of legal challenges to the powers in the JSA. The main challenge has been that they are not consistent with the UK's obligations under the ECHR. Although minor adjustments have had to be made following some judgments the PSNI have defended their use of JSA powers and, together with the NIO, defended the JSA regime as compliant with the ECHR;

(b) the powers are used far less frequently than in the past and the general public is not generally inconvenienced. The powers are used primarily against DRs and also to a lesser extent loyalist paramilitaries;

(c) the roll out of BWV is complete and that has had a beneficial impact on stop and search;

(d) the PSNI have become more willing to share information about their use of these powers and to engage more with the public (via, for example, the TSG programme of community engagement, PSNI use of social media and the PSNI website);

(e) road closures and land requisitions are kept to an absolute minimum.

This represents considerable progress and is even more encouraging when seen against the improved public order situation and the vastly reduced number of complaints in relation to Army activity. In the last 2 years I have specifically asked many people whether they agree with the conclusions set out so far in this Chapter and they unanimously said that they did.

Outstanding issues which need to be addressed

13.3 There are 6 areas where further action by the PSNI is needed –

(a) BWV has been beneficial (see paragraphs 7.9 and 7.10 above) but the frequency of its use needs to be improved;

(b) there needs to be better and more demonstrable supervision of the use of JSA powers (see paragraph 7.21 to 7.23 above);

(c) progress now needs to be made on the issue of community monitoring. There is clearly sufficient information in the public domain to indicate that the powers are focussed primarily on DRs and there is now no reason for not doing it - indeed there is a legal duty to do it (see paragraph 5.6 above);

(d) there needs to be a solution to the problem of not being able to obtain a copy of the search record without having to visit a police station (see paragraph 7.20 above);

(e) there is some legitimate concern about the impact of the use of stop and search on children ie people under 18. This is mainly an issue in relation to stops etc under mainstream criminal justice legislation. However, just under 200 children are stopped/searched under JSA and TACT powers every year and the use of these powers against children is a particularly sensitive issue (see paragraph 7.7 to 7.11 above);

(f) one senior police officer described the PSNI's handling of the media as "reactive". There are occasions when the PSNI could take the initiative and proactively explain how these powers are being used. For example, there is a perfectly good reason why these powers are used predominantly against DRs and less so against loyalist paramilitaries. The activities of both groups are equally corrosive but the public may not appreciate that normal criminal justice powers are often sufficient to deal with the criminal activities of the latter and the PSNI could do more to reinforce this message. So, in the context of community monitoring, this would be a sound response to those who might seek to exploit the statistics for political purposes. The powers are not directed at any community as such but at dangerous individuals within that community who have virtually no support within it.

It would helpful if public debate ceased to be in terms of the PSNI taking action against communities. Another area where a more proactive approach to communication would be beneficial is public order policing where a **very common complaint** is one of perceived inconsistency. There is always an operational explanation but it does not always get through to those who need to hear it. This is not an issue unique to the PSNI. On 11th January 2021 the London Times reported that the Home Secretary was preparing to force the police to explain controversial operational decisions – prompted in part, it would appear, by the decision of the police not to intervene when a statue of Edward Colston was toppled into Bristol harbour in protest at his links to slavery. However, the issue is of particular significance in Northern Ireland where lack of action or "over reaction" can be more readily misunderstood or politically exploited.

Safeguards need to be kept under review

13.4 In the Court of Appeal in **Ramsey** the Lord Chief Justice summarized Treacy LJ's conclusions when the case was heard in the High Court. He said –

…the authorisation process, police training, the control and restriction on the use of the impugned powers by the Code of Practice, complaints procedures, disciplinary restraint on police powers 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 previously detailed 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".

He went on to say –

"…where problems or potential problems emerge it appears the search for solutions 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 Art 8 because a review and/or experience suggest improvement. Amongst the panoply of effective safeguards is the effective ongoing review. ***The identification by these review processes of improvement and the willingness to identify and implement such is a measure of how effective such safeguards can be****"*.

13.5 As technology and jurisprudence evolve, issues emerge and circumstances change so safeguards may have to be tweaked or new ones introduced. These are intrusive and rather regrettable powers and the legitimacy of the scheme – and its acceptance by the general public - depends on the efficacy of the safeguards. It is not always enough that the strict letter of the law is observed. The use of these powers must not only be lawful (in terms of strict compliance with the statutory requirements) but also proportionate and justifiable in the broadest sense. The arrival of BWV, together with more sophisticated methods of recording, place the supervision of these powers more centre stage. The same is true of community monitoring which was a recommendation and is now a legal requirement. It may be that additional measures will be needed in relation to the stop and

search of children in the light of the two recent and as yet unresolved legal challenges (see paragraph 5. 10 to 5.12 above).

