

**REPORT OF THE INDEPENDENT REVIEWER**

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

**SEVENTH REPORT: 1 AUGUST 2013 – 31 JULY 2014**

**David Seymour CB**

**[January 2015]**



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



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The Rt Hon Theresa Villiers MP  
Secretary of State for Northern Ireland

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

In your letter to me of 11 November 2013, you appointed me as Independent Reviewer for the 3-year period of 1 February 2014 to 31 January 2017 under section 40 of the Justice and Security (Northern Ireland) Act 2007.

My Terms of Reference were set out in the letter as follows:

*“The functions of the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 will be, to review the operation of sections 21 to 32 of the Act and those who use or are affected by those sections; to review the procedures adopted by the Military in Northern Ireland for receiving, investigating and responding to complaints; and to report annually to the Secretary of State.*

*The Reviewer will act in accordance with any request by the Secretary of State to include specified matters over and above those outlined in Sections 21 to 32 of the Act”.*

My predecessor’s reports for 2008 to 2013 are available on the Parliamentary website: [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

I now have pleasure in submitting to you my first report which is the seventh annual report, and covers the period from 1 August 2013 to 31 July 2014.

**My executive summary of the report at page 2, sets out my conclusions and recommendations**



**DAVID SEYMOUR CB**

December 2014

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## INTRODUCTION

1.1 On 11<sup>th</sup> November 2013 I was appointed by the Secretary of State for Northern Ireland to the post of Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 (referred to throughout the rest of this report as the JSA). My appointment is for a 3-year period and started on 1<sup>st</sup> February 2014. The functions of the Reviewer are to review the operation of sections 21 to 32 of the JSA and the procedures adopted by the military for receiving, investigating and responding to complaints. The provisions of sections 21 to 32 are summarised in Part 1 of [Annex C](#) to this Report. Broadly speaking, they confer powers on the police and the military which do not exist in the rest of the UK. They are powers to stop and question, stop and search, 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. In announcing the appointment the Secretary of State said that:

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

I was specifically invited to review the powers not only from the perspective of those who use them but also from that of those who are affected by them.

- 1.2 David Anderson QC, the Independent Reviewer of Terrorism Legislation in the United Kingdom, has said that the value of the Reviewer lies in the fact that he is independent, has access to secret and sensitive national security information, is able to engage with a wide cross section of the community and produces a prompt report which informs the public and political debate. That is the purpose of this Review and I am grateful to all the organisations and individuals who engaged in this process. I am also very grateful to officials in the Northern Ireland Office (NIO) who facilitated these discussions and arranged my visits to Northern Ireland.
- 1.3 The reports of my predecessor, Robert Whalley CB, covering the years 2008 to 2013 can be found on the website [www.gov.uk/government/publications](http://www.gov.uk/government/publications).

## 2. EXECUTIVE SUMMARY

- 2.1 The **methodology and approach** adopted for the review including details of visits, briefings, attendance at parades and other events, attendance at the Police Service of Northern Ireland (PSNI) training and meetings are set out together with an explanation of the format of the review. This is my first review. It looks generally at the JSA powers and their use but also looks in particular at some specific issues (eg community monitoring and authorisations) which have been raised in the course of the year. The reporting year of 1<sup>st</sup> August to 31<sup>st</sup> July is not convenient and it would be better if the period was based on a calendar year (paragraphs 3.1 to 3.13).
- 2.2 The **security situation** is as described by the Secretary of State in her Statements to Parliament of 29<sup>th</sup> January 2014 and 14<sup>th</sup> October 2014 (at [Annex D](#)) and remains at SEVERE (paragraphs 4.1 to 4.5). The **public order situation** remains challenging and places great strain on PSNI resources but the parading season in 2014 passed off without major incident (paragraph 4.6).
- 2.3 There are a number of **safeguards** relating to the use of the JSA powers. There are statutory restrictions and other conditions set out in the Code of Practice (paragraphs 5.2 to 5.5); there is excellent training provided by the PSNI in the use of the powers (paragraphs 5.6 to 5.7) and there are appropriate arrangements in place for the electronic recording by the PSNI of the use of the powers (paragraph 5.8 to 5.9). Any person who wishes to make a complaint about the exercise of these powers by the PSNI can do so to the office of the Police Ombudsman for Northern Ireland (Police Ombudsman) (paragraph 5.10).
- 2.4 There were a number of significant **legal challenges** in the reporting period. In the case of **Ramsey** (8<sup>th</sup> May 2014) the applicant challenged the lawfulness of the “without suspicion” stop and search powers in the JSA on the basis that, notwithstanding the introduction of the Code of Practice, the powers as set out in the JSA did not satisfy the “quality of law” test required by the European Court of Human Rights (ECHR). That challenge was unsuccessful (paragraphs 6.2 to 6.6). In the case of **McAreavey** (9<sup>th</sup> May 2014) the challenge to the JSA was based on the failure of the Secretary of State to consult properly on one specific aspect of the Code namely the requirement to provide a record of the stop and search. This challenge was successful insofar as the judge ordered that the Secretary of State must re-consult on the issue of how such records should be made (paragraphs 6.7 to 6.12). In the case of **DB** (1<sup>st</sup> July 2014) there was a challenge by a resident of Short Strand in Belfast to the alleged failure of the PSNI to take action to stop illegal parades by loyalist protesters during the Flags protest in 2013. The Court of Appeal held that the PSNI handling of the protests was well within their discretionary policing judgment (paragraphs 6.13 to 6.18).
- 2.5 An analysis of the **operation of the powers in practice** shows that the number of occasions on which JSA powers have been exercised has fallen considerably since the last reporting period (paragraphs 7.3 to 7.6). The powers are used in a way which is intelligence led (paragraphs 7.7 to 7.8).

There is no evidence to suggest that the powers are used in a disproportionate or discriminatory manner (paragraphs 7.9 to 7.14). The arrest rate for the exercise of the stop and search power is low but there are good reasons for this (paragraphs 7.15 to 7.19). The powers have on occasion not been exercised in the best possible way. There are ways in which the use of the powers might be improved the most promising of which are greater transparency and the use of body worn cameras (paragraphs 7.20 to 7.29).

- 2.6 There is a strong case for the **community monitoring** of the use of the JSA powers but this is not straightforward and needs to be handled sensitively. The main issue is how best to collect the data. There are a number of associated issues which would need to be addressed and there would be cost implications for the PSNI. The PSNI have this under active consideration (paragraphs 8.1 to 8.9).
- 2.7 The **authorisation process** which triggers the use of stop and search without reasonable suspicion has been in operation since July 2012. The form used by the PSNI for these authorisations is at [Annex F](#) and sets out the steps that have been taken on (roughly) a fortnightly basis. I have scrutinised a large number of them and, like my predecessor, I have concluded that the process is thorough and undertaken with great care. A range of people within both the PSNI and NIO scrutinise the authorisations and there is effective internal challenge. However, the frequency with which this procedure has to be followed which is prescribed in statute is not ideally suited to the situation which currently prevails in Northern Ireland where there is a constant threat from residual terrorist groups and the threat assessment has remained at SEVERE for the past 5 years (paragraphs 9.1 to 9.15).
- 2.8 The powers to **close roads and requisition land** are exercised sparingly. They have been formally delegated to the Department of Justice (DOJ) under section 28 of the Northern Ireland Act 1998 (NIA 1998). Road closures are regularly reviewed. A very small number of land requisitions are made for short periods to enable effective policing of parades (paragraphs 10.1 to 10.11).
- 2.9 The PSNI have responded appropriately and positively to a number of **recommendations** made by monitoring bodies including the Northern Ireland Policing Board (NIPB), the Police Ombudsman for Northern Ireland and the Criminal Justice Inspectorate Northern Ireland (CJINI). They have also considered a report from the Committee for the Administration of Justice (CAJ) and Her Majesty's Inspectorate of Constabulary (HMIC) report on the use of stop and search in England and Wales (paragraphs 11.1 to 11.8).
- 2.10 The **armed forces** in Northern Ireland act in support of the PSNI in certain circumstances and they have no role in public order situations. Nevertheless they have powers in certain circumstances under the JSA to stop and question, stop and search, arrest and enter premises. The armed forces have not exercised these powers during this reporting period despite the large number of occasions when they have been called upon to dispose of

explosive ordnance or make safe Improvised Explosive Devices (IEDs). These powers should, however, be retained to protect the police and public in exceptional or dangerous circumstances (paragraphs 12.2 to 12.5). There are well established arrangements in place for handling complaints about military activity. There have been a few complaints about low flying aircraft in this reporting year but they have all been handled appropriately (paragraphs 12.6 to 12.12).

- 2.11 In my letter of appointment the Secretary of State asked me not only to review the use of the powers in the JSA but also the impact on those affected by them. I spoke to a wide range of people and have tried to summarise **the views expressed by consultees**. This part of the Review presented some challenges. The views - particularly of young people - were not confined to the exercise of JSA powers. I suspect that the encounters with the police which they described were more in the general criminal law/public order context. However, these views are relevant to the exercise of JSA powers so, given my remit, it seemed right to include them. They have been set out under the following headings – confidence in policing; factors which undermine confidence; factors which generate confidence; the impact of the Human Rights Act 1998 (HRA 1998); technology; the demands on the PSNI; the wider context; and the consensus that the JSA powers are still needed (paragraphs 13.1 to 13.23).
- 2.12 Policing is a highly sensitive issue in Northern Ireland largely for historical reasons. The PSNI have to operate in a unique policing environment. The JSA powers are legally sound in terms of ECHR compliance and the PSNI use them in a proportionate and proper manner. Occasionally things may go wrong and there are areas for improvement. However, my **conclusion** is that it would not be possible, in current circumstances, for the PSNI to discharge their primary objective of protecting people in Northern Ireland in the absence of the JSA powers (paragraphs 14.1 to 14.3).

### 3. METHODOLOGY AND APPROACH

- 3.1 This is not an inspection, inquiry or investigation but a review of the exercise by the police and military of the powers in the JSA. It depends for its effectiveness on the willingness of many people in Northern Ireland to contribute to the process by speaking openly and honestly about the powers and the impact of their exercise on the community.
- 3.2 I visited Northern Ireland on a monthly basis on 10 occasions between February and October 2014. These visits varied in length from 1 to 3 days. I also made a visit with my predecessor, Robert Whalley CB, in December 2013 as part of the handover process.
- 3.3 I attended the 2 day NIPB's '*Confidence in Policing*' Conference in March 2014 which was an invaluable introduction and exposure to the wide variety of

policing issues in Northern Ireland. I also met the NIPB's Performance Committee in August to discuss the use of the JSA powers.

- 3.4 I attended many briefing sessions (both formal and informal) with the police and the armed forces and received briefings from the Security Service (MI5). I made 2 visits to HQ 38 (Irish Brigade) at Thiepval Barracks at Lisburn and 3 visits to the armed forces base at Aldergrove where I was briefed on the role which the armed forces play in support of the PSNI. I was very impressed by the dedication, bravery and professionalism of the military and, in particular, those whose role it is to defuse and dispose of IEDs which, sadly, remain a regular feature of life in NI. I made several trips around Belfast to familiarise myself with the locality and the areas which have traditionally been the scene of conflict and disorder on the streets. I also saw at first hand the road closures and peace walls in Belfast.
- 3.5 I attended the Orange Order Parade in Belfast on 12<sup>th</sup> July 2014 and observed the policing of that event from Silver Command in Antrim Road Police Station and later in the day from PSNI HQ in Knock Road. I also observed a parade at Larne on the street. I attended the Apprentice Boys' Parade in Derry/Londonderry on 9<sup>th</sup> August 2014 and accompanied the police on patrol in the City that day. On both occasions I had detailed discussions with senior PSNI officers about the policing of these events and other issues relating to security and public order.
- 3.6 I was able to observe the training which the PSNI give to officers before they use the powers under the JSA. I have read academic material which has kindly been provided to me together with my predecessor's last Report and the Reports of other monitoring bodies.
- 3.7 I have had discussions with a wide variety of other people in Northern Ireland including senior members of the judiciary and the legal profession, church and community leaders, the political parties, government Ministers and officials, academics, community leaders, Non Governmental Organisations (NGOs), charitable bodies, the CJINI, HMIC, organisations representing police officers, the Police Ombudsman and many individuals including groups of young people who spoke frankly about their experience of policing. The full list of consultees is set out in [Annex B](#).
- 3.8 I have discussed policing issues at length with PSNI officers at all levels and benefitted from briefings and contributions from them on numerous occasions. I have also discussed JSA issues with others in the PSNI including lawyers, statisticians, analysts, the Communications Department and the Professional Standards Unit. They have all responded unfailingly to requests for information and have been of great assistance in helping prepare this Report. I have been impressed by their willingness to provide information, to engage with me in an open and constructive manner and the serious way in which they have considered and responded to recommendations from a variety of different sources. I have also been impressed by the commitment of the PSNI to fulfil their overriding objective of keeping people safe.

- 3.9 The powers set out in the JSA address the unique security situation which exists in Northern Ireland. They are not replicated elsewhere in the UK. There are similar (but not identical) powers of stop and search in the Terrorism Act 2000 (TACT 2000) which apply throughout the UK. David Anderson QC is the Independent Reviewer of Terrorism Legislation in the UK but he and my predecessor agreed that the exercise of the TACT 2000 powers in Northern Ireland should be reviewed by the JSA Reviewer. With the agreement of Mr Anderson this arrangement will continue.
- 3.10 The issue of “community monitoring” has been raised on a number of occasions so Chapter 8 concentrates on that topic. The “authorisation process” introduced by the the Protection of Freedoms Act (POFA 2012) is a relatively new feature of these arrangements involving both the PSNI and the Secretary of State and is dealt with in Chapter 9. When I took up post a number of recommendations in relation to public order policing had been made by my predecessor and other bodies. Chapter 11 considers how the PSNI have responded to those recommendations. I have heard a wide variety of opinions and observations in the course of many discussions. It is important that this Report reflects those views. In Chapter 13 I have tried to summarise them under the heading of themes which emerged from what, on first impression, seemed an array of conflicting and disparate observations. I have not attributed views to any individual or organisation unless they are already in the public domain.
- 3.11 The reporting period for this review is from 1<sup>st</sup> August to 31<sup>st</sup> July each year. This is the result of the fact that the JSA received Royal Assent on 31<sup>st</sup> July 2007 triggering a cycle which does not fit in with other reports including that of David Anderson QC’s review of the Operation of the Terrorism Legislation in the UK. It is also out of step with other reviews which are based on calendar year reporting. Consequently, statistics have to be specifically prepared to accommodate the reporting period of this review. The reporting cycle also straddles the parading season with the 12<sup>th</sup> July parades falling in one reporting period and the Apprentice Boys’ parade a few weeks later falling in the next. There would be some marginal advantage in terms of convenience, comprehension and workload (eg of statisticians) if this reporting period could be adjusted at the next suitable legislative opportunity.
- 3.12 Under section 40(3) of the JSA the Secretary of State can require me to include in the Report specified matters which need not relate to the use of the operation of the powers in the JSA and the procedures adopted by the armed forces for handling complaints but I have not received any such request.
- 3.13 This is my first Review. It looks generally at the arrangements in place under the JSA and how the powers are exercised. Inevitably it revisits issues which have been addressed in the 6 previous Reviews. It is likely that specific issues will emerge which will require closer and more detailed review in subsequent reports. It is also possible that views contained in this Report may need to be revised at some future point.

## 4. SECURITY AND PUBLIC DISORDER

- 4.1 The use of the powers in the JSA has to be assessed against the background of the security and public order situation.

### Security

- 4.2 On 29<sup>th</sup> January 2014 the Secretary of State for Northern Ireland made a Written Statement to Parliament. It was the 5<sup>th</sup> bi-annual update to Parliament on the security situation in Northern Ireland and her 3<sup>rd</sup> such statement as Secretary of State. That statement is at [Annex D](#) to this Report. Key points were that the number of national security attacks remains broadly comparable with previous years; there were 30 such attacks in Northern Ireland in 2013 over half of which took place between October and December; the attacks varied in their sophistication; and police officers, prison officers and military personnel have continued to be the primary targets for dissident groups.
- 4.3 The statement highlighted the incident in November when a taxi was hijacked in the Ardoyne area of North Belfast and its driver forced to drive to the City Centre with an IED on board. The device partially exploded close to Victoria Square shopping centre – “had it functioned fully it would have caused significant damage and injury”. The statement also referred to “security alerts, hoaxes and so-called “come-on attacks” which caused “disruption to many in the second half of 2013 including through road and rail closures and evacuations”. On 11<sup>th</sup> June 2014 the Secretary of State in response to a question from Dr McCrea MP (South Antrim DUP) said that “the threat level in Northern Ireland remains SEVERE with persistent planning and targeting by terrorists”. “SEVERE” is the second highest threat level and means that an attack is highly likely. To put this in context, the threat level from Northern Ireland related terrorism in the rest of the UK is lower at “MODERATE” which means that an attack is possible but unlikely. The threat level from international terrorism was raised to “SEVERE” in the UK on 29<sup>th</sup> August 2014 in response to events in Syria and Iraq.
- 4.4 On 14<sup>th</sup> October 2014 the Secretary of State for Northern Ireland made the 6<sup>th</sup> statement on the security situation in Northern Ireland in a written statement to Parliament. It is also at [Annex D](#). The key points are that there is a continuing terrorist threat from a small minority of groups who retain lethal intent and capability; police officers, prison officers and military personnel remain the principal targets of attacks which vary in their sophistication; as a direct result of the efforts of the PSNI and MI5 there have been major disruptions, arrests and convictions in 2014 as well as seizures of arms and IED components both north and south of the border which have impeded violent Dissident Republican (DR) terrorist activity; the PSNI seized 2.5kgs of Semtex from the so-called new IRA which was undoubtedly intended for use in lethal explosive devices; the parading season passed off largely peacefully in 2014 thanks to the strong co-operative approach of all those involved; and the £231m funding from the Government to the PSNI for 2011 – 2016 “will now have less impact because of the decision to severely reduce the overall

funding provided by the Executive to the PSNI". The statement says that "there is no doubt that this will have a negative effect on the PSNI's operational capability in some areas".

4.5 David Anderson QC, in his Report published in July 2014, noted that:

*"...dissident republicans were responsible for the bulk of the 73 bombings and 48 shootings that occurred in 2013....pipe bombs, mortars and under-vehicle IEDs were all used; targets for terrorist attack included police officers, police stations, churches, community centres and private houses".*

In written evidence to me the Police Federation for Northern Ireland (PFNI) referred to the enduring and resilient nature of the DR terrorist threat and thought that the extent of the threat was being downplayed in Northern Ireland. The Federation gave figures of 87 bombing incidents in Northern Ireland in 2013 of which 73 could be attributed to DR terrorists. It also referred to scores of shootings largely focussed on police officers (both on and off duty), their families and military establishments. The Police Superintendents Association for Northern Ireland also told me that the security situation was serious. There were 36 security related incidents in G District<sup>1</sup> between June 2012 and May 2014 – these were either bombings or shootings. The PSNI officers who took me out on patrol in the city on 9<sup>th</sup> August 2014 had themselves been shot at in the previous week.

## **Public Order**

4.6 Public order issues put great strain on the resources of the PSNI. This was illustrated during the legal proceedings arising from the **DB** judicial review of the policing of the flags protest (chapter 6.13 to 6.18 below). There were 4652 parades in 2013 in Northern Ireland. To date in 2014, there have been 4776. Although only a handful of these are contentious, they raise challenging operational issues. In 2013 the 12<sup>th</sup> July evening return parades in North and East Belfast resulted in a series of riots following on from the flags protests earlier in the year. This year, as a result of much hard work by politicians, community leaders, the PSNI and others, both the 12<sup>th</sup> July parades and the Apprentice Boys' Parade in Derry/Londonderry on 9<sup>th</sup> August passed off peacefully. However, the PSNI had to deploy 1454 officers on 12<sup>th</sup> July in Belfast City Centre and 529 officers on 9<sup>th</sup> August in Derry/Londonderry. That represents 21% and 7% respectively of the total number of police in the PSNI. The Police Federation for Northern Ireland told me that over the past 2 years 820 police officers have been injured on duty mainly as a result of the flags protests. The Twaddell Camp<sup>2</sup> and the ongoing nightly protests in that area place a major burden on the PSNI budget and resources (£12m per annum). It is clear that the PSNI face unique public order challenges which divert resources and energy away from other important areas of policing.

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<sup>1</sup> The PSNI website has a map displaying all districts by relevant areas: [www.psni.police.uk](http://www.psni.police.uk)

<sup>2</sup> The 'Twaddell Camp' is the area at the Woodvale/Ardoyne interface in North Belfast where Loyalist protesters have set up a permanent base to have protests.

## 5. SAFEGUARDS

- 5.1 There are formal arrangements in place to ensure that the powers are exercised properly.
- 5.2 The PSNI are under an overriding duty under section 31A of the Police (Northern Ireland) Act 2000 (P(NI)A 2000) to carry out their functions with the aim of “securing the support of the local community” and “acting in co-operation with the local community”.
- 5.3 Secondly, the statutory powers set out in both the JSA and TACT 2000 contain restrictions on the use of the powers and are limited in scope – see paragraph 9.5 below. Chapter 9 describes in detail the authorisation process under section 24/schedule 3, paragraph 4A of the JSA. It is also worth noting how the PSNI have responded to the many recommendations for improvement from various organisations and keep the use of these powers under constant review (Chapter 11).
- 5.4 Thirdly, these statutory restrictions are supplemented by Codes of Practice which govern the exercise of the powers. The Codes must be published in draft and the Secretary of State must consider any representations about the draft and modify it if she thinks it appropriate to do so in the light of those representations. The Codes have to be laid before Parliament and the Secretary of State brings them into operation by order made by statutory instrument after they have been approved by resolution of each House of Parliament. The Code of Practice under section 34 of the JSA came into operation on 15<sup>th</sup> May 2013. The Code of Practice under section 47AA of TACT 2000 came into operation on 10 July 2012. Both Codes reflect and supplement the statutory safeguards in the JSA and TACT introduced by the provisions of the POFA 2012. Those provisions were enacted to give effect in the UK to the judgment of the European Court of Human Rights in **Gillan and Quinton v UK** (Application no 4158/05) in 2010.
- 5.5. It is not necessary to set out the detail of the Codes here. It is sufficient to record that the Code of Practice places the PSNI under obligations to respect members of the public and protect their rights under the ECHR; to adhere to the PSNI Code of Ethics<sup>3</sup> which requires that officers must safeguard the rule of law, protect human dignity and conduct investigations in an accountable and responsible manner; to avoid discrimination; to avoid racial or religious profiling when selecting people for search; to ensure proper supervision and monitoring of the use of the powers; to use the powers only when necessary and proportionate ie where there is a proper basis to do so; to ensure that stop and question is not used on a random basis and the questioning takes place only for so long as necessary; to make records of stop and question; to search premises only when necessary and to consider less intrusive ways of preserving the peace; to exercise consideration when entering and searching premises and, if entry is forced, to try to cause as little damage as possible and to ensure that the building is left secure after the search; and to give the

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<sup>3</sup> PSNI's Code of Ethics: [http://www.nipolicingboard.org.uk/final\\_code\\_of\\_ethics-2.pdf](http://www.nipolicingboard.org.uk/final_code_of_ethics-2.pdf)

occupier of searched premises a written record if it is reasonably practicable to do so. In addition the Code of Practice sets out the process of authorisation by a senior police officer which enables officers to stop and search an individual without reasonable suspicion (this is dealt with more fully in Chapter 9). It sets out in detail the manner in which a person who is stopped may be searched. It also sets out the requirement for a record to be kept of the search (a requirement which was the subject of the judicial review application in **McAreavey** (paragraphs 6.7 to 6.12 below)). Similar requirements are set out in relation to the search of vehicles.

- 5.6 Fourthly, the PSNI have regular training sessions for those officers who exercise the powers of stop and search. I have attended these sessions. The standard of training is very high. It covers in some detail the legal powers available to the police and the procedure and etiquette which must be followed on each occasion. The training also includes practical exercises involving role play which is very realistic and challenging for the officers. Every aspect of stop and search is covered and the instruction is given by officers who themselves have long experience of public order policing and their experience is shared and available to those doing the training. The training is challenging both intellectually and physically and tests the officer's interpersonal skills.
- 5.7 There has been a significant amount of JSA and TACT 2000 training across the PSNI. For example, training was received by the Operational Support Department (between October 2013 and January 2014); by the Close Protection Unit (in the second quarter of 2013); in D District (May 2014); in E District (May 2014); in F District (May to September 2014); and G District (October 2013 to January 2014). Training in B District was due to be completed by the end of November 2014.
- 5.8 I was also shown how police officers electronically record and store details of every stop and question or stop and search under the JSA on a data base called 'STOPS' on BlackBerry devices via their PUMA<sup>4</sup> system. The following details are logged onto the screen:
- date and time of stop and search;
  - gender and ethnicity of the individual;
  - name (or whether name refused);
  - individual's address (or whether address refused);
  - basis for the stop and search;
  - object of the search eg wireless telegraphy apparatus;
  - details of objects found and injury or damage caused; and
  - officer details.

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<sup>4</sup> The PSNI's Providing Users Mobile Access (PUMA) system provides police officers on patrol with up to date access to Police Information and the capability to record and submit crime and incident related information electronically.

- 5.9 The PUMA system permits supervising officers (sergeants and above) to go into the system to examine the records. This enables the PSNI to discharge their obligation under paragraphs 5.9 to 5.13 of the Code of Practice to monitor and supervise the use of stop and search powers. A Unique Reference Number (URN) and guidance on how to obtain a full copy of the record is then provided to the individual concerned.
- 5.10 Finally, the Police Ombudsman has jurisdiction to consider all complaints against the police. The Police Ombudsman's office is a non-departmental public body and provides an independent and impartial complaints system. Any member of the public can make a complaint to the Police Ombudsman about the conduct of the PSNI. The number of complaints received by the Police Ombudsman for the financial year ending March 2014 was 3,734. This was a 14% increase on the previous year. Only 50 of those complaints related to the use of JSA powers. I was informed by the PSNI's Discipline Branch that in the past 2 years only one disciplinary matter had involved the use of JSA powers.
- 5.11 These arrangements – and the willingness of the PSNI to respond positively to recommendations from outside bodies - are important. The HMIC Report<sup>5</sup> on stop and search in England and Wales illustrates that, without proper arrangements in place and the correct approach, there is a real risk that powers of stop and search will not be exercised or recorded properly.

## 6. LEGAL CHALLENGES

- 6.1 The powers set out in the JSA are unique to Northern Ireland and the stop and search without suspicion powers are seen as intrusive and their exercise will inevitably provoke challenge. There were three important court judgments in this reporting period – two related specifically to the use of JSA powers and one was a more general challenge to the PSNI's handling of a major public order situation.
- 6.2 Mr Justice Treacy handed down a judgment on 8<sup>th</sup> May 2014 **In The Matter of an Application by Steven Ramsey<sup>6</sup> for Judicial Review**. This was a challenge to the lawfulness of the stop and search regime under section 24/schedule 3 of the JSA. Mr Ramsey's claim was that there was a long and documented history of him being stopped and searched under the powers contained in section 24/schedule 3. His case centred however on the five occasions he was stopped and searched since the introduction of the Code of Practice. The notes of those five cases indicated he had been stopped because of "suspected dissident republican links" or "as a result of confidential briefings". The challenge was made on the basis that section 24/schedule 3 of the JSA was incompatible with Article 8 of the ECHR which provides that

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<sup>5</sup> The HMIC Report: <http://www.justiceinspectrates.gov.uk/hmic/media/stop-and-search-powers-20130709.pdf>

<sup>6</sup> Northern Ireland Courts and Tribunal Service (NICTS) website: Ramsey Judgement: [https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/\[2014\]%20NIQB%2059/j\\_j\\_TRE9276Final.htm](https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/[2014]%20NIQB%2059/j_j_TRE9276Final.htm)

“everyone has the right to respect for his private and family life, his home and his correspondence”. The applicant alleged that section 24/schedule 3 breached this requirement because it failed the “quality of law” test in that there were insufficient safeguards against arbitrariness to render the section compatible with the ECHR.

- 6.3 The background to the case was the Court of Appeal’s judgment in **Canning, Fox and McNulty**<sup>7</sup> which was handed down on 9<sup>th</sup> May 2013. In that case the Court held that, in the absence of a Code of Practice, the powers in sections 21 (stop and question) and 24 (stop and search) were not sufficiently clear and precise to comply with Article 8. In paragraph 45 of its judgment the Court said that these broad powers required justification and safeguards against abuse. The law had to be clear and precise and required rules to ensure that the power was not capable of being arbitrarily exercised.
- 6.4 Mr Ramsey argued that, notwithstanding the introduction of the Code of Practice in May 2013 the regime of stop and search under the Act still did not satisfy the quality of law test. In particular he relied on the following points:
- (a) there was no effective oversight of authorisations by the police which trigger these powers and which have to be confirmed by the Secretary of State;
  - (b) the Secretary of State had never refused an authorisation;
  - (c) unlike the comparable power in TACT 2000, the authorisation did not have to be directed at a specific act of terrorism but only at a general threat (see paragraph 9.5 below);
  - (d) since the authorisation procedure came into force on 10<sup>th</sup> July 2012 there had been “rolling authorisations” despite the fact that they could only be in force for a maximum of 2 weeks at a time and, consequently, the power to stop and search for munitions etc without reasonable suspicion had been continually in force since that date throughout Northern Ireland;
  - (e) the geographical and/or temporal safeguards in the JSA were rendered effectively meaningless (despite the fact that the powers were exercised more frequently in some areas than others);
  - (f) information was not made available to explain the authorisation process and the basis on which authorisations were made;
  - (g) the authorising police officer need only have a “reasonable suspicion” that the safety of persons might be endangered and “reasonably consider” that an authorisation was necessary – these were low thresholds;
  - (h) the power was therefore broad and unfettered and failed the quality of law test making the individual exercise of the power very difficult to challenge;

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<sup>7</sup> Canning, Fox and McNulty Court of Appeal Judgement: [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2013/%5B2013%5D%20NICA%2019/j\\_i\\_GIR8854Final-PUBLISH.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2013/%5B2013%5D%20NICA%2019/j_i_GIR8854Final-PUBLISH.htm)

- (i) the power is to stop and search for “munitions” and “wireless apparatus” - the latter included mobile phones which most people carried with them routinely;
- (j) a recent change of policy by the PSNI meant that a person who was stopped was no longer given a record of the stop “on the spot” – the record was entered into a BlackBerry by the police and electronically submitted to a central office from where the person could obtain details of the stop with the use of a reference number.

6.5 The applicant further relied on the fact that the PSNI were obliged under the Code of Practice to monitor the use of the power but not the community background of those who stopped and searched. He alleged that the PSNI were not complying with the Code of Practice in respect of the exercise of the stop and search powers and that the power was not “necessary in a democratic society” as required by Article 8 of the ECHR. He also relied on the fact that the statistical material submitted by the PSNI did not show the arrest rate for those who were stopped.

6.6 Mr Justice Treacy noted that the Code of Practice introduced after the **Canning** judgment “would appear to plug the gap identified by the court in that case”; he noted that the Court of Appeal in that case had the draft Code before them and did not appear to criticise it. Moreover, the new authorisation procedure under the JSA which was introduced by the POFA 2012 and came into force on 10<sup>th</sup> July 2012 provided additional safeguards including oversight by the Secretary of State for Northern Ireland and the Independent Reviewer and scrutiny by the NIPB. In the circumstances he rejected the submission that the powers were disproportionate and concluded that:

*“The impugned power, underscored by the Code of Practice and within the framework of the authorisation regime, does not fall into the category of arbitrariness.”*

Consequently, he dismissed the application for judicial review. This was a significant decision. Had the application been granted, then – depending on the terms of the judgment – there would have been a need to amend the JSA, the Code or the procedures adopted by the PSNI (or a combination of these) in order to comply with the judgment. It might have been necessary, as happened after the **Canning** judgment, for the use of JSA powers to be suspended pending such remedial action.

6.7 On the following day, 9<sup>th</sup> May 2014, Mr Justice Treacy delivered another judgment in an **application by Emmet McAreavy for Judicial Review**<sup>8</sup>. This was a more narrowly focussed challenge. It was not based on a general complaint about the Code of Practice, the statutory arrangements underpinning it and their alleged failure collectively to meet the “quality of law”

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<sup>8</sup> Northern Ireland Courts and Tribunal Service (NICTS) website: McAreavey Judgement: [http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/\[2014\]NIQB%2062/j\\_j\\_TRE9268Final.htm](http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/[2014]NIQB%2062/j_j_TRE9268Final.htm)

test. This challenge, broadly speaking, was based on an alleged failure by the Secretary of State to consult properly on one specific aspect of the Code of Practice – namely the requirement that there be a record kept of the stop and search. However, the relief sought included an order to quash the decision of the Secretary of State to issue the Code and an order compelling her to consult properly on a new Code. In the meantime, the applicant sought the suspension of the Code.

- 6.8 The applicant had been regularly stopped and searched under the JSA powers. Until January 2012 he was provided with a written docket after each incident confirming the power exercised. However, since then he had not been provided with any record except that on some occasions he had been given a partly completed information card. Generally, the PSNI officers had recorded the details on a BlackBerry device and no copy of that record had been given to him. On December 5<sup>th</sup> 2012 a 12 week public consultation on the draft Code of Practice had begun. It included at paragraph 8.78 a requirement that the PSNI officer conducting the search provide a copy of the record via a portable printer if one was available. On 15<sup>th</sup> May 2013, following the Judgement in **Canning, Fox and McNulty** on 9<sup>th</sup> May 2013 the Code of Practice was brought into force using the urgent procedure. However, paragraph 8.78 had been amended to remove the reference to providing a copy of the record via a portable printer and left only the requirement that the officer should provide a URN and guidance on how to obtain a full copy of the record from the PSNI after the event.
- 6.9 The applicant argued that the provision of a record of the stop and search was a fundamental safeguard reminding the police that there must be a good reason for the stop and search. As such it was an important curb on the exercise of an otherwise unfettered power. This was necessary to afford a measure of protection against arbitrary interference. Consequently, the powers under sections 21 and 24 of the JSA were insufficiently circumscribed and there were inadequate safeguards against abuse. The applicant submitted that the manner in which the consultation had taken place subverted the purpose paragraph 8.78 of the Code which required an officer to provide a copy record at the time of the stop and search and the new provision was not the result of a genuine consultation process but of a discussion between the PSNI and the Secretary of State.
- 6.10 The PSNI argued that the draft Code of Practice did not impose any requirement on them to provide a contemporaneously printed record; the JSA was silent on the issue of whether a record must be provided to the subject and, if so, in what form; paragraph 8.78 of the draft Code of Practice did not require access to portable printers; the applicant did not therefore have any right under the Code of Practice to be supplied with immediate documentary evidence; and the applicant's claim in relation to the duty to consult was misconceived as it was based on the assumption that the final version of the Code of Practice removed an essential safeguard. The draft Code of Practice contained no such requirement.