Serious assessment should now be made by those in the criminal justice system about the continuing need for NJTs

13.6 The provisions in the JSA relating to police powers and NJTs are unique to Northern Ireland. They are remnants of the emergency powers which were introduced during the Troubles. Whereas it is clear that the police powers should remain for as long as the security situation remains SEVERE (see paragraph 13.1 above) the time has now come for a serious assessment of whether NJTs remain necessary.

13.7 At the height of the Troubles more than 300 cases a year were heard by Diplock Courts. In this last reporting period only 9 certificates were granted for an NJT and 2 of those were “historical” (in cases involving the actions of British soldiers during the Troubles). Not all of these 9 cases could be said to be “terrorist cases” though they all (except the cases of the British soldiers) do have a paramilitary link. The NJT provisions in the JSA were only intended to be temporary and that is why they have to be renewed by Parliament every 2 years. If these provisions were not renewed Section 46 of the CJA would still apply. This makes provision for the discharge of a jury if there is evidence of jury tampering. The judge can then order that the trial continue without a judge. Some say that section 46 would not provide an adequate safeguard in Northern Ireland because –

(a) it would require **evidence** of jury tampering which might not be forthcoming; and

(b) it is only concerned with jury tampering whereas under the JSA a NJT can be used if there is also a risk to the administration of justice on account of a hostile or biased jury.

However, evidence that tampering has taken place (rather than suspecting that it might) should be the proper basis on which to proceed to a NJT. The possibility of a perverse verdict is inherent in any system of trial by jury and is not a problem unique to Northern Ireland.

13.8 If there was a decision in due course not to renew these provisions it should be accompanied by legislation permitting their immediate reintroduction by order (approved by both Houses). This should give some comfort to those who are nervous of change and think that it would be premature – and, of course, they may in due course be proved right. However, after 14 years, a robust examination of the need for these provisions is now required.

ANNEX A – ACRONYMS

ANPR – automatic number plate recognition

BWV – body worn video

CAJ – Committee for the Administration of Justice

Code – Code of Practice under section 34 of the JSA

CIRA – Continuity IRA

CRN – Community Resolution Notice

DoJ - Department of Justice

DPIA – Data Protection Impact Assessment

DPP – Director of Public Prosecutions

DR - Dissident Republican

ECHR – European Convention of Human Rights

EU – European Union

EOD – explosive ordnance disposal

GDPR – General Data Protection Regulation

IED – improvised explosive device

IOPC – Independent Office for Police Conduct

HMICFRS – Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services

IAG – Independent Advisory Group

JSA - Justice and Security (Northern Ireland) Act 2007

MOP – member of the public

NIHRC – Northern Ireland Human Rights Commission

NIO – Northern Ireland Office

NIPB – Northern Ireland Policing Board

NIRT – Northern Ireland related terrorism

NJT – Non jury trial

Ombudsman – Police Ombudsman for Northern Ireland

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

POFA – Protection of Freedoms Act 2012

PPS – Public Prosecution Service

PSA – paramilitary style assault

PSNI – Police Service of Northern Ireland

TACT – Terrorism Act 2000

TSG – Tactical Support Group

VBIED – vehicle borne improvised explosive device

ANNEX B – ORGANIZATIONS AND INDIVIDUALS CONSULTED

Alliance Party*

Alyson Kilpatrick BL

British/Irish Intergovernmental Secretariat*

Children's Law Centre*

Children's Commissioner for Northern Ireland

Coiste na nlarchimi (COISTE)

Committee for the Administration of Justice (CAJ) *

Criminal Justice Inspectorate (Northern Ireland)*

Crumlin Ardoyne Residents Association (CARA)

David Mulholland Chief Executive Northern Ireland Bar*

DoJ officials *

DUP*

Ex Prisoners Interpretative Centre (EPIC)

Falls Community Council

Father Gary Donegan

Garnerville Training College, PSNI

Include Youth*

Jim Roddy, City Centre Initiative, Derry

Joanne Hannigan QC*

Jonathan Hall QC, Independent Reviewer of Terrorist Legislation *

HQ (38) Irish Brigade *

John Wadham, Human Rights Adviser, NIPB*

Les Allamby Northern Ireland Human Rights Commission*

Madeleine Alessandri Permanent Secretary Northern Ireland Office*

MI5

Northern Ireland Office

Northern Ireland Youth Forum

Police Federation for Northern Ireland

Police Ombudsman of Northern Ireland

Police Superintendents Association

Professor Duncan Morrow (Ulster University)

Professor John Topping (Queen's University) *

Professor Jonny Byrne (Ulster University) *

Progressive Unionist Party

PSNI (Chief Constable and officers of all ranks)

Public Prosecution Service

Rev Mervyn Gibson

Secretary of State for Northern Ireland*

Sinn Fein*

Social Democratic and Labour Party*

South Belfast Resource Centre

Ulster Unionist Party*

*Meetings held remotely

ANNEX C – SUMMARY OF POWERS

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 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.	A record of each entry into a building must be made. Records are not required for any premises other than buildings. 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).