- 6.11 Mr Justice Treacy held that the provision of on the spot written evidence was a fundamental safeguard; removing this safeguard was a fundamental change which needed to be consulted upon; while the draft Code of Practice did not impose an absolute requirement for a contemporaneously written record it was clear that the provision of such a record should take precedence over the provision of a reference number; therefore the provision of such a record could only have appeared to the consultees as a fundamental safeguard to be generally applied. He rejected the PSNI's argument that the provision of a contemporaneous written record was not intended to be standard practice.
- 6.12 The judge made an order that the Secretary of State should re-consult on paragraph 8.78 and the issue of how stop and search records should be recorded. The Secretary of State decided not to seek to appeal this judgment and published a consultation document on paragraph 8.78 of the Code of Practice inviting replies no later than 22<sup>nd</sup> December 2014.
- 6.13 A more significant challenge to PSNI policing of public order was made in the matter of an application by **DB**<sup>9</sup> for Judicial Review. That case was decided by the Court of Appeal on 1<sup>st</sup> July 2014. It was not a challenge to the specific powers in the JSA or the regime underpinning them. It was a challenge by a resident of the Short Strand area in Belfast to the alleged failure of the PSNI to take action to stop illegal parades by loyalist protesters who objected to the decision of the Belfast City Council to fly the Union flag on 15 designated days rather than every day. The circumstances of the flags protests are well known and fully documented and set out in paragraphs 2 to 12 of the Court of Appeal's judgment. There were multiple parades and protests between 3<sup>rd</sup> December 2012 and 15<sup>th</sup> February 2013. Many of them were violent and 171 PSNI officers were injured (though no member of the public was hurt). None of them had been notified to the PSNI. Therefore, they fell outside the jurisdiction of the Northern Ireland Parades Commission and the PSNI had to rely on general public order powers to control the protests. The PSNI said that, at the height of the protests, some 4,000 people were protesting at 84 different sites across Northern Ireland.
- 6.14 The appeal was from a decision by Mr Justice Treacy. In a judgment of 28<sup>th</sup> April 2014 he granted an application for judicial review of the PSNI policing of parades which had not been notified, as required under the Public Processions (Northern Ireland) Act 1998 (PP(NI)A 1998), finding that the PSNI had facilitated illegal and sometimes violent parades for a period of time in breach of their duty under section 32 of the P(NI) A 2000 (to protect life and property, to preserve order, to prevent the commission of offences and to bring offenders to justice) and in breach of Article 8 of the ECHR (right to respect to private and family life).

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<sup>9</sup> Court of Appeal Judgement summary from NICTS website:

[https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Court%20Of%20Appeal%20Allows%20Chief%20Constable's%20Appeal%20Against%20Loyalist%20Flag%20Protest%20Judgment/j\\_j\\_Summary%20of%20judgment%20-%20In%20re%20DB%201%20July%202014.htm](https://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Documents/Court%20Of%20Appeal%20Allows%20Chief%20Constable's%20Appeal%20Against%20Loyalist%20Flag%20Protest%20Judgment/j_j_Summary%20of%20judgment%20-%20In%20re%20DB%201%20July%202014.htm)

6.15 The press coverage on the following day is worth noting. The front page headline in the Belfast Telegraph was “Police’s parading strategy in tatters” and underneath “Damning ruling by judge says PSNI facilitated illegal and violent protests”. Another headline in that paper was “Softly softly flag row policing was all wrong”. The paper reported that the judgment was “scathing” and reported that the judge had accused senior police “of not understanding the powers they could use to prevent illegal parades and arrest participants”. The journalist Brian Rowan, in his Analysis column commented that:

*“as the public became more angry the police just seemed to stand back helplessly; - I watched as that crowd made its way back to the east of the City across the front of the Short Strand with all the inevitable fallout and tension and confrontation that followed - my observation was not just of police in the middle but police in a muddle and a mess - it wasn’t the police’s finest hour - but it was not all their fault”.*

There were comments from within the loyalist community about a “cultural war that stirred up an already ugly mood”. The paper quoted the then Chief Constable as saying:

*“The difficulty when you have finite resources and a large scale protest, you have to police that reasonably both for the protection of individuals, communities and police officers. They were tough decisions made at the time; they were pragmatic decisions. I was very clear that justice would be done. And it has; we have had nearly 700 people charged with offences rising out of those disputes and protests and yet not a member of the public was seriously injured...I would rather be accused of being too soft than of being too hard and robust and potentially seeing many people injured and the future jeopardized”.*

6.16 There were a number of seemingly conflicting legal obligations at issue. On the one hand, the parades were technically unlawful because they had not been notified to the PSNI under the PP(NI)A 1998; the PSNI had a duty under section 32 of the P(NI)A 2000 to prevent crime; and the applicant resident in Short Strand had a right to respect for his private and family life under Article 8 of the ECHR. On the other hand, the protesters had a right under Article 11 of the ECHR to freedom of assembly; the PSNI had an obligation under section 32(1) of the P(NI)A 2000 to protect life and property and their judgment had been that widespread arrests at the start of the protest would have escalated the violence and increased the threat to the public; and the PSNI had an obligation to exercise their professional judgment to protect the public from violent disorder both in the immediate vicinity and the wider Northern Ireland community under Article 2 of the ECHR.

6.17 The Court of Appeal in its judgment in this case took a different view from Mr Justice Treacy. In allowing the PSNI’s appeal the Court of Appeal made the following points:

- (a) appropriate weight should be given to the judgment of a person with responsibility for a given subject matter and access to special sources of knowledge and advice;
- (b) the PSNI were uniquely placed through their experience and intelligence to make a judgment on the wisest course to take in all the circumstances – they had long and hard experience of dealing with riotous situations in Northern Ireland;
- (c) the difficulty of catching rioters who had means of retreat available through paths and gardens was self-evident;
- (d) the PSNI had sources of information about what was likely to happen if they took certain courses of action which they were experienced in assessing – robust policing was likely to lead to increased protest and more extensive public disorder;
- (e) the obligation under section 32 of the P(NI)A 2000 did not impose a requirement to intervene on every occasion when an offence was committed;
- (f) the PSNI had kept the policing of the protests under constant review;
- (g) the PSNI had a wide area of discretion in this type of situation as to how they should proceed.

In conclusion the Court of Appeal held that:

*“The issues facing those policing this major public disruption which extended far beyond Belfast to all parts of Northern Ireland demonstrated the enormous difficulties for those policing modern societies in circumstances of community conflict and heightened tension. We consider that the decision to manage disruption and pursue a subsequent criminal justice charging policy was well within the discretionary policing judgment which such situations require in light of the challenges posed by the circumstances set out above”.*

- 6.18 The Belfast Telegraph of 1<sup>st</sup> July 2014 reported the Court of Appeal’s judgment in some detail with the observation that the judgment “...represents a major boost for the force as it prepares to deal with any contentious parades over the summer marching season”.

## **7. THE OPERATION OF THE POWERS IN PRACTICE**

- 7.1 It is one thing to exercise stop and search powers lawfully. It is equally, if not more, important that the powers are exercised appropriately, effectively, and in a proportionate way and for their intended purpose. Chapter 13 below sets out the views of people who have been affected by the use of these powers. It is not my role to comment on those views. Nor is it always clear that the alleged behaviour relates specifically to the use of JSA powers. However, these observations have been made by a number of people on both sides of the community including not only young people but also community leaders, Members of the Legislative Assembly (MLA) and members of the NIPB. In

particular the role of the PSNI's Tactical Support Group (TSG) when entering premises was singled out. The PSNI are the first to admit that things can go wrong from time to time and that policing can make things better and can sometimes make things worse. Given the history of policing in Northern Ireland and the fact that the PSNI become the focus of attention when community divisions spill over ("referees for political failure" in the words of one observer), it is clearly important to observe fully the high standards set out in the Code of Practice when dealing with the public. If these standards are not observed it simply reinforces long held perceptions of the police which are rooted in history. In these circumstances it is important for there to be as much material as possible in the public domain which demonstrates how the powers in the JSA are exercised in practice.

7.2 So in this Review I have asked the following questions:

- How frequently are the powers used?
- Are the powers used in a way which is "intelligence led"?
- Are the powers used in a disproportionate or discriminatory manner?
- Why are the arrest rates following the exercise of these powers so low?
- Could the powers be exercised in a better and more effective way?

### How frequently are the powers used?

7.3 Detailed statistics relating to the use of the powers in the JSA and TACT 2000 are at [Annex E](#).

7.4 In brief the number of occasions on which the powers were exercised by the PSNI between August 1<sup>st</sup> 2013 and July 31<sup>st</sup> 2014 (together with comparisons with the previous year) rounded to the nearest whole number are as follows:

#### JSA

- (a) Section 21, stop and question – **1,830** (down from 2,670 – a **31% decrease**);
- (b) Section 23, power to enter premises – **25** (down from 147 – an **83% decrease**);
- (c) Section 24/Schedule 3, stop and search for munitions and transmitters – **4,860** (down from 7,320 – a **34% decrease**);
- (d) Section 24/Schedule 3, paragraph 2, the power to enter premises pursuant to section 24 – **194** (down from 253 – a **23% decrease**);
- (e) Section 24/Schedule 3, paragraph 2, vehicles searched pursuant to section 24 – **9,307** (down from 11,760 – a **21% decrease**).

#### TACT 2000

- (a) Section 43, stop and search of person reasonably believed to be a terrorist – **96** (down from 165 – a **42% decrease**);
- (b) Section 43A, stop and search of vehicle reasonably believed to be used for terrorism – **25** (down from 53 – a **53% decrease**);

- (c) Section 47A, stop and search where senior police officer reasonably suspects an act of terrorism will take place – **NIL** (down from 70 – a **100% decrease**).

7.5 The stop and search statistics need to be seen in a broader context. In Northern Ireland there are a number of stop and search powers, including in the following legislation:

- Firearms (NI) Order 1981 - Art 53
- Justice and Security (NI) Act 2007 - Sec 21
- Justice and Security (NI) Act 2007 - Sec 24 Reasonable suspicion
- Justice and Security (NI) Act 2007 - Sec 24 Authorisation
- Misuse of Drugs Act 1971 - Sec 23
- Police and Criminal Evidence (PACE) (NI) Order 1989 - Art 3
- Public Order (NI) Order 1987 - Art 23B
- Terrorism Act 2000 - Sec 43
- Terrorism Act 2000 - Sec 43A
- Terrorism Act 2000 - Sec 47A Authorisation
- Crossbows (NI) Order 1988 - Art 6
- Wildlife (NI) Order 1985 - Art 25

7.6 The **overall** use of stop and search under all these powers (including JSA 2007 and TACT 2000) is **30,912** – (down from 32,951– a **6% decrease**). So there has been a welcome decline in the use of stop and search powers under all legislation - but a marked decrease in the use of JSA and TACT 2000 powers. The majority of stops and searches (24,222) were under TACT 2000, PACE, Misuse of Drugs Act and the Firearms Order.

#### **Are the powers in the JSA used in a way which is “intelligence led”?**

7.7 I am satisfied that the PSNI use these powers on an intelligence led basis. Intelligence can come from a variety of sources and can range from high grade sophisticated intelligence to simply the fact that a police officer knows, for example, that a vehicle belongs to a particular individual. The use of stop and search powers may be the result of specific briefing about an individual or intelligence about a specific threat within a geographic area in a given timeframe. The power is used on the basis of threat and not in an arbitrary way or for no legitimate purpose. The PSNI frequently exercise powers to stop and question (section 21 of the JSA) about identity and movements the answers to which may reduce the likelihood of recourse to the stop and search power (section 24/schedule 3 of the JSA). It is normally the **operation** which is intelligence led and the exercise of the powers in an individual case or, indeed, more generally, may not always appear to those affected on the ground to be based on specific intelligence. I have been briefed on several occasions by the PSNI and MI5 about how the use of these powers, based on intelligence, has prevented serious attacks and loss of life. In the course of those briefings and in discussion afterwards it is clear that there is close co-operation between the PSNI and MI5.

7.8 It is difficult (for obvious reasons) to demonstrate publicly that the use of these powers is intelligence led so it is necessary to look to other indicators in the public domain to help demonstrate that assessment. As is explained in paragraph 7.9 below, the police have no incentive to act otherwise than on intelligence. There is some statistical evidence available which illustrates that the use of the powers is intelligence led. For example, the power to stop and search under section 24/schedule 3 of the JSA was used on 4,860 occasions during this reporting period – a daily average of 13. It was, however, exercised on 61 occasions and again on 77 occasions on two particular dates during the reporting period in relation to specific threats based on intelligence. Another indicator is the fact that, in relation to JSA and TACT 2000 searches, the highest number in the period 1<sup>st</sup> April 2013 to 31<sup>st</sup> March 2014 were in the police districts with the greatest number of incidents - namely A District (990); E District (1,033) and G District (2,526).

### **Are the powers used in a disproportionate or discriminatory manner?**

7.9 The PSNI have increasingly limited resources. The exercise of these powers (in particular the power to stop and search) is unpleasant by its very nature not only for the individual but also for the police. Very often it takes place in challenging circumstances. The PSNI understand that the exercise of these powers is controversial. It can alienate individuals and communities and make effective policing (which depends ultimately on community support) more difficult. It can also lead to complaints to the Police Ombudsman and to legal challenge – all of which is unwelcome and time consuming. The PSNI have excellent intelligence available to them - sufficient to ensure that these powers are used only when they need to be. The excessive or discriminatory use of these powers would amount to a breach of the Code of Practice and could potentially lead to disciplinary proceedings. As the HMIC Report of 2013 points out in the context of England and Wales:

*“For decades the inappropriate use of these powers both real and perceived, has tarnished the relationship between constables and the communities they serve, and in doing so has brought into question the very legitimacy of the police service”.*

Most importantly, the PSNI need these powers to do their job and keep people safe. One officer in Derry/Londonderry told me that he could not contemplate doing his job safely and properly without having these powers at his disposal. Given all these factors it is difficult to see what motive officers could have to exercise the powers gratuitously or for no legitimate purpose.

7.10 Nevertheless, I heard a number of complaints that these powers had been exercised in a rude and disrespectful manner and in a heavy handed and disproportionate way – for example by closing off a whole estate to carry out a single search or arrest. It was also suggested to me by residents in both the Catholic/Nationalist/Republican (CNR) and Protestant/Unionist/Loyalist (PUL) communities that the PSNI discriminate in the exercise of their powers against their own community and fail to take similar action against the other

community. It is difficult to comment on the allegations of rudeness and there may be operational reasons based on intelligence for what, at first sight, may seem disproportionate action. The PSNI gave me figures, however, which suggest that there were few complaints about the use of the stop and search power. Of the 30,912 stops and searches under all legislation (see paragraph 7.6 above) in the reporting period only 190 led to complaints ie 0.6% of the total. Of that number of 190 only 50 were complaints about the exercise of JSA powers ie 0.15% of all searches. Not all of these would necessarily be complaints that were soundly based. So these statistics show that on average there is one complaint a week about the exercise of the JSA powers. However, in this sensitive area, this is enough to damage the police's reputation and to reinforce pre-conceived notions that these powers are not used in a fair and proportionate way.

- 7.11 Statistics provided to me by the PSNI indicate that 40% of the stop and searches are carried out against individuals who were searched more than once during the year ("multiple searches"). The three "busiest" districts all exceeded this 40% average – A District 43%; E District 42% and G District 70%. 81% of those individuals stopped on multiple occasions in the past year were suspected to be DRs or their associates accounting for 92% of all multiple searches. In G District 92% of those individuals searched on multiple occasions were suspected to be DRs or their associates accounting for 98% of all multiple searches in G District. Some might say that these figures indicate a bias towards one section of the community. The PSNI would argue that these figures show that the powers are targeted at those who pose a threat to the public and demonstrate that they are used on an intelligence led basis to protect the public. The PSNI told me that only 0.03% of the Northern Ireland population are stopped more than once a year under JSA and TACT 2000 powers.
- 7.12 So 81% of the stop and searches on multiple occasions are of individuals suspected to be DRs or their associates. The remaining 19% of the searches include 7% who had significant criminal association; 3% had loyalist association; 1% were firearms related; 1% were related to interface disorder; and 8% were of unspecified background.
- 7.13 It also worth noting that there are no internal or official "targets" for the exercise of these powers. They are intelligence led and exercised only when necessary to protect the public. I saw nothing to suggest that the powers are used in an arbitrary way or to harass – even though that is a common perception in some quarters. All the facts and indicators suggest otherwise.
- 7.14 The PSNI also told me that in a recent 6 month period between 1<sup>st</sup> January 2014 and 30<sup>th</sup> June 2014 only 8 stops under sections 21 and 24 of the JSA involved young persons aged between 11 and 14 (though there were 153 such stops which were drug related and 143 were stopped under PACE). In the same period 25 stops under section 21 involved persons aged between 15 and 17 and 61 in that age group were stopped under section 24 (though there were 1,454 stops which were drugs related and 568 stops which were under

PACE). Of the 2,411 stops of young persons aged 17 and below under all legislation during this period, only 4% were under sections 21 and 24 of the JSA. The average age of a person stopped and searched under the JSA during this 6 month period was 36 years old.

### **Why are the arrest rates following the exercise of these powers so low?**

7.15 Some concern has been expressed about the low arrest rate following the use of these powers and, in particular, an arrest rate of 1.3% following the use of the “without reasonable suspicion” power to stop and search (section 24/schedule 3, paragraph 4A JSA). This compares to an arrest rate more generally of 8.9% for powers that do require reasonable suspicion.