Section	Power	Overview	Records
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 on the premises or anyone who enters the premises to remain on the premises. For example, movement within the premises may be restricted, or entry into the premises not permitted. A person commits an offence and may be prosecuted if they fail to submit to a requirement or wilfully obstruct or seeks to frustrate a search of premises. 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.	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.
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.

Section	Power	Overview	Records
24/ Schedule 3	Paragraph 4A(1): A senior officer may give an authorisation under this paragraph in relation to a specified area or place.	This power allows a senior officer to authorise officers to stop and search people for munitions or wireless apparatus in specified locations. 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.	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.
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 which may constitute evidence that he is a terrorist.	A "terrorist" is defined in section 40 as a person who has committed one of a number of specified terrorist offences or a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism. And the definition of "terrorism" is found in section 1 of TACT 2000. 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(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.

Section	Power	Overview	Records
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 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.	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.

Section	Power	Overview	Records
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 registration number of the vehicle, the date, time and place of the search, the purpose, grounds and outcome of the search and the officer's warrant or other identification number and the police station to which the officer is attached.

Section	Power	Overview	Records
47A	A constable may stop and search a person or a vehicle in a specified area or place for evidence that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism, or evidence that the vehicle is being used for the purposes of terrorism. The specified area or place must be specified in an authorisation made by a senior police officer and where necessary confirmed by the Secretary of State in accordance with section 47A of, and Schedule 6B, to the Terrorism Act 2000.	A senior officer (an assistant chief constable or above) may given an authorisation under section 47A(1) in relation to a specified area or place if that officer (a) reasonably suspects that an act of terrorism will take place; and (b) reasonably considers that the authorisation is necessary to prevent such an act and that the specified area or place and the duration of the authorisation are no greater than necessary to prevent such an act. 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 the 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.	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 fact that an authorisation is in place, the purpose and outcome of the search and the officer's warrant or other identification number and the police station to which the officer is attached.

ANNEX D – STATISTICS

Annex E Statistics

Table 1: Police Service of Northern Ireland Summary Sheet

Justice and Security Act – 1st August 2019 - 31st July 2020

	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Total
1. JSA Section 21 - Number of persons stopped and questioned	96	77	89	54	131	70	46	48	11	41	26	73	**762**
2. JSA Section 23 - Power of Entry	4	0	0	0	0	0	0	0	1	0	1	0	**6**
3. JSA Section 24 (Schedule 3) - Munitions and Transmitters stop and searches													
No. of persons stopped and searched, public place:	421	412	444	447	472	423	414	210	175	265	285	394	**4,362**
No. of persons stopped and searched, private place:	12	12	11	14	7	10	12	10	11	32	14	33	**178**
Persons stopped and searched - total	**433**	**424**	**455**	**461**	**479**	**433**	**426**	**220**	**186**	**297**	**299**	**427**	**4,540**
JSA Section 24 (Schedule 3) - Searches of premises:													
No. of premises searched - Dwellings:	18	9	10	5	14	1	5	3	2	5	9	7	**88**
No. of premises searched - Other:	0	0	1	0	1	2	0	0	0	0	0	0	**4**
No. of occasions firearms, explosives and/or ammunition seized or retained [(a)]	1	0	0	0	0	1	0	0	0	0	1	0	**3**
JSA Section 24 (Schedule 3) Use of Specialists: Use of specialists - No. of occasions 'other' persons accompanied police:	0	0	0	0	0	0	0	0	0	0	0	0	**0**
4. JSA Section 26 (Schedule 3) - Search of Vehicles													
(1) (a) Vehicles stopped and searched under section 24	856	870	950	885	1337	795	804	452	168	262	270	438	**8,087**

(1) (b) Vehicles taken to another location for search	0	1	0	0	0	1	1	1	0	0	0	0	**4**

(a) Excludes number of occasions in which replica firearms 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 2019 and 31st July 2020

TABLE 2A	
Section 21 – Stop and Question	
Year	**Number of Persons Stopped and Questioned**
2019	
August	96
September	77
October	89
November	54
December	131
2020	
January	70
February	46
March	48
April	11
May	41
June	26
July	73
August 19 - July 20	**762**