7.16 My predecessor addressed this issue in general terms in paragraphs 120 to 124 of his 3<sup>rd</sup> Report. In paragraph 122 he stated that:

*“...the small number of formal outcomes does not mean that the police activity was unnecessary, unjustified or wrong. An equal valid measure is the extent of harmful activity that has been disrupted, attacks prevented and lives saved. This is not easy to quantify...”*

*“...Some powers lead to more arrests than do others. It would be easy, but in my judgment false, to conclude that some powers have less utility than others. These are complex and individual police operations: each threat is unique in its planning and execution and the police response must be prepared with consummate flexibility, imaginative thinking and meticulous planning”.*

7.17 These paragraphs were quoted in the PSNI’s skeleton argument submitted to the court in the case of **Ramsey** (see paragraph 6.2 above). Paragraph 71 of that skeleton argument stated:

*“In our submission the appropriate metric to measure the proportionality of the section 24/Schedule 3 powers is the extent to which it has discharged the state’s obligation to protect the life of its citizens pursuant to Article 2 [of the ECHR]. The example of the foiled mortar bomb attack on a Derry City Centre police station provides a better illustration of the proportionality of the JSA powers than reliance on arrest statistics”.*

7.18 In my view, there is merit in that argument. To test the need and validity of such a power by the number of arrests would be to misunderstand the purpose of the power. It is not intended primarily as a method of triggering the prosecution process – though clearly on occasions it has that effect. The authorisation process which permits stop and search without reasonable suspicion takes place when a senior police officer:

*“reasonably suspects... that the safety of any person might be endangered by the use of munitions or wireless telegraphy apparatus and **reasonably considers that the authorisation is necessary to prevent such danger”.***

The power is therefore a preventative device to stop people being killed or injured by explosives. Typically, stop and search powers would be used where, for example, there is intelligence that a vehicle is in transit across Northern Ireland carrying explosives to a particular location. In these circumstances, the test for whether the power has been exercised properly and effectively would be whether the attack had been prevented rather than whether a large number of arrests had been made. I have received briefings about the occasions when attacks have been prevented. The PSNI have told me that their use of the powers during this reporting period has led to the recovery of munitions, the disruption of terrorist activity and the prevention of attacks (including bombings) and also led to a number of arrests. Collateral benefits from the use of these powers (but not the reason for exercising them) include an increased intelligence flow and the deterrence of terrorist activity.

- 7.19 This approach is consistent with the PSNI's overriding objective of keeping people safe and assists the PSNI to comply with their obligation under Article 2 of the ECHR to take reasonable operational steps to avert a real and immediate threat to life. These stop and search powers do not require reasonable suspicion and it is therefore inevitable that they lead to a lower arrest rate than those which do require reasonable suspicion.

#### **Could these powers be exercised in a better and more effective way?**

- 7.20 It is clear that any lapse by the PSNI has the potential to reinforce deeply held views about the police and, ultimately, makes the role of policing more difficult.
- 7.21 There are three possible practical ways in which the powers might be exercised in a better and more effective way – by increasing transparency, by allowing lay observers and by using body worn cameras. None of these is straightforward or easy but they all merit consideration.

#### **Greater transparency**

- 7.22 The PSNI (and others) could do more to explain why these powers are necessary and how they are used to protect the public. The importance of transparency in this context was highlighted by the HMIC Report of on stop and search powers in England and Wales in 2013 and, in particular, Chapter 7:

*“The code of practice directs that, in order to promote public confidence in the use of stop and search powers, forces must, in consultation with police authorities, make arrangements for the records to be scrutinised by representatives of the community, and to explain the use of the powers at a community level...Some forces told the public of the impact that the use of stop and search powers had had in specific crime operations; but this tended to involve only the number of stops and searches carried out, and the arrests that followed. We found that only a few forces had informed the public of their intentions ahead of specific operations or explained what they were doing and the reasons for it. This is a missed opportunity*

*as police legitimacy is improved when local communities understand why officers are doing what they are doing in their areas”.*

- 7.23 There will, of course, be operational limits to how transparent the PSNI can be and they already commit resources at present to explaining their role to the NIPB, the media and local community representatives via the Policing and Community Safety Partnerships. However, in preparing this Report I have formed the impression that the PSNI have a good story to tell but it is not getting through to some parts of the community where it most needs to be heard and understood. Getting the message across - particularly in relation to how and why these powers are used - is a tough task but is key to changing the sceptical mind-set which makes policing in Northern Ireland so difficult and challenging.

### **Lay observation policies**

- 7.24 My understanding of the use of stop and search powers was improved by going on patrol with PSNI officers and hearing about their experiences and how they go about their work. Some NGOs have suggested to me that they too would like the same opportunity and to see at first-hand how these stop and search powers are exercised. In this context it is relevant to note that the Home Secretary announced “*The Best Use of Stop and Search Scheme*”<sup>10</sup> in a statement to Parliament on 30<sup>th</sup> April 2014. That document states:

*“... In order to improve public understanding of the police and contribute to best practice forces must be open and accessible. It is important for the public, particularly young people and people from Black and Minority Ethnic communities, to be able to see the police conducting their work in a professional way. Equally, it is also important for the police to understand the communities that they are serving – as this enables more effective policing through police and community co-operation and exemplifies ‘policing by consent’. ... By introducing ‘lay observation’ a process of two-way learning can take place, bringing the police closer to the public. A core element of the Scheme is the requirement that participating forces will provide opportunities for members of the public to accompany police officers on patrol when they might deploy stop and search powers”.*

- 7.25 I have not had an opportunity of discussing this with the PSNI in any great detail. There are clear and obvious security risks. Stops and searches in Northern Ireland are intelligence led and the vast majority of those stopped and searched are those suspected of being involved in terrorism in DR groupings or their associates. The PSNI would routinely be putting observers in a potentially dangerous situation and it is probably not practicable to do this in Northern Ireland. These are not easy encounters to manage at the best of times. One alternative may be to invite NGOs and others to attend the training on stop and search which is given to officers or to see the film of real stop and

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<sup>10</sup> <https://www.gov.uk/government/speeches/stop-and-search-comprehensive-package-of-reform-for-police-stop-and-search-powers>

searches obtained by body worn cameras (see paragraphs 7.26 to 7.29 below).

### **Body worn cameras**

- 7.26 Many senior public figures and NGOs considered that the use of body worn cameras would be helpful.
- 7.27 The PSNI are currently engaged in a 6 month pilot project using body worn cameras in Derry/Londonderry and Limavady in G District. It involves 48 cameras which are switched on in public order situations, when there is a stop and search, and when the police are investigating domestic abuse, road traffic offences or anti-social behaviour. They are also switched on during the search of crime scenes, when witnesses give accounts of events and during the arrest process. I was given a demonstration of how the cameras were used during a stop and search in a street in Limavady. Both the officers had cameras so there was a good film of the incident which was about 10 minutes in length. All the cameras are docked at the end of the shift. All the film is retained for 31 days and then destroyed unless it is needed for evidential purposes.
- 7.28 There are clear advantages in using body worn cameras. It provides an accurate record of an incident. It protects the police against spurious allegations and intimidation by members of the public and generally appears to improve behaviour of all concerned. The camera can be switched off if it is necessary to have a confidential conversation with the member of the public.
- 7.29 There are, however, issues surrounding the use of body worn cameras. Some members of the public will no doubt allege that the PSNI behaved badly when the camera was switched off. If the use became standard practice defence lawyers would challenge any evidence which is not recorded when it could have been. The definition of the film is not high quality but is sufficient for its purpose. Some makes of camera are better than others and some are cumbersome. The main issue, however, is cost – see paragraph 13.11. However, this would be another example of bringing transparency to the process of policing. The Metropolitan Police are also trialling the use of body worn cameras in London. Commander Adrian Hanstock, the Commanding Officer for this pilot, was quoted in the Sunday Times in August 2014 as saying that the recording of such searches “will change culture and behaviour” – and, he added, “help the police catch up with the many encounters posted by the public on You Tube”. It would be a pity if this important safeguard could not be introduced because of budgetary constraints.

## **8. COMMUNITY MONITORING**

- 8.1 The general response of the PSNI to recommendations made by various bodies is described in Chapter 11 below. However, one issue that deserves to be highlighted is community monitoring. In the May 2009 CJINI Report ‘*The*

*Impact of Section 75 of the Northern Ireland Act 1998 on the criminal justice system in Northern Ireland*<sup>11</sup> it was noted in paragraph 2.15 that:

*“...the PSNI has not been able to produce figures relating to the community and religious background of those they stop and search. This issue is discussed at some length in the Policing Board’s Annual Human Rights Report for 2007. The authors of the report conclude, after detailed discussion of this issue that “in the light of the inconsistent approach to monitoring the exercise of powers to stop and search, it is difficult to determine whether the powers are used disproportionately... While we recognise that the Analysis Centre’s template may not be wholly effective in providing a robust monitoring framework where community background is not differentiated on the basis of geographical location, the onus is on the PSNI to develop a more effective means. We recommend therefore that the PSNI take steps to establish an effective method of monitoring the use of stop and search powers across districts”. We respectfully agree with this conclusion. Any disproportionality in the use of stop and search powers has the capacity to seriously affect community police relations as has often been the case in England and Wales”.*

- 8.2 The CAJ, in its Report of November 2012 ‘*Still Part of Life Here – A report on the use and misuse of stop/search and question powers in Northern Ireland*’<sup>12</sup> commented that:

*“Remarkably there is no direct monitoring of stop and search/question on grounds of community background. This is despite such monitoring being an essential tool to prevent the use of powers in a manner which constitutes ethnic/racial profiling, and the related targeting of persons perceived to belong to ‘suspect communities’.... As well as gathering ethnic monitoring data on other groups CAJ urges the PSNI to bring its own definition of sectarianism in line with the views of the competent international treaty bodies and to initiate and publish results of monitoring of stop and search/question powers on grounds of (Protestant/Catholic etc) community background.”*

- 8.3 More recently the NIPB’s ‘*Human Rights Thematic Review*’<sup>13</sup> on the use of police powers to stop and search and stop and question under the Terrorism ACT 2000 and the Justice and Security (NI) Act 2007’ published in October 2013 made eleven recommendations. Recommendation 7 was that the PSNI should as soon as reasonably practical, but in any event within 3 months of the publication of their thematic review, consider how to include within its recording form the community background of all person stopped and searched under sections 43, 43A or 47A of TACT 2000 and all persons stopped and searched or questioned under sections 21 and 24 of the JSA. The PSNI set up a working group to consider how this recommendation

<sup>11</sup> CJINI Report: <http://www.cjini.org/CJINI/files/37/3770d86c-d019-4199-95e9-89491e6e8e8f.pdf>

<sup>12</sup> [http://www.caj.org.uk/files/2013/05/01/No.\\_63\\_Still\\_Part\\_Of\\_Life\\_Here,\\_November\\_2012\\_.pdf](http://www.caj.org.uk/files/2013/05/01/No._63_Still_Part_Of_Life_Here,_November_2012_.pdf)

<sup>13</sup> [http://www.nipolicingboard.org.uk/stop\\_and\\_search\\_thematic\\_review\\_final\\_draft\\_15\\_october\\_2013.pdf](http://www.nipolicingboard.org.uk/stop_and_search_thematic_review_final_draft_15_october_2013.pdf)

should be implemented and this work was ongoing at the time of the preparation of this Report.

- 8.4 There are strong arguments in favour of recording the community background of those who are stopped and questioned or searched. Sections 75 and 76 of the NIA 1998 places a duty on the PSNI to promote good relations and not to discriminate. The powers are to be used without discrimination on grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, disability or whether or not a person has dependents. These obligations are also set out in the respective Codes of Practice under TACT 2000 and the JSA. Section 31A of the P(NI)A 2000 provides that police officers shall carry out their functions with the aim of securing the support of the local community.
- 8.5 Paragraph 5.6 of the Code of Practice defines “racial or religious profiling” as the use of racial, ethnic, religious or other stereotypes, rather than individual behaviour or specific intelligence, as a basis for making operational or investigative decisions about who may be involved in criminal activity. Paragraph 5.7 provides that officers must take care to avoid any form of racial or religious profiling when exercising the powers and paragraph 5.8 says that great care should be taken to ensure that the selection of people is not based solely on ethnic background, perceived religion or other protected characteristic. Paragraph 5.8 concludes that “profiling people from certain ethnicities or religious backgrounds may lose the confidence of communities”. Paragraph 5.10 requires senior officers to supervise and monitor the use of these powers and paragraph 5.11 states that supervising officers should ensure that the use of the powers is “fully in accordance with the Code”.
- 8.6 These are the formal obligations placed on the PSNI and, as is so often said in this context, transparency is the key to accountability and therefore confidence in the PSNI. In these circumstances it is hard to see how that accountability can be complete and properly assessed unless some form of community monitoring takes place. Some have said that the statistics will be exploited for political purposes – that is, regrettably, inevitable but it is no reason for not having reliable data publicly available. Official statistics will always be exploited by those who have a political agenda. It has been said that there is a possibility that the powers might be targeted indiscriminately to redress any statistical imbalance but, for the reasons given in paragraph 7.7 to 7.14 above, I am confident that this would not happen. Others have said that such monitoring is unnecessary and would exacerbate community tensions. The PSNI have also expressed concern that making a police officer record community background would introduce a consideration into the mind of the officer which his training and experience has led him to consider irrelevant. However, a significant majority of those I have consulted considered that such monitoring should be done given the obligation of the PSNI not to discriminate and the need for transparency.
- 8.7 The real difficulty is how this information should be obtained for these purposes. It is clear from paragraphs 7.11 and 7.12 above that this

information can be obtained for the purposes of demonstrating that the powers are exercised in a proportionate way. However, a formal requirement in the JSA for the detained person to state his community background would be unacceptable. It could only be enforced by making it a criminal offence for the person to refuse to do so. This would amount to criminalising a refusal to declare religious or political allegiance. Much of the objection to community monitoring appears to be based on this concern. Indeed, many people I spoke to (including young people) were positively hostile to the idea of being asked this question in a public place. The PSNI themselves do not consider that having the power to ask for this information – as opposed to, for example, a name and address – is operationally necessary.

- 8.8 So what other ways are there of getting this information? Mr Justice Treacy said in **Ramsey** (paragraphs 6.2 to 6.6 above) at paragraph 38 of his judgment that questioning the subject about their community background would be “intrusive” but went on to say that:

*“...there is no reason why, if there is to be effective monitoring, details of the perceived religion/political opinion should be omitted/not recorded. This is especially so since in many cases the exercise of the powers will be intelligence driven and the perceived religion/political opinion is likely to be known by the police”.*

There are various ways in which this information could be obtained – by officer perception (as Mr Justice Treacy suggested); by voluntary disclosure either during or after the incident; or, as some community leaders have suggested, by reference to the postcode; or a combination of all three. Finally, there is no reason in principle why such information should not be in the public domain. Many statistics in the criminal justice field are broken down in this way – see for example the DoJ’s publication *“Perceptions of Policing, Justice and Organised Crime: Findings from the 2011/12 and 2012/13 Northern Ireland Crime Surveys”*<sup>14</sup> published in June 2014.

- 8.9 If a decision was taken to proceed with community monitoring on the basis of one of these options a number of issues would arise:
- (a) The statistics would need to be qualified by a statement which indicated the basis on which they were obtained and the potential margin of error.
  - (b) Consideration would have to be given to monitoring all cases of stop and search under all legislation (see paragraph 7.6 above) to achieve a balanced and informative picture – the majority of stops and searches/question are **not** under the JSA.

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<sup>14</sup> <http://www.dojni.gov.uk/index/statistics-research/stats-research-publications/northern-ireland-crime-survey-s-r/perceptions-of-policing-justice-and-organised-crime-findings-from-the-2011-12-and-2012-13-northern-ireland-crime-surveys.pdf>

- (c) If the Codes have to be amended to accommodate the new arrangements this could only be done by Order subject to Parliamentary approval.
- (d) There would be a risk that the statistics would be exploited by those with a motive to do so but the PSNI should be able to explain and justify in general terms any trends revealed by the statistics on operational grounds and, indeed, it might assist the public debate if they were to do so.
- (e) It would be wrong to look at information about community background without noting that the number of stops under the JSA and TACT 2000 have fallen significantly in recent years. As the HMIC Report on stop and search powers in England and Wales (July 2013) says:

*“...whilst there is strong public debate about the disproportionate use of the powers on certain groups, there is surprisingly little attention paid by either the police service or the public to how effective stop and search powers are in reducing or detecting crime”.*

It is this information, as much as any other, which needs to be in the public domain.

- (f) It is likely that such monitoring will place an additional administrative burden on the PSNI at a time when they are facing serious reductions in their budget. This would certainly be the case if it was introduced by way of a voluntary questionnaire. That would require additional administrative, statistical and analytical resources. One solution might be to pilot such a scheme or to undertake such a project periodically over a short period of time rather than to make it a standing requirement.

## 9. THE AUTHORISATION PROCESS

- 9.1 The authorisation process is a relatively recent development and attracts scrutiny because it enables a police officer to stop and search a person without reasonable suspicion. An authorisation is made by a senior police officer and lapses after 48 hours unless it is confirmed by the Secretary of State and then it can remain valid for a period of up to 14 days from the date on which it was originally made.
- 9.2 The background, briefly, is as follows. The authorisation process was the result of the judgment of European Court of Human Rights in the **Case of Gillan and Quinton v. the United Kingdom**<sup>15</sup> in 2010 which resulted in the POFA 2012 which amended both the TACT 2000 and the JSA.