TABLE 2B	
Section 23 – Power of Entry	
Year	**Number of Premises Entered**
2019	
August	4
September	0
October	0
November	0
December	0
2020	
January	0
February	0
March	0
April	1
May	0
June	1
July	0
August 19 - July 20	**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
2019			
August	421	12	433
September	412	12	424
October	444	11	455
November	447	14	461
December	472	7	479
2020			
January	423	10	433
February	414	12	426
March	210	10	220
April	175	11	186
May	265	32	297
June	285	14	299
July	394	33	427
August 19 - July 20	**4,362**	**178**	**4,540**

TABLE 2D

Section 24 (Schedule 3)

Searches of Premises

Year	Searches of Premises by Police			
	Dwellings	Other	Occasions firearms, explosives and/or ammunition seized or retained	Occasions 'other' persons accompanied police
2019				
August	18	0	1	0
September	9	0	0	0
October	10	1	0	0
November	5	0	0	0
December	14	1	0	0
2020				
January	1	2	1	0
February	5	0	0	0
March	3	0	0	0
April	2	0	0	0
May	5	0	0	0
June	9	0	1	0
July	7	0	0	0
August 19 - July 20	**88**	**4**	**3**	**0**

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

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

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**
2019		
August	856	0
September	870	1
October	950	0
November	885	0
December	1,337	0
2020		
January	795	1
February	804	1
March	452	1
April	168	0
May	262	0
June	270	0
July	438	0
August 19 - July 20	**8,087**	**4**

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 2019 – 31 July 2020

Persons stopped and searched under:	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug 19 -Jul 20
PACE / MDA / F Order[b]	1,581	1,471	1,896	1,789	1,887	1,765	1,581	1,295	1,645	2,238	2,017	1,883	**21,048**
TACT S43	3	1	2	2	2	1	1	1	0	4	5	7	**29**
TACT S43A	0	0	0	1	0	0	1	2	0	0	1	0	**5**
TACT S47A	0	0	0	0	0	0	0	0	0	0	0	0	**0**
JSA Section 21	96	77	89	54	131	70	46	48	11	41	26	73	**762**
JSA Section 24	433	424	455	461	479	433	426	220	186	297	299	427	**4,540**
Other Legislations[c]	2	0	2	3	0	2	4	2	3	0	25	1	**44**
Total (Powers Used)[a]	**2,115**	**1,973**	**2,444**	**2,310**	**2,499**	**2,271**	**2,059**	**1,568**	**1,845**	**2,580**	**2,373**	**2,391**	**26,428**

(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) 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 2018 – 31 July 2019

Persons stopped and searched under:	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug 18 -Jul 19
PACE / MDA / F Order[b]	1,764	1,776	2,236	1,912	1,675	1,699	1,577	1,870	1,577	1,602	1,570	1,828	**21,086**
TACT S43	3	6	2	9	3	5	6	3	2	2	3	8	**52**
TACT S43A	1	1	0	1	0	2	2	1	0	2	1	3	**14**
TACT S47A	0	0	0	0	0	0	0	0	0	0	0	0	**0**
JSA Section 21	110	108	121	124	100	105	79	100	127	84	77	98	**1,233**
JSA Section 24	529	447	551	670	480	475	474	544	458	312	305	412	**5,657**
Other Legislations	5	7	0	0	5	14	27	4	1	1	0	4	**68**
Total (Powers Used)[a,b]	**2,412**	**2,345**	**2,910**	**2,716**	**2,263**	**2,300**	**2,165**	**2,522**	**2,165**	**2,003**	**1,956**	**2,353**	**28,110**

(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.

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)	2018/19(1,9)	2019/20(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	21,062	19,842
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	74	38
- Section 47A(5)								0	0	70	0	0	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	1,283	997
- Section 24 (2)				251	372	621	11,721	12,699	7,687	6,239	3,906	6,980	7,935	6,245	6,035	4,818
Other legislative powers(6)									294	417	190	97	140	32	79	21
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**	**28,553**	**25,716**
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*	28,116	25,450
PACE / Misuse of Drugs Act / Firearms Order	*69%*	*74%*	*83%*	*81%*	*66%*	*41%*	*46%*	*56%*	*66%*	*73%*	*78%*	*71%*	*67%*	*74%*	*74%*	*77%*
All Terrorism Act Powers	*31%*	*26%*	*17%*	*18%*	*32%*	*49%*	*19%*	*1%*	*1%*	*1%*	*1%*	*1%*	*1%*	*<0.5%*	*<0.5%*	*<0.5%*
All JSA Powers	*0%*	*0%*	*0%*	*1%*	*2%*	*10%*	*35%*	*44%*	*33%*	*26%*	*21%*	*28%*	*31%*	*25%*	*26%*	*23%*
Other legislative powers	*0%*	*0%*	*0%*	*0%*	*0%*	*0%*	*0%*	*0%*	*1%*	*1%*	*1%*	*<0.5%*	*<0.5%*	*<0.5%*	*<0.5%*	*<0.5%*
All Powers(8)	***100%***	***100%***	***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 onwards. Figures reported for the period pre-2017/18 still contain such searches. The impact is an approximate 2.5% reduction in the total number of persons stopped and searched/questioned from 2017/18 onwards.

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

Table 4

1 August 2019 to 31 July 2020

DATE	IED	EXPLOSION	HOAX	FALSE	CMD	FIND	FIND X-RAY	INCENDIARY	TOTAL
August 19	0	1	4	2	1	2	3	0	**13**
September 19	1	1	5	2	3	8	5	0	**29**
October 19	1	1	2	1	4	0	5	0	**14**
November 19	2	2	1	1	3	3	4	0	**16**
December 19	2	1	1	2	5	0	3	0	**14**
January 20	3	3	2	3	1	2	11	0	**25**
February 20	2	0	2	5	0	0	5	0	**16**
March 20	2	1	3	3	4	4	7	0	**24**
April 20	0	0	0	3	1	2	4	0	**10**
May 20	1	0	2	5	9	2	7	0	**26**
June 20	4	1	1	3	7	5	7	0	**28**
July 20	0	0	2	2	1	0	12	0	**17**
TOTAL	**18**	**11**	**25**	**32**	**39**	**28**	**73**	**0**	

ANNEX E – 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 F – NJT STATUTORY PROVISIONS

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 G – 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 H – NJT CASES EXAMINED

There 11 certificates considered by the DPP between 1st August 2019 and 31st July 2020. The cases are listed below together with the DPP's decision; the date of that decision and a description of the offence.

R v McIntyre; certificate granted 23rd August 2019; riot.

R v Neale; certificate granted 12th September 2019; possession of firearms and drugs;

R v Burleigh; certificate granted 16th September 2019; possession of firearms.

R v Perry; certificate granted 3rd October 2019; collecting information likely to be useful to a terrorist.

R v Stephenson and McKerr; certificate granted 3rd October 2019; possession of firearms and information likely to be useful to a terrorist.

R v Holden; certificate granted 8th October 2019; gross negligence manslaughter.

R v Brown, Curry and McElroy; certificate granted 8th January 2020; blackmail.

R v McGrann, Megaw, McCullough and Fryers; certificate granted 22nd January 2020; wounding with intent.

R v McQuaide; certificate refused 4th March 2020; supplying drugs and possessing criminal property.

R v Dodds; certificate refused 10th March 2020; possession of explosives.

R v Soldier F; certificate granted 29th July 2020; murder/attempted murder.

ANNEX J – SUMMARY OF RECOMMENDATIONS SINCE THE 5TH REPORT

(as annexed to Court of Appeal judgment in the case of Ramsey [2018] NIQB 83)

REPORT	RECOMMENDATIONS	PSNI RESPONSE	APPELLANT COMMENTS
Fifth Report (1.8.201-31.7.2012) Whalley			
1.	Draft Code of Practice should be completed as soon as possible (para 167)	Accepted	
2.	PSNI should then complete their work to incorporate the completed Code in operational orders concerning the powers in the Justice and Security Act to meet the requirements of paragraph 8.37 of the current draft of the Code and reflect it in training (paragraph 211)	All officers are made aware of a new authorisation via internal email with attachments to include the JSA Code of Practice.	
3.	Now that PSNI have moved to *full electronic capture of record* keeping under the JSA, **the menu of actions to be completed by officers undertaking stops should reflect the basis given by the authorising officer when making the application** (paragraph 297)		Not done – resisted *until* judgment Treacy LJ
4.	**In each record, the officer should state the basis for the stop separately from the statement of the power used** (paragraph 298)		Not done – resisted until judgment Treacy LJ
5.	Authorising officers should consider as a matter of good practice initialling in manuscript each page of an authorisation application to the Secretary of State as a record of their review of the documentation (paragraphs 226)	The authorising officer initials each page of the application.	
6.	The authorisation process should continue as operationally required and should follow the format described in this report in no less detail than at present (paragraph 247)	The authorisation process continues in the format described.	