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<sup>15</sup> ECHR: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585#{\"itemid\":\[\"001-96585\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-96585#{\)

- 9.3 Under section 47A of TACT 2000 which applies throughout the UK an authorisation can be made if a senior police officer reasonably suspects that an act of terrorism will take place and reasonably considers that the authorisation is necessary to prevent it. The authorisation has to be for the minimum necessary area and duration.
- 9.4 Under Schedule 3 to the JSA, which applies only to Northern Ireland, a senior police officer must reasonably suspect that the safety of persons might be endangered by the use of munitions or wireless telegraphy apparatus and must reasonably consider that the authorisation is necessary to prevent that danger. Again, the authorisation has to be for the minimum necessary area and duration.
- 9.5 As my predecessor noted in his 5<sup>th</sup> Report paragraph 192-193:
- “.... The new authorisation power under Schedule 3 is therefore tightly limited – and rightly so – to the dangers presented by munitions or wireless apparatus. The range of activity to be prevented is much narrower than the corresponding provisions in section 47A, and is closely related to the activities of residual terrorist groups in Northern Ireland, with their customary reliance on munitions (which means weapons and explosives) and wireless telegraphy.*
- .... On the other hand, the authorisation under Schedule 3 does not need to relate to a specific act as under section 47A. Rather the reference is to the safety of any person who might be endangered by the use of munitions or wireless telegraphy apparatus. That again – correctly in my view – reflects the circumstances of the activities of residual terrorist groups engaged in planning and carrying out acts of violence over longer periods of time rather than a single act of terrorism”.*
- 9.6 There have been 32 authorisations under the JSA between 1<sup>st</sup> August 2013 and 31<sup>st</sup> July 2014. There has not been a time in this period when an authorisation has not been in place and the area specified in each one covers all of the eight police districts ie the whole of Northern Ireland. I have looked closely at 14 of these (45%) of these (by way of a sample) including the submissions which have sought Ministerial confirmation of the authorisations. I have also examined the internal NIO correspondence which led to these authorisations being confirmed.
- 9.7 The form which is used for these authorisations is a standard form and is at [Annex F](#). The key features of the form which reflect the process that is followed are:
- (a) the authorising officer, in practice an ACC, must explain the rationale for the authorisation (Box 1);
  - (b) legal advice has to be sought from the PSNI Human Rights legal advisor and this is summarised (Box 3);
  - (c) the PSNI assessment of the threat is set out and provides details of the the security threat overview; specific details of intelligence which has

- given rise to the reasonable suspicion that the safety of individuals might be endangered for each police district; and general intelligence which could be applied to any of the police districts (Box 4);
- (d) details of relevant information and/or circumstances over the recent period are provided and this includes information on security incidents that have occurred by police district during the previous authorisation. In addition, if an authorisation is one that covers a similar geographical area to the one immediately preceding it (and in practice this has always been the case between 1st August 2013 and 31<sup>st</sup> July 2014) then information has to be provided as to how the current situation has changed, or if it has not changed, that it has been reassessed and remains relevant (Box 5);
  - (e) the authorising officer has to explain why the use of these powers is an appropriate response to the circumstances and why the powers under sections 43 and 43A of TACT 2000 or general PACE powers are not sufficient (Box 6);
  - (f) the authorising officer has to identify the geographical extent of the authorisation and give the reasons why the powers are required in that area, a map is provided (Box 7);
  - (g) the authorising officer has to identify the duration of the authorisation and explain why the powers are required for this time which should be 'no greater than is necessary' (Box 8);
  - (h) the authorising officer has to show that all officers who are to exercise these powers have received appropriate training and briefing in the use of the legislation and understand the limitations of these powers (Box 9);
  - (i) the authorising officer has to provide information about how the powers will be used (practical implementation) and why eg vehicle checkpoints; stops and searches near homes or establishments of those under threat such as police or prison officers; whether searches are to be based on particular indicators (eg behavioural indicators, types of items or clothes worn, types of vehicle etc.); and, if the powers are to be used on a random basis why this is necessary and why searches based on particular indicators are not necessary (Box 10). The reference to powers being used on a 'random basis' in this form requires an explanation. The PSNI have explained that this reference is to situations where (for example) the police know, or have intelligence, that a bomb is being transported in a particular area and all or most vehicles may need to be stopped to address that threat. So, in practical terms, the PSNI say that what they do is quite far removed from random searching and that officers are trained to make an informed decision taking into account threat information along with the prevailing circumstances thus forming a basis for an individual search. In tactical terms the PSNI say that this may rest on a sliding scale somewhere between reasonable suspicion and purely random searching. Nevertheless the use of the

phrase "on a random basis" is unfortunate and it would be better to use the expression "without reference to specific indicators";

- (j) the authorising officer has to provide a detailed account of the steps that have been taken to engage with those communities that will be affected by the authorisation and where this is not possible he should carry out a retrospective review of the use of the powers. In practice the authorising officer will provide an account of how engagement with affected communities has taken place. This is most likely to have been done through existing engagement with the Police and Community Safety Partnership (Box 11);
- (k) the authorising officers have to notify and engage with the NIPB (Box 12).

9.8 At the end of the form there are two pages of Explanatory Notes to guide the authorising officer. Once the form is completed it produces a substantial document. The authorisation is sent to the NIO for confirmation by the Secretary of State. It is scrutinised by officials to check that the procedures have been followed, only relevant considerations taken into account and that there is a proper evidential basis for the authorisation. Officials then prepare a written submission for the Minister which makes it clear that this is a fresh authorisation and all the matters set out in the form need to be assessed individually. The material in Boxes 4 and 5 will be different on each occasion. The submission draws attention to any special considerations which might arise on any new authorisation. Like my predecessor I am satisfied that this process is undertaken properly and thoroughly. The statutory tests were met; intelligence was refreshed on each occasion and was based on input from all 8 District Commanders who are best placed to assess the intelligence and advise the ACC; there was internal challenge both within the PSNI and between PSNI and NIO; and legal advice was routinely sought to ensure that the process had been properly undertaken.

9.9 Questions have been raised about the need for the authorisations to cover the whole of Northern Ireland and the fact that they have been continually in place throughout the current reporting period. This matter was looked at by my predecessor at paragraphs 231 to 238 of his 5<sup>th</sup> Report and paragraphs 268 to 276 of his 6<sup>th</sup> Report. His conclusions, briefly, were:

- there was a wealth of material from the 8 Police Districts to support the authorisation;
- the pattern of terrorist activity and threat reporting can fluctuate within short periods of time;
- there is an operational need for co-ordinated and simultaneous police operations in multiple districts; and
- terrorists have the ability to move across police areas, districts and international borders with bomb making equipment and can switch targets and location within Northern Ireland on an opportunistic basis.

9.10 In his 6<sup>th</sup> Report at paragraph 268 he stated that there has been an expectation that the power in section 24/schedule 3 of JSA "would have a

much more limited application". He referred to one occasion when the geographical extension to the whole of Northern Ireland was tested quite stringently because it was not evident from the initial material that the case for full geographic extent was made out and that it was only after further analysis and consideration of available material that it was concluded that the threshold had been reached.

9.11 The Code of Practice makes it clear, however, at paragraph 8.26 that:

*"Endangerment of the public, based on a number of threats relating to munitions and wireless telegraphy may not in itself be sufficient to justify extension throughout Northern Ireland"*.

The Explanatory Notes attached to the Authorisation Form at [Annex F](#) also make it clear that "authorisations which cover the whole of Northern Ireland should **not** be made unless they can be shown to be necessary. This means that authorisations must be as **limited** as possible and linked to addressing the suspected act of endangerment".

9.12 I agree with my predecessor's assessment of the geographic extension of authorisation. Sadly, there has always been sufficient material to justify this Northern Ireland wide geographic application during the period covered by this Review. Looking at the authorisations there have been cases where there has been no or no serious incident in a particular police district in the previous authorisation period or in the most recent authorisation periods. However, this does not, of itself, mean that an authorisation should not cover that district. The basis on which the ACC's authorisation is made and on which the Secretary of State's confirmation of it is made is the intelligence relating to what **might happen**. The test in the JSA is forward looking and the fact that a district has been quiet for a short period might simply mean that the exercise of the powers has been effective in preventing any activity (which is one of the purposes of the power). The cases in this period where the authorisation for a particular district has required the most careful consideration have been where there is no particular intelligence for the next period combined with there being no reported incidents in the previous period. However, things can change very quickly. This was illustrated quite recently. On 13<sup>th</sup> October 2014 the Belfast Telegraph reported that in the quiet rural area of Fermanagh:

*"...police have said items seized during last week's raid of the farm near the village of Kinawley included 500kg of fertiliser and a number of packs of home-made explosives; timer units, detonators and fuses; six pipe bombs and component parts for other devices; a suspected firearm and about 100 rounds of ammunition; and forensic suits and gloves"*.

9.13 Some concern has been expressed about the fact that, since the POFA 2012 came into force, authorisations under the JSA have been in place continually except for a brief period of 5 days from 9<sup>th</sup> May to 14<sup>th</sup> May 2013 following the **Canning** judgment when the use of the JSA authorisations was suspended and an authorisation was given under section 47A of TACT 2000 instead pending the introduction of the Code of Practice. This has led some to

suggest that there is a “rolling” system of authorisations which are routinely renewed without proper consideration being given to whether they are justified on each occasion. However, it has to be remembered that the security threat in Northern Ireland has been at “Severe” since 2009. There has been a constant residual DR terrorist threat from the use of munitions and wireless telegraphy apparatus which shows no signs of diminishing in the immediate future – see the latest Statement by the Secretary of State on 14<sup>th</sup> October 2014 at [Annex C](#). It is clear that there is rigorous scrutiny in relation to each new authorisation. Each one is based on the latest intelligence in relation to all 8 police districts and the material set out in each one is different. It is a very time consuming and laborious process which is undertaken diligently by all concerned – not least because the PSNI understand that these powers are crucial to keeping people safe and they have every incentive to ensure that the process is undertaken thoroughly and in a professional way on each separate occasion.

- 9.14 However, this JSA authorisation process is highly resource intensive and raises the question whether this process is the most appropriate for Northern Ireland. Under TACT 2000, which applies throughout the UK, the test for an authorisation is whether a senior police officer reasonably suspects that an act of terrorism will take place and that the authorisation is necessary to prevent it. It is significant that, with the one exception referred to in paragraph 9.13 above which was limited to Northern Ireland, there have been no such authorisations in the rest of the UK under TACT 2000. However, it is possible to envisage circumstances where there is a reasonable suspicion that an attack will take place at a major installation (eg an airport or city centre building) for an authorisation to be made limited to the surrounding area and for such period of time as is necessary for the threat to be addressed.
- 9.15 By contrast under the JSA, which specifically addresses the situation in Northern Ireland, the test is whether the senior police officer reasonably suspects that that the safety of people might be endangered by the use of munitions or wireless apparatus and that an authorisation is necessary to prevent it. This requires an assessment of whether there is a general threat rather than a threat of a specific act of terrorism. Regrettably there has been such a general threat ever since the authorisation process was put in place. The risk does not fluctuate at 14 day intervals or from district to district. In these circumstances, while recognising that the authorisation process is a necessary safeguard, that it works and is undertaken with great care on each occasion there is a clear case for the maximum period of an authorisation to be extended given the permanence of the residual DR terrorist threat in Northern Ireland. Such an extension would, of course, require a legislative amendment to the JSA and is therefore a matter for Parliament. One NGO expressed the view that they would be content see 3 month authorisations particularly if the PSNI put more information in the public domain about how these powers were used.

## 10. ROAD CLOSURES AND LAND REQUISITION

10.1 There are 3 powers in the JSA to close roads and requisition land -

- (a) if the Secretary of State considers it is necessary for the preservation of the peace or the maintenance of order she may authorise a person to take possession of land; to take steps to place buildings in a state of defence; to detain property and cause it to be destroyed or moved; to carry out works on such land; or to take any other action which interferes with a public right or with a private right of property (section 29);
- (b) if he considers it immediately necessary for the preservation of the peace or the maintenance of order a member of Her Majesty's forces on duty on duty or a police officer may wholly or partly close a road; divert it; prohibit or restrict the use of it; or prohibit or restrict the use of a waterway (section 30); and
- (c) if the Secretary of State considers it necessary for the preservation of the peace or the maintenance of order she may by order direct that a road may be closed in whole or part or diverted (section 32).

10.2 An agency agreement was signed on 27<sup>th</sup> June 2011 between the Secretary of State for Northern Ireland and the Minister of Justice (MoJ) which provides for the requisition power in section 29 and the road closure power in section 32 to be exercised by the devolved administration on behalf of the Secretary of State. This delegation of the power was made under section 28(1) of the NIA 1998 which provides for agency arrangements to be made between the Secretary of State and a Northern Ireland Department. It is important to note that:

- the DoJ may only exercise these powers in respect of devolved matters;
- the Secretary of State for Northern Ireland remains responsible for everything that is done on her behalf under this agreement; and
- the Agreement provides that the DoJ will make available to the Reviewer of the JSA all the records it keeps on the exercise of these powers on behalf of the Secretary of State. I have been fully briefed on these matters during the reporting period.

10.3 In October 2012 work was completed on the '*Procedural Guidance for Making Road Closures under Section 32 of the Justice and Security (Northern Ireland) Act 2007*'. The terms of that guidance are described in paragraphs 510 to 515 of my predecessor's 6<sup>th</sup> Report. His conclusions on road closures were:

- the use of these powers between 2009 and 2013 were an unwelcome reminder of continuing problems; the powers have so far been used sparingly and he expected to see continuing restraint;
- the use of the powers has been in connection with 3 distinct situations namely attacks on public buildings (eg law courts and police stations), public disorder (often connected to the parading season) and the

harassment of communities of different affinity living in close proximity to each other; and

- where such harassment is caused by exploiting narrow alleyways and footpaths the use of closure powers is entirely justified to give local residents some respite from constant intrusion – and he welcomed the greater involvement of Belfast City Council in taking forward locally based initiatives.

- 10.4 I visited many of these sites and road closures both in Derry/Londonderry and Belfast and was briefed fully by officials in the DoJ. Most of the road closures in Belfast are in the north and east of the city where there is the greatest interface. Some of the road closures are only at night and some are only temporary. I was told that a “fear element” still persists which prevents the removal of road closures (which would require both community and PSNI agreement). So road closures remain a regular feature of life particularly in Belfast.
- 10.5 Road closures are regularly reviewed. For example, the Shore Road in Ballykinler was closed in July 2010 at the request of the PSNI based on the risk of a Vehicle Borne Improvised Explosive Device (VBIED) being left close to the perimeter fence of the Ballykinler army base. Annual reviews of the closure were completed in August 2011, January 2013 and July 2014. The PSNI remained of the view that the road needed to remain closed as there was no intelligence to indicate a reduction in the threat to this facility. The closure will be reviewed next in late 2015.
- 10.6 Another example is Lower Chichester Street in Belfast adjoining the Law Courts. This was initially closed in 2010 at the request of the Northern Ireland Courts Service following an assessment of a threat against the Law Courts. This closure has caused access difficulties in relation to the Bar Library car park which was originally located on this street. The new access arrangements which had to be put in place resulted in additional security costs and compensation claims brought against the Secretary of State for Northern Ireland under section 38 and Schedule 4 of the JSA. This closure has therefore been under regular review but it has been assessed that the threat to the Law Courts complex in Belfast remains and that the road closure is proportionate and necessary in order to protect the court buildings.
- 10.7 On the other hand, sometimes the process of review can lead to a relaxing of the restrictions. For example, in Derry/Londonderry a partial closure of Asylum Road was carried out in December 2010 at the request of the PSNI. That road runs adjacent to one side of the Strand Road police station. The PSNI were concerned about a VBIED being positioned near the station (it had previously been the subject of an earlier VBIED attack which caused damage to both the police station and surrounding properties). During the review of the closure in June 2013, the PSNI advised that consideration was being given to pedestrianizing the area subject to closure in a way which would protect the station and improve the appearance of the area by removing the big black barriers. This scheme was completed in June 2014 and resulted in the lifting

of the closure order. Sometimes a road closure can just be improved. Physical change can also be made at an interface without affecting the legality of the road closure order. For example, the DOJ have sought to improve community safety through the installation of CCTV, improved street lighting and designing a new set of gates at Workman Avenue. These measures are being delivered, with community agreement, with the road closure remaining in place.

10.8 The following requisitions under section 29 of the JSA were carried out by the DoJ under the agency arrangements:

- between 6<sup>th</sup> June 2014 (0900 hours) and 9<sup>th</sup> June 2014 (2359 hours) a section of land at the apex of Crumlin Road and Woodvale Road, Belfast was requisitioned to enable an effective policing operation in the area surrounding the Tour of the North Parade;
- between 26<sup>th</sup> June 2014 (1500 hours) and 15<sup>th</sup> July 2014 (1000 hours) the Forthriver Business Park in the Springfield Road, Belfast was requisitioned to enable effective policing ahead of and immediately after the Whiterock parade and the 12<sup>th</sup> July parades; and
- between 7<sup>th</sup> July 2014 (1800 hours) and 16<sup>th</sup> July 2014 (2359 hours) a section of land at the apex of the Crumlin Road and Woodvale Road in Belfast was requisitioned to enable an effective policing operation of the 12<sup>th</sup> July parades in that area.

10.9 On 23<sup>rd</sup> May the DoJ made an order closing an alleyway to all vehicles and pedestrian traffic between Vulcan Gardens and Strand Walk in Belfast to allow it to be gated. This order will be lifted when Belfast City Council have put a gating order in place which is expected in the course of 2015.

10.10 The arrangements for the exercise of these powers are also kept under review given their importance to local communities. Consideration is being given to transferring the compensation functions under section 38 of, and Schedule 4 to, the JSA to the NIO. Historic road closures are also under review as are the agency arrangements. They have to be reviewed every 3 years and the current arrangements have been in place since June 2011.

10.11 Although some road closures cause inconvenience (eg the Lower Chichester Road closure) they are necessary for the preservation of peace and the maintenance of order and give a measure of comfort to local communities. The powers are exercised sparingly. They are kept under constant review and, where appropriate, they are lifted or modified. It is, however, clear that road closures will be required for the foreseeable future. It is also clear that there is no desire either within the PSNI or local communities for there to be more than are strictly required for the purpose for which they are intended.

## **11. PSNI RESPONSE TO RECOMMENDATIONS**

11.1 The PSNI is a highly monitored police service and subject to close scrutiny by a number of bodies. In assessing the operation of the powers in the JSA and TACT 2000 it is instructive to review how the PSNI have responded to

external scrutiny and the recommendations made either during or shortly before the year beginning August 1<sup>st</sup> 2013. In assessing the PSNI's response to external scrutiny I have considered the following:

- (a) the NIPB's Thematic Review of October 2013;
- (b) the Police Ombudsman's recommendations to the PSNI;
- (c) the CJINI's Review of June 2013;
- (d) CAJ's Report of November 2012 ("Still Part of Life Here");
- (e) HMIC's Report on the use of stop and search in England and Wales (July 2013).

11.2 The NIPB's Thematic Review of October 2013 made 11 recommendations regarding the stop and search powers under both the JSA and TACT 2000. The PSNI response is set out below:

- (a) Arrangements should be made to enable supervising and senior officers to examine records made of the powers to stop and search under sections 43, 43A and 47A of TACT 2000 according to the name of the officer and individual searched.

Response – This recommendation has been accepted.

- (b) The PSNI should have a clear instruction that the power to stop and search may not be used to confirm identity where that is known or to require a person to produce identification to confirm such identity.

Response – This recommendation has been accepted and the aide memoire has been amended.

- (c) District Commanders should be consulted before an authorisation is made under TACT 2000 or JSA and have an opportunity to influence the decision. The PSNI have had these arrangements in place since the authorisation regime began on 10<sup>th</sup> July 2012. Indeed, the arrangements go further than the recommendation so far as District Commanders are concerned.

Response – The PSNI regard the involvement of District Commanders as central to the authorisation process (see paragraph 9.8 above).

- (d) The PSNI should make the same arrangements as in paragraph (a) above for the exercise of stop and search powers under JSA.

Response – This recommendation has been accepted and the arrangements are in place.

- (e) The PSNI should develop guidance, after consultation, on the conduct of stop and search/question which sets out the range of cultural and religious issues which may arise during a search and what an officer should do when presented with language barriers or sensory impairment.

Response – PSNI estimate that these issues arise in only 1% of cases – 12 out of 1,270 incidents of stop, search and question in April-June 2014. PSNI will however develop written guidance in consultation with relevant stakeholders and this will be included in PSNI policy.

- (f) The PSNI should conduct a review, at least annually, of the ambit of the use of the powers to stop and search/question to ensure that the powers are being used in accordance with the law and not disproportionately. The senior officer responsible for the exercise of these powers should provide a briefing to the NIPB's Performance Committee and publish relevant statistics. It is the role of the Independent Reviewer to provide this reassurance. There is of course no reason, however, why the PSNI should not undertake their own review and, if necessary, be prepared to present its findings, together with that of the Independent Reviewer, to the Performance Committee of the PBNi or include it in the Chief Constable's Annual Review.

Response – The PSNI have accepted this recommendation.

- (g) The PSNI should consider how to include the community background of those stopped and searched under TACT 2000 and JSA.

Response – This recommendation and the PSNI response is discussed in Chapter 8 above.

- (h) The PSNI should develop and issue guidance to its officers on the use of stop and search powers involving children building on guidance already issued in G District.

Response – The PSNI have issued such guidance in an amendment to the PSNI Search Manual.

- (i) Each District Commander should, after consultation, devise a strategy for improved consultation, communication and community engagement in respect of its use of stop and search powers. Any such strategy should include an agreed mechanism for explaining the use of the powers to the community and answering its questions.

Response – This recommendation is accepted in principle. The issue is complicated by the fact that the number of Police and Community Safety Partnerships is being reduced from 26 to 11. There is also an issue about whether such a strategy should cover stops and searches under all local legislation (see paragraph 7.5) above.

- (j) The PSNI should include in each officer's performance review details of his or her exercise of stop and search powers including details of any substantiated complaints which should then be considered.

Response – Substantiated complaints are included in an officer's performance reviews. Although the thematic recommendations relate only to the JSA and TACT 2000 stop and search powers, PSNI

practice is to treat all complaints seriously and these are, as a matter of course, considered as part of any officer's performance review.

- (k) The PSNI should produce a standalone policy document setting out the framework for the use of stop and search powers which should contain clear guidance on the strategic and policy goals, on individual searches, the conduct of searches, record keeping and the responsibility of each officer to ensure compliance. The policy should include reference to the Codes of Practice and human rights principles.

Response – PSNI are currently working on what is envisaged will be an outward facing and publically accessible policy.

- 11.3 The Police Ombudsman made the following recommendations:
- 11.4 The PSNI do not record the grounds for the stop and search but rely on the fact of the authorisation as the basis for it (see Chapter 9 above). The Police Ombudsman found that this has led to numerous complaints by members of the public who think they are being harassed by the police. The Police Ombudsman thought that this omission could lead to potential abuse and considered that such a process was envisaged by paragraph 8.61 and 8.75 of the Code of Practice. A proper system of recording the rationale for the stop and search would assist officers in countering claims of harassment. This matter was raised in my predecessor's 6<sup>th</sup> Report at paragraph 336. He commented that it was important that the PSNI consider the Police Ombudsman's recommendation carefully. He recognised that implementing it might generate some work for the PSNI. He concluded that the drive for best practice "must be relentless".
- 11.5 The PSNI do not accept this recommendation – or more accurately, they take the view that the current practice is in accordance with the Police Ombudsman's recommendation. The PSNI draw a distinction between the **basis** for a search and the **grounds** for a search. While the PSNI is required to give a basis for the search they are not required to provide any grounds reasonable or otherwise. Accordingly the Code of Practice does not state that the basis must be one of those listed in paragraph 8.61 of the Code. The basis for the stop and search is read out to each person and, as required by paragraph 8.75(v) of the Code of Practice, this is recorded electronically. In response to the Police Ombudsman's recommendation, however, the basis for the use of the power of stop and search is now included in the printed copy of the search record which is made available to the individual.
- 11.6 The PSNI analysis on this point is sound. I comment elsewhere on the PSNI's reluctance to explain publicly how it uses these powers but I think, in this context, it would not be appropriate for a police officer to be required to articulate the reasons why a particular individual had been stopped and searched. I think it is sufficient that the individual is told that due to a current threat in the area and to protect public safety a stop and search authorisation has been granted. This wording is included on the printed record available at

a police station. The Police Ombudsman's recommendation does however highlight the need for greater transparency on the use of these powers. It would also be sensible for the standard form police record to state "Grounds (where appropriate)" to reflect the fact in some cases grounds need not be given.

11.7 The Police Ombudsman also recommended that there should be certain amendments to clarify the aide memoire which has been done. He also recommended that police officers should be reminded of the need to record the outcome of a search and that reporting of times should be accurate. The PSNI have responded positively to this recommendation and I am not aware of any inaccurate reporting by the PSNI during this reporting period.

11.8 The CJINI produced a Review of the criminal justice system's preparedness for exceptional or prolonged public order in June 2013 following the flags protest. That Review goes wider than the remit of this Report but it is worth noting that the CJINI recommended that the PSNI:

*"should conduct a more rigorous and comprehensive threat and risk assessment for public order which should include the wider strategic contexts..."*

The PSNI have developed a Public Order Strategic Threat and Risk Assessment in accordance with new national directions from the Association of Chief Police Officers. As part of this compilation they have conducted a service level public order debrief identifying best practice and areas for improvement which are being taken forward by the PSNI Public Order Strategic Board.

11.9 The CAJ (in response to the public consultation on the Code of Practice in March 2013) made a number of recommendations specifically in relation to stop and search powers. They included recommendations in relation to community monitoring (see Chapter 8 above) but also recommendations in relation to broader monitoring, desegregated statistics on arrests/charges and age; the practice of asking "any" question to ascertain the identity of a person as opposed to "any necessary" question; the separation of persons for questioning (in particular children); and the removal of the requirement that acquaintances be used as interpreters. Although CAJ is not a statutory agency the PSNI met with members to engage with them and explain the use of these powers. NIO officials have also met with and engaged with the CAJ. Many of the CAJ's recommendations are however already covered by the work being done to comply with the NIPB's Thematic Review of Stop and Search so have not gone by default.

11.10 Finally, the HMIC produced a Report in July 2013 on the use of stop and search powers covering the 43 police forces in England and Wales. It is instructive to note that nearly all the recommendations for improvement involved taking actions which had already been taken in Northern Ireland by the PSNI. To that extent the PSNI were – and are – ahead of the game nationally. For example the HMIC made the following recommendations:

- (a) Chief Constables should establish and improve monitoring of stop and search powers so that they can be satisfied that the powers are exercised lawfully and to prevent crime, catch criminals and maintain trust. The PSNI have an elaborate monitoring system in place through its PUMA database.
- (b) Chief Constables and the College of Policing should establish in the stop and search Authorised Professional Practice document a clear specification of what constitutes effective use of such powers together with guidance which should be compliant with the Code of Practice. The PSNI are committed to the adoption of national best practice.
- (c) Chief Constables should ensure that officers carrying out stop and search are supervised with particular attention being given to compliance with equality legislation. The Code of Practice of Practice provides for this and the PUMA BlackBerry system facilitates general supervision of the stop and search powers.
- (d) The College of Policing and Chief Constables should design national training requirements to improve the officers' use of Stop and Search powers including how best to use the powers; the impact that the use of the powers has on community confidence and trust in policing. The PSNI has a comprehensive training programme in this area together with refresher courses (see paragraph 5.6 to 5.7).
- (e) Chief Constables should ensure that officers and supervisors who need this training are required to complete it and their understanding of what they learn is tested. This is what the PSNI already do.
- (f) Chief Constables should ensure that relevant intelligence gleaned from stop and search encounters is gathered, promptly placed on their force intelligence systems and analysed to assist the broader crime fighting effort. The PSNI record all stops and search/question electronically on their PUMA BlackBerry system.
- (g) Chief Constables should, in consultation with elected local policing bodies, explain to the public the way that stop and search powers are used and making arrangements for stop and search records to be scrutinised by community representatives and this should be done in a way which involves those who are stopped and searched. The PSNI engage with the NIPB who hold them to account for the use of all stop and search powers. Every person who is stopped and searched by the PSNI must be given a URN and guidance on how to obtain a full copy of the record of the stop from the PSNI within 12 months.
- (h) The police should always consider complaints and they should be capable of being made quickly and easily. In Northern Ireland complaints can be made to the Police Ombudsman who has jurisdiction to consider any complaint made against the police. There is some scope for less formal resolution in appropriate cases (see paragraph 13.15 below).
- (i) Chief Constables should introduce a nationally agreed form (paper or electronic) for the recording of stop and search encounters in

accordance with the Code of Practice. PSNI currently deliver this electronically through their PUMA BlackBerry system.

- (j) Chief Constables should work with their elected policing bodies to find a better way of using technology to record relevant information about stop and search encounters which reveals how effectively and fairly the power is being used. Every PSNI officer has a BlackBerry to record every stop and search (each BlackBerry costs £1500 pounds) with the exception of part time officers. Part time officers complete very few stops and searches compared to regular officers. If they do they will make a record that will subsequently be transferred onto the electronic system and provide the person searched with information as to how they can get a copy of the record. Again, the PUMA system enables the PSNI to analyse the use of the JSA powers and provide accurate statistical information.

11.11 It is clear that the PSNI respond positively and effectively to recommendations from whatever source and, moreover, wish to be scrutinised closely in this way so as to receive constructive feedback. It is significant that their own public order debrief identifies best practice areas for improvement in public order policing following internal challenge. This shows that the PSNI understand the importance of the proper exercise of JSA powers and recognise the potential for continual improvement.

## **12. THE ARMED FORCES**

12.1 This Chapter deals specifically with the role of the armed forces in Northern Ireland and with two issues in particular – the exercise of specific powers in the JSA and the processing and handling of complaints against the armed forces.

### **Specific powers in JSA**

12.2 My predecessor in his 6<sup>th</sup> Report stated in paragraphs 705 and 706:

*“...The Government established in 2007 that the armed forces should act in a limited capacity in Northern Ireland, and always in support of the police. The conditions underpinning support were laid down under Operation Helvetic and have been maintained since then.*

*...In particular there is no role for the armed forces in public order situations, nor has it been suggested to me by anyone in recent years that they should have such a role”.*

12.3 These are the arrangements which are still in place today. However, the military retain specific powers under the JSA.

- (a) a member of Her Majesty’s forces on duty may stop a person for as long as is necessary to question him to ascertain his identity and movements or knowledge about a recent explosion or another recent

- incident endangering life or what he knows about a person killed or injured in a recent explosion or incident (section 21);
- (b) if a member of Her Majesty's forces on duty reasonably suspects that a person is committing, has committed or is about to commit any offence he may arrest that person without a warrant and detain him for a period not exceeding 4 hours; and may enter premises for this purpose and may seize and detain for a period not exceeding 4 hours anything which he reasonably suspects has been or is intended to be used in the commission of an offence relating to road closures or land acquisition (section 22);
  - (c) a member of Her Majesty's forces on duty may enter premises if he considers it necessary in the course of operations for the preservation of the peace or the maintenance of public order (section 23);
  - (d) a member of Her Majesty's forces on duty may stop and search a person in a public place for munitions or enter and search premises (including vehicles) for the purpose of ascertaining whether there are any munitions unlawfully on the premises or whether there is wireless telegraphy apparatus on the premises and he may also stop and search a person who is not in a public place and search him for those purposes (section 24/schedule 3);
  - (e) a member of Her Majesty's forces on duty who reasonably believes that a person is unlawfully detained in such circumstances that his life is in danger may enter and search any premises for the purpose of ascertaining whether the person is detained there (section 25);
  - (f) the power in section 24 and 25 above includes a power to search vehicles etc (section 26);
  - (g) a member of Her Majesty's forces on duty who performs a search under sections 24 to 26 above may examine documents or records to ascertain whether it contains information likely to be useful for terrorism (sections 27 and 28); and
  - (h) if a member of Her Majesty's forces considers it immediately necessary for the preservation of the peace or the maintenance of order he may wholly or partly close a road; divert it; prohibit or restrict the use of it; or prohibit or restrict the use of a waterway (section 30).

12.4 These are exceptional and intrusive powers given to the military because they address the specific security situation which exists in NI. However, the military have confirmed that they have not used these powers during this reporting period and they have not been used since the Act was passed. The military say that, despite the large number of call outs to dispose of explosive ordnance (see paragraph 12.5 below), circumstances have not arisen which have required the powers to be used. I am satisfied that the military should retain these powers even though they have not been used in recent times. The police are normally on the scene first and take the lead in dealing with public safety involving the disposal of explosive ordnance. However, there is no guarantee that this will always be the case and the military would be

dangerously exposed if they did not have these powers in reserve to deal with exceptional or unforeseen circumstances.

- 12.5 The level of explosive ordnance disposal in support of the PSNI is illustrated by the statistics in table 4 of [Annex E](#). The military were called out during the reporting period on 347 occasions – roughly one per day through out the 12 month period. These figures are broken down as follows:
- On 67 occasions to deal with an IED – typically an active device such as a pipe bomb.
  - On 22 occasions to deal with an explosion.
  - On 74 occasions to deal with a hoax – where an object is deliberately made to look like an IED, on occasions accompanied with a telephone warning confirmed by the police the purpose of which could potentially be the prelude to a “come on” attack.
  - On 2 occasions to deal with incendiary devices which were programmed to ignite and cause buildings to burn – these have traditionally been targeted at commercial premises.
  - On 123 occasions the call out, very often acting on intelligence, was to deal with the discovery of munitions or components parts.
  - On 59 occasions the call out was false – that is to say a member of the public may genuinely have reported a suspect object giving rise to genuine concern but where there has been no telephone call or attribution.

### **Processing and handling of complaints against the armed forces**

- 12.6 Under section 40(1)(b) of the JSA the person appointed as the Independent Reviewer must review the procedures adopted by the Brigadier<sup>16</sup> for receiving, investigating and responding to complaints. Section 40(6) provides that the Reviewer shall receive and investigate any representations about these procedures; may investigate the operation of those procedures in relation to a particular complaints or class of complaints; may require the Brigadier to review a particular case or class of complaint in which the Reviewer considers that any of the procedures have operated inadequately; and make recommendations to the Brigadier about inadequacies in those procedures.
- 12.7 Section 40(7) provides that the Brigadier must provide such information, disclose such documents and provide such assistance as the Reviewer may reasonably require.
- 12.8 I can confirm that I have not received any representations about these procedures. I have not had to require the Brigadier to review any cases or class of complaint. I can confirm that I have investigated the operation of

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<sup>16</sup> In January 2009 the post of General Officer Commanding Northern Ireland was abolished and subsumed under that of Commander 38 (Irish) Brigade, referred to as the ‘Brigadier’. This has brought no change to the relationship between the senior military commander in Northern Ireland and the reviewer.

these procedures and have been provided with all the case files relating to complaints which are discussed at paragraphs. 12.9 to 12.11 below.

12.9 I visited the staff at 38 (Irish) Brigade Headquarters in Thiepval Barracks who deal with complaints. All the complaints related to inconvenience, distress and on occasion economic damage allegedly caused by low flying aircraft. It is worth noting that in 2009 there were 110 complaints and by 2013 the number of complaints had fallen to 18. During the period covered by this Review there were only 5 complaints. The reason for this trend lies in the fact that there are far fewer military flights than in previous years. Indeed there are comparatively fewer complaints about low flying aircraft in Northern Ireland than in the rest of the UK. The complaints are normally disposed of in one of three ways:

- (a) By confirming that no military aircraft were active in that area at the relevant time. Detailed records are kept of all military flights. Where there is no record of a military flight in the area the explanation will normally be that the aircraft was a PSNI aircraft, an Electricity Board aircraft, corporate or private aircraft.
- (b) Sometimes the complaint is not pursued.
- (c) If 38 Brigade is satisfied that they were responsible the case is resolved locally or in cases of economic loss referred to the Ministry of Defence (MoD) in London to investigate arrange compensation as appropriate.

12.10 The details of the complaints dealt with in this period are as follows:

- (a) Complaint received on 20<sup>th</sup> August 2013 relating to an incident which had taken place on 19<sup>th</sup> June. Three Merlin helicopters flying in formation in Bangor after the G8 Conference had “spooked” the complainant’s cattle. After some initial delay within the system, the complaint was settled by the MoD Compensation Team in London.
- (b) Complaint received on 5<sup>th</sup> September 2013 from a farmer in County Antrim who reported that a Gazelle helicopter had flown low over the complainant’s farm distressing animals including cattle and horses being trained for show jumping. The MoD confirmed that the incident did involve military aircraft but the “complaint” was not pursued. It was resolved sufficiently by the confirming to the individual the details of the previously agreed local air traffic procedures to avoid overflight.
- (c) Complaint received on 22<sup>nd</sup> October 2013 from a farmer in the Ballymoney area of County Antrim. On investigation it appeared that there were no military aircraft in that area at the relevant time. The aircraft was probably a private helicopter. The outcome of the complaint was, however, that the armed forces gave an undertaking that there would be no low flying over the farm during the period when the potential for economic loss was greatest.
- (d) Complaint received on 25<sup>th</sup> November from a complainant in Donaghadee, County Down that low flying aircraft flew over a field

at the back of his property causing horses to run into an electric fence. The horses were wearing distinctive coats so the pilot should have been aware of the threat to them. The military's records showed that there were no military aircraft in the area at the relevant time. The reply to the complainant referred him to the Complaints Department of the Civil Aviation Authority (CAA) and that of the PSNI.