7.	Authorisations should continue to extend to the whole of Northern Ireland if necessary, but where this is done the record should show that each District Commander has been specifically asked whether he wishes the authorisation to apply to his District (paragraph 235)	District Commanders are consulted prior to each authorisation.	Understood from subsequent reports that this was complied with – possibly following observations by NIPB
8.	Subject only to further judicial intervention, the powers in sections 21 to 32 of the Justice and Security Act should be continued for a further full year (paragraph 637)	Accepted	
Sixth Report (1.8.2012-31.7.2013) **Whalley**	**No recommendations made but this report adopted the 11 recommendations of the NIPB Thematic Report (2013) which are as follows;**		
9.	The PSNI should develop a mechanism which enables supervising officers and senior officers to undertake reliable examinations of the records of the use of powers to stop and search under section 43, 43A and 47A of the Terrorism Act 2000 according to the name and number of the police officer and according to the name of the person searched.	Accepted	Understood technical aspect complied with in February 2014, ongoing issues remain, see for ex. 8th Report
10.	The PSNI should amend its Aide Memoire and include within its new policy (to be developed as per Recommendation 11 of this thematic review) clear instruction that the power to stop and question under section 21(1) of the Justice and Security (Northern Ireland) Act 2007 may not be used to require a person to confirm identity where identity is already known and may not be used to require a person to produce identification for the purpose of confirming identity.	Accepted Aide Memoire was updated on 28th September 2015 to state *"identity may not be asked where identity is already known"*.	

11.	The PSNI should include within its new policy on the use of powers to stop and search and question under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007 (to be developed as per Recommendation 11 of this thematic review) a requirement that the relevant District Commander(s) should be consulted before an authorisation is given and he or she should have an opportunity to influence the authorisation.	Accepted	
12.	The PSNI should develop a mechanism which enables supervising officers and senior officers to undertake reliable examinations of the records of the use of powers to stop and search and questions under sections 21, 23 and 24 of the Justice and Security (Northern Ireland) Act 2007 according to the name and number of the police officer and according to the name of the person searched.	Accepted	Understood technical aspect complied with in February 2014, ongoing issues remain, see for ex. 8th Report
13.	The PSNI should develop guidance, in consultation with relevant stakeholders, on the conduct of searches under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007, which sets out in sufficient detail the range of cultural and religious issues that may arise during a search and which addresses specifically what an officer should do when presented with language barriers or sensory impairment.	Accepted Guidance was issued in December 2015 to all officers during terrorism and security powers training.	
14.	The PSNI should conduct a review, at least annually, of the ambit and use of the powers to stop, search and question	Accepted The use of the	

	contained within the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007 during the previous 12 months to ensure that the powers are being used in accordance with law and not disproportionately. Thereafter, the Chief Officer responsible for stop and search powers should provide a briefing to the Performance Committee of the Northern Ireland Policing Board. The first review should be completed within 12 months of the publication of this thematic review.	powers is reviewed quarterly by tactical assessment governed through the Police Powers Delivery Group chaired at ACC level. NIPB Performance committee is briefed (most recently 27th November 2019)	
15.	The PSNI should as soon as reasonably practicable but in any event within 3 months of the publication of this thematic review consider how to include within its recording form the community background of all persons stopped and searched under sections 43, 43A or 47A of the Terrorism Act 2000 and all persons stopped and searched or questioned under section 21 and 24 of the Justice and Security (Northern Ireland) Act 2007. As soon as that has been completed the PSNI should present to the Performance Committee, for discussion, its proposal for monitoring community background. At the conclusion of the first 12 months of recording community background, the statistics should be analysed. Within 3 months of that analysis the PSNI should present its analysis of the statistics to the Performance Committee and thereafter publish the statistics in its statistical reports.	Work in Progress	It appears that there are ongoing issues, see 11th Report
16.	The PSNI should develop and	Accepted	

	thereafter issue guidance to all police officers in Northern Ireland on stopping and searching children. That guidance should draw upon the guidance already produced and issued in G District.	The PSNI search manual was updated in November 2015 to include guidance on stopping and searching children and young people.	
17.	Each District Commander should, in consultation with District Policing and Community Safety Partnerships, Independent Advisory Groups, Reference Groups (where applicable) and the Performance Committee, devise a strategy for improved consultation, communication and community engagement in respect of its use of stop and search powers under both the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007. That strategy should include an agreed mechanism by which the PSNI will explain the use of powers to the community and will answer any issues of concern.	A stakeholder group was established in October 2014 and any issues of concern are raised through Policing Community Safety Partnership meetings	Unknown
18.	The PSNI should introduce into officers' performance reviews, where relevant, the use of Terrorism Act 2000 and Justice and Security (Northern Ireland) Act 2007 powers to stop and search and question. During such a review any substantiated complaint made about an officer's use of the powers should be considered.	Accepted Introduced in a wider context to include all officer conduct and their compliance with the Code of Ethics and complaints	Unknown – although some suggestion in 8th Report that this has been complied with
19.	The PSNI should conduct a review of policy and produce a stand-alone policy document setting out the framework within which powers to stop and search and question under the Terrorism Act 2000 and the Justice and Security (Northern Ireland) Act 2007 must be	Accepted PSNI Senior Executive Team agreed 21 key policy areas at a meeting on 18th May 2016; one of these areas was search which was governed by a single service policy. It was	It seems apparent that this recommendation was not acted upon for some time and has not completely been accepted.