- (e) Complaint received on 27<sup>th</sup> November 2013 from the same complainant referred to in paragraph (c) above. The complaint related to the same matter except that on this occasion the incident occurred on 25<sup>th</sup> November 2013. The Civilian Representative (a legacy position from within the NIO retained to assist with military community engagement) visited the complainant on 12<sup>th</sup> December 2013 and explained that, although there had been a military aircraft in the area on the day in question, it did not fly at a height which would have caused problems for livestock. He also explained that Power NI<sup>17</sup> had helicopters operating in the area at the time checking power lines. It was noted that an undertaking had been given not to fly low in the area of the complainant's farm during certain times of the year. The complainant indicated that he did not wish to pursue the matter on this occasion. The incident had occurred outside the period during which the armed forces had agreed not to fly near the complainant's farm.

12.11 There have been 2 further complaints which have been dealt with outside the reporting period for this review but are mentioned here briefly for the sake of completeness. A complaint was received on 31<sup>st</sup> July 2014 from a horse owner in County Antrim who complained that there had been low flying activity over her property. A reply was sent explaining that the military's flight record showed that no military aircraft were in the area at the relevant time. The complainant was invited to re-direct her complaint to the CAA. The other complaint was received on 14<sup>th</sup> August 2014 from the complainant referred to in paragraph 12.9 (c) above. It was the same complaint as had been made on the two previous occasions but the military's records showed that there were no military aircraft in the area at the relevant time. Further enquiries revealed that this was a PSNI helicopter involved in a missing person search. The complainant was informed of this fact and it was suggested that he ask the PSNI to agree to place an "avoid" over his farm during the relevant period.

12.12 The military understand the sensitivities of low flying aircraft in Northern Ireland and treat complaints about them flexibly and seriously. They are aware of the impact that such activity can have on a rural community. The complaints have been dealt with promptly and there was nothing in the files which suggested that the complaints had not been given the attention they merit or that the individual complainants were dissatisfied with the military's handling of their complaints.

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<sup>17</sup> Power NI is Northern Ireland's electricity supplier.

### 13. SUMMARY OF VIEWS EXPRESSED BY CONSULTEES

13.1 This Chapter summarises the views of those I met and talked to in the course of preparing this Report. They all emerged from discussions about the JSA and are relevant to the use of those powers but some observations have a wider significance and touch on general policing issues. It is important to set out these views for a number of reasons. First, if confidence is to be maintained in the use of the JSA powers it is important that the views of those affected by them are recorded and placed in the public domain. Secondly, although I reached my conclusions independently and did not agree with some of these observations, many of them did influence the content of this Report. Thirdly, it is significant that a number of common themes emerged, often from disparate sources, which should be a cause for reflection even if some of the individual comments underlying them may be unfair, harsh or unsubstantiated. In particular if confidence in policing is to be retained and enhanced it is important to know the mood of the community because that is the reality which needs to be addressed.

#### Confidence in PSNI policing

13.2 It is clear that, despite some dissenting voices, the PSNI command a high reputation for their contribution on behalf of all sides of the community in Northern Ireland. Many speakers at the NIPB's 'Confidence in Policing' Conference in March 2014 praised the PSNI's professionalism in difficult circumstances. These included the NIPB Chair, the MoJ and the Police Ombudsman. I also noted that this view was shared by many community leaders who represent different traditions in Northern Ireland. The DoJ published a paper entitled "*Perceptions of Policing, Justice and Organised Crime: Findings from the 2011/12 and 2012/13 Northern Ireland Crime Surveys*"<sup>18</sup> in June 2014 which said that:

*"...while the NICS 2012/13 findings indicate that the level of public confidence in the police and police accountability arrangements (80%) remained unchanged since 2011/12 (81%), the confidence rating has shown an overall increase over the past decade, comparing favourably with NICS 2003/04 when a rate of 73% was observed".*

In particular, the CJINI referred in its Report of June 2013 to the

*"...context of the PSNI being recognised as a world leader in the field of policing disorder together with significant operational delivery and success in some of the most challenging circumstances conceivable".*

The Chief Constable's Report to the Board on 2<sup>nd</sup> October 2014 stated that confidence in the PSNI continues to rise and currently sits at 67.1% - a 2% increase on the same period last year.

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<sup>18</sup> <http://www.dojni.gov.uk/index/statistics-research/stats-research-publications/northern-ireland-crime-survey-s-r/perceptions-of-policing-justice-and-organised-crime-findings-from-the-2011-12-and-2012-13-northern-ireland-crime-surveys.pdf>

## Factors which undermine confidence

- 13.3 Confidence in policing has fallen throughout the UK in recent times on account of a number of well publicised events which are outside the remit of this Report. The PSNI have also come under scrutiny during this reporting period for matters which are similarly outside the scope of this review. Extraneous factors can operate to influence attitudes to public order policing regardless of how properly and professionally it is performed. These factors, combined with Northern Ireland's recent history and the fact that, there has been an historic lack of trust in policing, produce a situation where parts of the community, including many young people, are wary of and resent any contact with the police. In these circumstances it is a challenge to gain and retain the confidence of every part of the community. However, it is important to listen to and consider what the community has to say.
- 13.4 There are some matters specific to public order policing which adversely affect confidence in the exercise of the powers and should be addressed.
- 13.5 First, there is perceived inconsistency of approach. I heard it said many times that confidence in policing is hard won and easily lost. More than one person operating at community level told me that the progress and hard work of months can unravel in minutes if a single PSNI intervention goes wrong. At the NIPB's Conference a comment was made that the activities of one or two officers in one policing district had undermined confidence in the whole PSNI. The then Chief Constable said at the same conference, "if one incident goes wrong it takes 14 good incidents to redress the balance". This could be said of all police forces, services and agencies which have contact with the public but in Northern Ireland it has a disproportionate effect of reinforcing antipathy towards the PSNI and reinforcing community divisions. Notwithstanding the Court of Appeal judgment in **DB** (see paragraphs 6.13 to 6.18 above) there remains considerable concern about what was perceived by many residents of East Belfast to be inconsistent policing of the flags protest in 2013.
- 13.6 Secondly, at community level there were some who were – and wanted to be – supportive of the police but who found their contact relationships with them were mixed. There were examples of excellent working relationships with local police stations which were not replicated when the relationship was with officers from outside the local community. The comment was made that the PSNI were not a "homogenous" body. In particular a contrast was made between the relationships with the local police and with the TSG. It is in the nature of part of the TSG's role that on occasion they have to police in a robust fashion. One senior police officer recognised that there was "some scope for soft skill work".
- 13.7 Thirdly, the PSNI's relationship with young people could be improved. I met young people from both the CNR and PUL sections of the community in North, West and East Belfast. The views they form of the PSNI at this stage are likely to be taken into adulthood. It is vital that the next generation have confidence in the PSNI. One speaker at the NIPB's Conference said that it was important not to lose another generation to criminality. Another

contributor said that some PSNI officers were abusive and cheeky to young people and I heard other reports to that effect from people on both sides of the community. Some thought that the initial contact on the street was “oppressive and disrespectful”. One community worker said that, although there was less violence on the streets, young people were still having to endure very poor social conditions. Consequently some were finding an identity by attaching themselves to criminal gangs and earning money, with the approval of their families, by dealing in drugs. Some young people said they threw missiles at the police “for the craic”. Community leaders on both sides of the community wanted the PSNI to take a more proactive approach to drug dealing. They saw the formal criminal processes as too slow and cumbersome. However, at the same time, they did not want to see young people criminalised unnecessarily and stopped and searched “for standing on a street corner”. One observer said that in West Belfast there were no other places for young people to congregate – but the stop and search powers should not be used as a form of “social control” or to “harass”. It was said that while there were improvements following the Patten Report<sup>19</sup> (for example on the name of the police force and its symbols, training and structures) it “did not do much about attitudes”. It is significant that the DoJ publication of June 2014 referred to in paragraph 8.8 above reported that some of the lowest levels of confidence in policing were observed in areas of high anti-social behaviour and deprivation.

- 13.8 One young person said that if the PSNI had a good attitude towards them then “we would have a good attitude”. They commented on what they perceived to be the unfairness and arbitrariness of the arrests in their community following the prolonged flags protests in 2013. One young person said that a police officer should have gone incognito to the protest and felt what it was like “to be arrested for doing nothing”. They felt that there was inconsistency in sentencing following those protests and the PSNI had gone for “easy targets”. Some were concerned that photographs of young people were published by the police even though they were under 18. They also commented that it was not always clear why they were being stopped by police officers. The PSNI say that during the flags protests they explained what they were doing at every stage - both strategically and locally. It was clear that some of the encounters with the police fell short of a formal stop under the JSA because no record was kept. However, in these informal encounters with the police they said that they were not treated with respect. More than one community worker said that the PSNI was a “middle class” service which did not empathise with working class young people. Another young person said that the police “think they are better than us and are above the law”. A comment was made that NGOs were not interested in “Loyalist issues and complaints”. The PSNI did not recruit working class people

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<sup>19</sup> The Independent Commission on Policing for Northern Ireland was established in 1998 as part of the Belfast Agreement. It was chaired by the conservative politician Chris Patten. On 9 September 1999 the Commission produced its report entitled ‘A New Beginning: Policing in Northern Ireland’ better known as the ‘Patten Report’.

because they did not attain the necessary qualifications and this was another factor which alienated young people from the police. One speaker at the NIPB's Conference concluded, by saying that "we need to revisit how we treat young people". One senior public figure suggested that the young generation were becoming more sectarian than in the recent past. If true that is indeed a concern.

13.9 Fourthly, there have been a number of press reports which describe allegedly heavy handed and inappropriate use by the police of their stop and search powers. When I have raised these issues with the police very often a different picture emerges. The PSNI told me that there was a corporate reluctance to feed the publicity machine on stop and search. The number and tenor of media reports of police misconduct made it extremely challenging to rebut allegations on every occasion. I was told it was also very challenging to engage media with "good stories" about the police. If so, then some media stories about police misconduct will, inevitably, go unchallenged. The answer to this, in the context of the JSA, is to place as much information as possible in the public domain about the use of powers.

13.10 It is clear that the legacy of the flags protests in 2013 still lingers and this has consequences for confidence in policing in 2014. As was noted in paragraph 6.17 above the Court of Appeal held that the PSNI had acted appropriately, within its operational discretion, and had not misunderstood its legal obligations. However, despite that legal vindication, many people have told me that the PSNI response should have been sharper and more pro-active and that these events were predictable and should have been anticipated once Belfast City Council had taken its decision. Some commentators have suggested there was some disagreement within the PSNI about the tactics to be deployed. There was one suggestion that PSNI's commitment to the HRA 1998 had become "an excuse to do nothing" in the face of an unlawful protest. Many people acquired a criminal record as a result of that operation and the protracted nature of the protests exacerbated community tensions. I have been struck by how resentment over the handling of those protests persists (particularly amongst young people). To an outside observer there is a marked contrast between the policing of the flags protests in 2013 and of the parades during the parading season in 2014. In the latter case, the Parades Commission had made its determinations in relation to parades and the conditions which had to be observed; they were placed in the public domain; the PSNI made it clear that the conditions would be enforced and community leaders worked hard to ensure that there was compliance on the streets. There were no misunderstandings or surprises and everyone knew where they stood. In the former case there were no ground rules other than the general criminal and public order law and little opportunity to plan or consult. This just serves to illustrate the difficulty of policing spontaneous public disorder on a large scale.

13.11 The issue of resourcing is outside the terms of this Review. However in total terms in year budget cuts of around 7% (£51.4m) have been applied to the

PSNI Resource DEL budget (Departmental Expenditure Limits). Additionally the target for efficiency savings in 2014/15 is £47.6m, and these are expected to be delivered in addition to the imposed in year budget cuts. Together these amount to almost £100m. Following the recent publication of the Draft Budget, the financial outlook for 2015-16 also looks extremely challenging. A budget cut for PSNI in the region of 10% is likely. This amounts to over £70m in cuts and will alter the shape and nature of the services PSNI can provide. In the context of the use of the JSA powers some “improvements” will come at a cost. Community monitoring would add an extra administrative burden on the PSNI. Moreover, the introduction of body worn cameras to reassure the public and generate greater transparency is estimated to involve an initial capital investment of between £1.15m and £1.65m followed by revenue costs of £480k spread over 4 years. The cost of the current limited pilot is approximately £40,000 for equipment, implementation and operating costs. Any recommendation relating to the improved use of JSA powers which has a financial cost must be seen against the background of this challenging financial position.

### **Factors which generate confidence**

- 13.12 There are number of factors which generate confidence in policing.
- 13.13 First, it is clear that effective community involvement is key. It was described by one senior police officer as “the heart and muscle” of good policing. On my trip to Derry/Londonderry I met community leaders who explained that their initiative had been born in adversity when in the late 1990s riots in the City centre had caused £5m of damage. Business, community groups, residents from both sides of the community worked together and in conjunction with the police to secure improvements. Key to success was constant communication “365 days a year” and the developing of good personal relations with the local police. Diversionary tactics were employed to ensure that young people had other things to do at critical times and the Festival of Free Derry was established in the Bogside at Free Derry Corner to coincide with the Apprentice Boys’ parade. The PSNI consulted community leaders, where appropriate, before making operational decisions. It was also clear that churches can play an important role in bringing communities together. I was told that whatever is happening at the political level “90% of civil society is moving on”. Indeed, I heard from many sources that leadership shown at local level was key to improvements in relations with the PSNI. I was told that this was not a blueprint for other parts of Northern Ireland. It was necessary for local communities to “work it out for themselves”. To ensure success all those involved had to “keep their feet on the pedal all the time”. This type of initiative generated trust and prevented public disorder and police engagement on the streets.
- 13.14 Secondly, small gestures generate confidence. I was given examples of occasions when the police accepted the advice of community leaders to stay away from a particular event and to police it discreetly from a distance. A decision by the PSNI not to wear handguns when attending meetings with

local people was another example. A senior police officer told me that being accessible to community leaders, being transparent, courteous and punctual are all factors which generate confidence and trust.

- 13.15 Thirdly, representatives from both sides of the community commented on the importance of a prompt apology from the police if an incident had not gone to plan or not been handled well. I was given an example of where this happened when the wrong house had been entered and searched. I was given another example of how this happened after a TSG search of premises occupied by a single mother and her child. The local community leader said that, following a telephone call to a local PSNI contact, an apology was made and that brought the matter to an end. He did not want to complain to the Police Ombudsman and was satisfied by the prompt, personal and informal recognition that a mistake had been made. This approach generates confidence and trust but also adds credibility when the PSNI feel it necessary to defend their actions against unfair attacks. This policy was adopted in Derry /Londonderry in recent years and community leaders I met praised its beneficial legacy. However, it is important that the police do not to give the impression of interfering with the individual's right to complain to the Police Ombudsman.
- 13.16 Fourthly, I heard of many examples where the creation over time of good human relations between community leaders from different traditions and between those community leaders and the PSNI had the beneficial effect of building trust and mutual confidence which was of great assistance to the wider community when tensions arose. I was given examples of how relations took a step backwards when individual police officers moved on. This just illustrates what is well understood - namely that good policing at a local level depends on the establishment and maintenance of strong personal relations within the community.
- 13.17 The confidence issue is not just a matter of confidence in the police. The PSNI must have confidence in those in the community with whom they have regular contact. Deliberately undermining the police at every opportunity does not serve the community well in the long term. As Sir Keir Starmer said at the NIPB's Conference, a society that wants good policing must champion it. He said that what was needed was constructive criticism not what he called "grandstanding criticism". It is also important that the police have confidence in themselves if they are to perform at their best. A number of observers have commented that recent events have undermined PSNI self-confidence. The Community Relations Council released a report in March 2014 called '*The Northern Ireland Peace Monitoring Report - Number Three*'<sup>20</sup> reported that "front line police have been the human shock absorbers for failures elsewhere". It went on to say that:

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<sup>20</sup> Community Relations Council Report <http://www.community-relations.org.uk/wp-content/uploads/2013/11/Peace-Monitoring-Report-2014.pdf>

*“violence against the police has become once more accepted as part of life in Northern Ireland, whether in the form of an under-car booby trap bomb planted by dissident republicans or street violence by loyalist protesters. Politicians may condemn it in the abstract but seldom challenge their own constituencies. Yet if the human consequence is experienced by the police, in political terms it is the rule of law which suffers”.*

### **The impact of the Human Rights Act 1998**

13.18 In the context of the exercise of the JSA and public order policing, the PSNI have embraced the HRA 1998 and incorporated its standards into their working methods. There was a consensus at the NIPB's Conference that the HRA 1998 had provided an excellent legal framework for police practice, operations and ethos. It was recognised that good policing was about keeping people safe and protecting the human rights of all members of the community. With that obligation came the need for full accountability to the community via the Policing Board. That guarantee of accountability was said to be key to the improvement of the PSNI. The embedding of the HRA 1998 into police practice is probably unique to the PSNI and its monitoring by statute through the NIPB was certainly a world “first”. The NIPB published a Thematic Review on the use of stop and search and stop and question under TACT 2000 and the JSA and made 11 recommendations all of which, with one exception, were accepted by the PSNI (see paragraph 11.2 above). Police officers at all levels said that the HRA 1998 has been a useful tool in the context of public order policing.