	exercised. The policy should contain clear guidance on the PSNI's strategic and policy goals and on the individual exercise of the powers, the conduct of searches, record-keeping and the responsibility of each officer to ensure compliance. The policy should incorporate reference to the statutory Codes of Practice and relevant human rights principles.	agreed a stand-alone policy on counter terror stop and search would not be completed.	
Seventh Report (1.8.2013-31.7.2014) **Seymour**	No specific recommendations, comments to improvements in the following areas;		
20.	Greater transparency (7.22-7.23)	Work in Progress Dedicated stop and search page available on PSNI internet page which details use and statistics around use of JSA powers.	
21.	Introduction of Body Worn Cameras (7.26-7.29)	Accepted Fully rolled out across PSNI July 2017	
22.	Strong arguments in favour of recording community background (para 8.4)	Work in Progress	Despite recommendation in 2013 – pilot project not launched until end of December 2015 & this issue has still not been properly addressed.
23.	PSNI relationship with young people could be improved (para 13.7)	Work in Progress Ongoing engagement through various youth groups and through Children & Young Persons Forum – Joint public PSNI meeting to discuss issues on	It is clear that persistent issues continue on this issue as reflected in subsequent reports.

		stop and search.	
Eighth Report (1.8.2014-31.7.2015) **Seymour**			
24.	Reporting period for review should be changed to the calendar year (para 3.10)	Requires a change to primary legislation	
25.	Duration of the authorisation allowing and search without reasonable suspicion should continue for 3 months rather than 14 days once confirmed by the SOS (para 11.9)	Requires change to primary legislation PSNI view is 28 days would be appropriate	
26.	Powers in JSA should be retained so long as the current security situation in NI continues (paras 4.6 and 12.2)	Accepted	
27.	Use of BW cameras should be rolled out as soon as possible and PSNI should publish an annual assessment of impact and benefits. It will be important to monitor the benefits and challenges. (paras 6.13-6.16)	Accepted	
28.	PSNI should place as much information as possible in the public domain about the use of JSA powers including (i) explanation why arrest rates are low following stop and search; (ii) statistics about how often munitions are found; (iii) how frequently use of powers is monitored; (iv) an explanation of how and how frequently individual officers use of the JSA powers is monitored using the PUMA system and the outcome of such monitoring paragraph 8.7 (v) an analysis of Equality monitoring Stop and Search project (paragraph 9.4) The use of body worn cameras, as finances permit and PSNI should publish on an annual basis an assessment of the impact and	Work in progress Dedicated stop and search page on PSNI website provides detailed information to include statistics. Stop and search supervision assessment completed in October 2018 highlighting outcomes of stop and search supervision and how often it is done.	According to the Independent Reviewer. "There has been a reasonable response from the PSNI but it is work in progress. **There was an *initial* reluctance to provide statistics about how often munitions were found following a search.** **It is not clear what the supervision of the use of the powers amounts to in practice or what the outcomes of that supervision**

	benefits (paragraphs 6.13 – 6.16) A review of the use of repeat stops and searches; Statistics about how many persons stopped collect a copy of stop/search record (para 15.4)	Accepted	**have been.** Only a small percentage of individuals who are stopped appear to be going to a local police station to collect a copy of their search record. **Little progress has been made on community monitoring....**" (para 12.6 9th report).
Ninth Report (1.8.2015-31.7.2016) **Seymour**			
29.	The PSNI should post a website dedicated to stop and search. It should regularly updated and used in particular, to correct inaccurate reporting of the use of JSA and TACT powers	Ongoing The stop and search page is available on the PSNI website	
30.	All supervising officers should check the use of these powers every month to make sure that the powers are exercised not only legally but also fairly and in the most appropriate manner (para 12.7(b))	Supervision takes the form of examining the record, corresponding with BWV footage and interview with the officer where necessary.	
31.	Consideration should be given to keeping an internal written record should of what triggered any decision to stop and search in all cases where an individual has been repeatedly stopped and searched and in all cases involving a stop and near a school or when the individual is accompanied by a child or young person at the time he is stopped and those records should be made available to the Independent Reviewer (paras	The PSNI has considered this recommendation carefully and has concluded that it is not feasible to accept it. Stop and search powers under JSA are without reasonable suspicion powers, accordingly it would not be feasible for a police officer to be required to articulate the	**This has been resisted**

	6.18, 6.25 & 6.51)	reasons why a particular individual had been stopped and searched. 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. Authorisations are only made after detailed consideration of all the available information and the submission of an application to the Secretary of State, the entire application process is heavily scrutinised. (See response in 7th Report)	
32.	in the cases referred to above, the supervising officer should personally satisfy himself that the power was used appropriately (if necessary after interview with the officer concerned) (para 12.7(d)).	Supervising officers are already required to satisfy themselves that all powers in relation to stop and search are used appropriately	The reports from the Independent Reviewer suggest that the approach of supervisors do not fully interrogate the system and clearly the specific recommendations in relation to young people and searches near schools are being resisted.
33.	the annual assessment of the use of body worn cameras should address, amongst others, the issues set out in paragraph 6.31 (para 12.7(f)	Assessment complete and presented to the Independent Reviewer	
34.	as soon as the PUMA system has been updated to record the reason why a stop and search record has been printed the PSNI should use that	This information is published on the PSNI stop and search webpage	

	information to publish how many times these records are collected at police stations (paragraph 7.2)		
35.	the PSNI should continue to work on an effective narrative about the disparity in the use of the powers as between different paramilitary groups (paragraphs 6.44 to 6.46)	The PSNI have provided a response to the Independent Reviewer on the use of powers against individual groups which provides an effective narrative around the use of the powers.	
Tenth Report (1.8.2016-31.7.2017)			
A Recommendation Repeated	Reporting period for review should be changed to the calendar year (para 3.8)	Requires change to primary legislation	Would require primary legislation (para 15.2 11th report)
	Amending Search power to allow a police officer to search also "to deter, prevent or disrupt their transportation or use" (para 6.8)	Requires change to primary legislation	
A Recommendation Repeated	Duration of the authorisation allowing and search without reasonable suspicion should continue for 3 months rather than 14 days once confirmed by the SOS (paras 10.1-10.4)	Requires change to primary legislation PSNI view is 28 days would be appropriate	
36.	PSNI should monitor impact which improved supervision has had on the use of JSA powers and provide an assessment for the next reporting period (paras 6.9-6.10)	Accepted Stop and search supervision assessment completed and provided to the Independent reviewer in October 2018.	According to the Independent Reviewer - Officers of rank of sergeant or above conduct regular checks on all stop and search powers. 10.4% of stops and search/question were examined. NFA in vast majority of cases but those findings not consistent with Dr Topping's research and

			supervision has not led to any thematic or strategic conclusions, which would be expected in the long term. (para 15.3(a) 11th report)
37.	Annual assessment of impact of BWV should be provided (para 6.16-6.18)	Accepted Internal assessment complete and briefed to Independent Reviewer	According to the Independent Reviewer – this is a work in progress but PSNI do not propose to produce an annual assessment as such (para 15.3(b) 11th report)
38.	Moving automated records on use of JSA powers onto main intelligence base (paras 8.3-8.5)	Work in progress	According to the Independent Reviewer - this should be complete by March 2020 (para 15.3(b) 11th report)
39.	Powers in JSA should be retained so long as the current security situation in NI continues (paras 6.30-6.34) Also made in previous report	Accepted	
40.	Internal record should be kept of any stop and search under JSA involving children or where an unexpected incident has occurred which might prove controversial (para 6.13)	Not accepted. This is a repeated recommendation.	According to the Independent Reviewer this recommendation has not been accepted. PSNI consider it is not feasible. These are "without reasonable suspicion" powers and police officers should not be required to articulate reasons why a particular person should be stopped and searched. (para 15.5 11th

			report)
Eleventh Report (1.8.2017-31.7.2018)	BWV should always be used where JSA powers are used in a case involving a child (para 8.5)	Accepted Detailed in 12th Report to be published in February 2020	
41.	Where it is not used this must be reported to a supervising officer (para 8.5)	Accepted	
42.	A record should be kept of all computers and laptops seized and retained under JSA powers together with the duration of the retention (para 8.11)	Accepted	
43.	Senior Management in PSNI should consider whether community monitoring could be done on the basis of officer perception (paras 10.1-10.6)	Under consideration.	Again despite recommendations from NIPB in 2013 this still has not been implemented.

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