### **Technology**

13.19 Technology has changed public order policing in a number of ways. There are now “citizen journalists” and “keyboard warriors” who record contact with the police in a public place and transmit it instantly via social media often in pursuit of an agenda directed against the police. Social media also enables groups of young people to arrange to congregate quite spontaneously at certain locations, often at the interface. They are sufficiently streetwise to do this at times when there is a handover of shifts at the local police station when the ability of the police to respond quickly is temporarily reduced. On the other hand, there is evidence that body worn cameras used by the police in the stop and search process (see paragraph 7.26 to 7.29) can have the effect of improving behaviour both on the part of the PSNI and the person who is being searched. Also, the PSNI's PUMA BlackBerry system enables officers to record electronically all relevant details of stops and searches which can then be stored centrally and are available to all supervising officers so all such activity can be monitored on the basis of a comprehensive record (paragraph 5.8 to 5.9).

### **The demands on the PSNI**

13.20 There was a consensus that the PSNI is stretched in terms of its ability to handle public order issues. This has an impact on the morale of the police and

the confidence that the community has in its ability to cope with widespread public disorder and the terrorist threat. I heard many times that the current staff levels of 6,808 are already below the 7,500 recommended by the Patten Report. That recommendation was on the basis that the security situation had been resolved. However, the threat assessment remains at SEVERE and the PSNI are facing heavy reductions to their budget (see paragraph 13.11). The situation at the Ardoyne/Twaddell interface costs £12m a year to police. It has to be policed every day of the year and this is a major diversion of opportunity costs and is expensive in terms of overtime. The PFNI commented that “the shortage of resources available to the PSNI to overcome terrorism is now acute” and “there is a very real prospect of an insufficient response to DR terrorism triggering a violent reaction from loyalist paramilitaries”. A frequent comment was that the police were “tired”. There was a limit to what could be achieved through improved deployment, 12 hour shifts, cancelled rest days, community engagement and reorganisation of priorities. It was important that the mutual assistance arrangements whereby police reinforcements were made available from the rest of the UK were robust. Resources are outside the scope of this report but concerns were repeatedly expressed that the budget reductions facing the PSNI will have an impact on policing generally including public order policing and the way in which the JSA powers are used.

### **The wider context**

13.21 Many people commented that the focus should not just be on the PSNI. The CJINI in its Review of the Criminal Justice System’s preparedness for exceptional or prolonged public disorder reported that “the other core agencies of the criminal justice system such as the Public Prosecution Service and the Northern Ireland Courts and Tribunals Service have a key role to play in the overall management and confidence issues. The speed of the criminal justice system’s response and the need for both the public and offenders to see the consequences much more swiftly are central to that confidence”. Other points to emerge were that there were other priorities for the police including hate crimes, domestic violence, sex abuse, child exploitation and cybercrime. Moreover, it was not the responsibility of the police to solve political and social issues which were the responsibility of other agencies including the devolved government, housing, social services and local authorities.

### **Consensus that the JSA 2007 powers are still needed**

13.22 In the many discussions I had with people from all walks of life and in all parts of the community, nobody put forward the view that the powers in the JSA are no longer needed. The legal challenges described in Chapter 5 were serious in their intent – but do not go to the need for such powers but rather the concern that they be sufficiently circumscribed. Many expressed some concern about the manner in which those powers were exercised and some young people could not understand why they had been stopped when in their view they were doing nothing wrong.

13.23 The POFA 2012 places an obligation on each member of the Cabinet to review powers of entry for which they are responsible to determine whether they can be repealed or amended or whether they need more safeguards. The NIO produced a '*Powers of Entry Review*' report<sup>21</sup> which was laid before Parliament under a Ministerial Statement issued by Lord Bates<sup>22</sup>. The Secretary of State has reviewed the 4 powers of entry in the JSA (namely, section 22, section 23, section 24/schedule 3 (paragraph 2) and section 25). Her conclusion was that these powers remain necessary because of the security situation in Northern Ireland and that the safeguards in the JSA were adequate.

## 14. CONCLUSION

14.1 Policing is a highly sensitive issue in Northern Ireland. The PSNI have changed and progressed following Patten and this achievement is widely recognised. The Sinn Féin Bulletin<sup>23</sup> in the summer of 2014 recognised that huge strides had been made in policing over the past 15 years. The use of the JSA powers is a very visible police activity. In particular the power to stop and search without suspicion is highly intrusive. The PSNI understand this and have responded positively to recommendations for improvement from a variety of sources.

14.2 The PSNI operate in a unique policing environment. The security threat has remained at SEVERE for the past 5 years. Many lives have been saved by the hard work and dedication of the PSNI supported by the military. Parliament has given the PSNI particular powers in the JSA to counter this threat. There are constant public order challenges. PSNI officers are targeted both on and off duty. Routine patrol patterns are liable to be exploited by DR terrorists. Routine requests for police assistance (eg burglary) have to be assessed against the background of potential "come on" traps where police are lured into exposed and vulnerable situations to attempt to cause them harm. Personal protection arrangements for the police are at a level which does not exist in the rest of the UK and 700 police officers were injured in 2013 alone (10% of all police officers). Officers in the PSNI are routinely armed and are protected by ballistic body armour. Police Stations are protected by armed security and in some areas additional crews are sent on patrol at night just for the purpose of protecting the police. The PSNI operate in a jurisdiction where alternatives to policing have traditionally been provided by armed paramilitary groups and this still continues. Finally, the PSNI are currently under huge budgetary pressure.

14.3 In these circumstances, it is very important that the powers in the JSA be retained. I did not meet anyone who said the powers should go. The concerns

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<sup>21</sup> NIO Report: [www.gov.uk/government/publications/northern-ireland-office-powers-of-entry-review](http://www.gov.uk/government/publications/northern-ireland-office-powers-of-entry-review)

<sup>22</sup> Lord Bates statement: [www.gov.uk/government/news/review-proposes-to-remove-hundreds-of-unnecessary-powers-of-entry](http://www.gov.uk/government/news/review-proposes-to-remove-hundreds-of-unnecessary-powers-of-entry)

<sup>23</sup> The Sinn Féin Party newspaper

that were expressed related to the manner in which they were occasionally used; the perception that they were used unfairly against one community or the other; and the lack of transparency about how and why the powers were used. It is reassuring that the powers have been used less in this year and the police have tried to demonstrate that they are used in a proportionate and non-discriminatory way. There are appropriate safeguards in the JSA and the Code of Practice and appropriate redress is available if those affected wish to complain about the use of the powers. The regime in the JSA has been challenged in the courts and has been found to be compliant with the ECHR. There was an interesting contrast between the successful policing of this year's parades where there was certainty about the policing arrangements; proactive planning was possible; and everyone knew where they stood. There is a perception in some quarters that this did not happen with the flags protest in 2013. That concern (whether or not well founded) is a legacy which lingers and was raised repeatedly in discussions with the PUL community. It remains, rightly or wrongly, a source of some resentment. There are areas where it would be good to see progress - greater transparency and explanation of the use of, in particular, stop and search powers; the introduction of body worn cameras and improved relations with young people. However, the police could not discharge their duty of protecting people, particularly in the current environment, in the absence of the JSA powers.

**ACRONYMS AND GLOSSARY**

ACC – Assistant Chief Constable

CAA – Civil Aviation Authority

CAJ – Committee on the Administration of Justice

CJINI – Criminal Justice Inspectorate Northern Ireland

CNR – Catholic/Nationalist/Republican

Code of Practice – Code of Practice issued under section 34 of the JSA

DoJ – Department of Justice

DR – Dissident Republican

ECHR – European Convention on Human Rights

HMIC – Her Majesty’s Inspectorate of Constabulary

HRA 1998 – Human Rights Act 1998

IED – Improvised Explosive Device

JSA – Justice and Security (Northern Ireland) Act 2007

MI5 – Security Service

MLA – Member of the Legislative Assembly

MoJ – Minister of Justice

NGO – Non Governmental Organisation

NIA 1998 – Northern Ireland Act 1998

NICS – Northern Ireland Crime Survey

NIO – Northern Ireland Office

NIPB – Northern Ireland Policing Board

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

Patten Report – Report of the Independent Commission on Policing for Northern Ireland (1999)

POFA 2012 – Protection of Freedoms Act 2012

PFNI – Police Federation for Northern Ireland

Police Ombudsman – Police Ombudsman for Northern Ireland

P(NI)A 2000 – Police (Northern Ireland) Act 2000

PP (NI) A 1998 – Public Processions (Northern Ireland) Act 1998

PSNI – Police Service of Northern Ireland

PUL – Protestant/Unionist/Loyalist

TACT 2000 – The Terrorism Act 2000

TSG – Tactical Support Group

URN – Unique Reference Number

VBIED – Vehicle Borne Improvised Explosive Device

**ORGANISATIONS AND INDIVIDUALS CONSULTED OR SUBMITTING EVIDENCE**

Alliance Party

Attorney General for Northern Ireland

British Irish Intergovernmental Secretariat

Charter NI

Church leaders

Committee for the Administration of Justice

Cressida Dick (Assistant Commissioner Metropolitan Police)

City Centre Initiative (Derry/Londonderry)

Criminal Justice Inspectorate Northern Ireland

David Anderson QC (Independent Reviewer of Terrorism Legislation)

David Ford MLA (Minister of Justice)

Department of Justice officials

Director of Public Prosecutions (NI)

DUP

Inter-Action (Belfast)

HQ (38) Irish Brigade

Ivan Lewis MP (Labour Opposition Spokesman on Northern Ireland)

Lord Chief Justice

Lord Carlile QC CBE (Independent Reviewer of National Security Arrangements in Northern Ireland).

MI5

Northern Ireland Alternatives

Northern Ireland Human Rights Commission

Northern Ireland Office officials

Northern Ireland Policing Board

Northern Ireland Policing Board Performance Committee

Parades Commission Northern Ireland

Parliamentary Under-Secretary of State

Peace and Reconciliation Group (Derry/Londonderry)  
Police Federation for Northern Ireland<sup>24</sup>  
Police Ombudsman Northern Ireland  
Police Superintendents Association of Northern Ireland  
Professor Jonny Byrne, University of Jordanstown  
Police Service of Northern Ireland  
PUP  
Rights Watch (UK)  
Safer Neighbourhoods  
SDLP  
Sinn Féin  
Sir Keir Starmer QC  
Stopwatch (London)  
Ulster Political Research Group  
Ulster Unionist Party<sup>25</sup>

The following were invited to submit comments but did not respond –

Amnesty International

Justice

Liberty

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<sup>24</sup> The Police Federation of Northern Ireland submitted written evidence.

<sup>25</sup> The Ulster Unionist Party submitted written comments.

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

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

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

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

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

## Statements by the Secretary of State

**29 January 2014**

**The Secretary of State for Northern Ireland (Theresa Villiers):** This is the fifth bi-annual update to the House on the security situation in Northern Ireland and my third such statement as Secretary of State for Northern Ireland.

### **Overall Situation**

The latter half of 2013 saw persistent planning and targeting by terrorists, evidenced by a significant number of attacks with lethal intent taking place in the weeks before Christmas. Many more such attempts have been disrupted. Overall, the number of national security attacks remains broadly comparable with previous years. The threat continues to be tackled and suppressed and there have been some significant successes by the security forces which should bring both immediate and longer term benefits.

While we must remain vigilant about the threat from terrorism in Northern Ireland we must not allow it to overshadow the many positives to emerge from 2013, not least the successful hosting of both the G8 Summit and the World Police and Fire Games. That such high profile events passed without any significant security incidents taking place is a major achievement.

High levels of cross border police cooperation continue to be a crucial part of efforts to combat terrorism and keep people in Northern Ireland safe. Working relationships between PSNI and An Garda Síochána are excellent. At a meeting in December between Commissioner Martin Callinan and Chief Constable Matt Baggott, along with Justice Ministers Alan Shatter and David Ford, it was agreed that consideration would be given to whether there are ways in which cooperation between the two police services could be further strengthened and updated.

### **Security Situation in Northern Ireland**

The threat level in Northern Ireland and Great Britain has remained unchanged since my last statement to Parliament in July 2013. All threat levels, of course, are kept under constant review.

There were 30 national security attacks in Northern Ireland during 2013, over half of which took place between October and December. Had it not been for the tremendous efforts of the PSNI and their security partners in disrupting and preventing further attacks, this figure would undoubtedly have been higher. I thank the PSNI, MI5 and An Garda Síochána (AGS), for their relentless and effective pursuit of the very small, but violent, minority who favour terrorism over democracy. I also wish to pay tribute to Army Technical Officers whose expertise and courage has undoubtedly prevented injury in recent months.

As in previous years, attacks have varied in their level of sophistication. Police officers and military personnel have continued to be primary targets for dissident groups. PSNI officers in particular have faced relentless targeting in the last six months. In addition to pipe bombs attacks against police patrols and devices sent by post to senior officers, in December PSNI officers narrowly avoided injury after their vehicles were fired upon in north Belfast. Three men were subsequently arrested and charged in connection with this incident.

There have also been a number of significant attacks on commercial targets. In November, a taxi was hijacked in the Ardoyne area of North Belfast and its driver forced to drive to Belfast City Centre with an IED on board. The device later partially exploded close to the Victoria Square shopping centre. Had it functioned fully, it would have caused significant damage and injury.

Only weeks later an IED was placed in Belfast's Cathedral Quarter, an area popular for its bars and restaurants and busy with those celebrating the festive season. Although only a small device, an erroneous warning about its location meant that it exploded before the police could fully clear the area. Fortunately, due to the vigilance of the public and the prompt response of the PSNI, there were no injuries.

These indiscriminate and reckless attempts to intimidate and to damage Belfast's thriving retail and entertainment sectors highlighted a complete disregard of terrorist groups for the people and businesses at the forefront of Northern Ireland's economic recovery. The attacks were not, however, successful and the resilience displayed by both individuals and businesses in the face of this disruption stood in stark contrast to the cowardice of those responsible for the attacks.

In September, a viable explosive device which could have killed or caused serious injury was discovered close to a special school in Lurgan. In October, postal workers and public officials were exposed to potential injury after letter bombs were sent to senior police officers and public figures. These were intercepted before they could cause injury but, once again, these acts demonstrate a blatant disregard for the safety of people working in the community.

Security alerts, hoaxes and so called "come-on" attacks also caused disruption to many in the second half of 2013, including through road and rail closures and evacuations. For the individuals, families, communities, commuters and businesses affected, this is frustrating and hugely inconvenient.

### **Successes and disruptions**

The PSNI and MI5 continue to devote all the resources required to tackle the threat and bring those responsible for these attacks to justice. Since my last statement, there have been a number of significant disruptions, arrests and convictions as well as seizures of arms and IED components:

- In December, following a PSNI/MI5 operation, three individuals were charged with a number of serious terrorist offences: conspiracy to murder members of the security forces, conspiracy to possess explosives with intent to endanger life and membership of the IRA. Two of the three individuals were further charged with aiding and abetting the attempted murder of police

officers on 5 December 2013 and with aiding and abetting the possession of firearms on the same date.

- An operation in Forkhill, south Armagh conducted jointly by PSNI and An Garda Síochána on 18 December led to a significant discovery of home-made explosives and equipment for bomb-making and highlighted the importance and value of joint working with colleagues in the Republic of Ireland. I congratulate the PSNI and AGS on their successes and look forward to further such co-operation.
- A number of dissidents have also been found guilty of offences related to terrorist activity. In January, Gavin Coyle was sentenced to a total of 10 years after admitting having guns and explosives with intent to endanger life and being a member of a dissident republican organisation. It followed the discovery in 2011 of the arms and explosives which included assault rifles and Semtex. The operation undoubtedly saved lives and now those involved are being held to account through the justice system. In a separate case, four other men caught with guns and ammunition in Omagh were sentenced to a total of 36 years.

### **Dissident Republican Paramilitary Groups**

The so-called 'new IRA' has continued to pose a significant threat over the last six months and has repeatedly demonstrated its lethal intent. In the north west, the group has been responsible for a number of low level attacks as well as an attempted mortar attack on a PSNI station. In Belfast they have claimed responsibility for the murder of Kevin Kearney, and conducted a shooting attack against police. However, the actions of this group have been severely hampered by the security forces. Arrests, searches, and seizures of terrorist materiel both north and south of the border have slowed the group's development and prevented many more attacks. Security force successes have constrained the threat posed by this group.

Oglaigh na hEireann (ONH) was particularly active in the latter half of 2013, demonstrating both its recklessness and its lethal intent with IED attacks against commercial premises in Belfast, and shooting attacks an IEDs against PSNI officers. The group has claimed responsibility for three particularly significant attacks: a vehicle borne IED which partially functioned close to Victoria Square shopping centre; a small IED which functioned in the Cathedral Quarter on a busy Friday evening; and an under vehicle IED found under a former police officer's car by the officer and his daughter. Terrorists in Northern Ireland persist in their belief that warning calls somehow absolve them of responsibility for their indiscriminate and dangerous actions. This is not the case and these attacks, with their inadequate and inaccurate warnings, brought us dangerously close to yet another tragic loss of life.

Over the last year, CIRA has continued to splinter into competing factions. Several of these pose a localised threat to security forces, though many are more focused primarily on criminality than terrorism. One particular group in Belfast have caused extensive disruption with a number of hoaxes and pipe bombs. These frustrate the local population, damage local businesses and disrupt lives.

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

### **Loyalist paramilitary groups**

There remain individuals associated with loyalist paramilitary organisations who continue to be involved in a range of criminal activity, including paramilitary assaults, organised crime such as drug dealing, and intimidation. Continued tensions within and between the two main loyalist paramilitary groups (UVF and UDA) also remain a cause for concern. During 2013 we have witnessed loyalist-related public disorder including protests and security incidents that have taken place outside the offices of democratically elected representatives. There have also been attempts by paramilitaries to gain greater influence and control within loyalist communities.

Overall levels of criminality and violence within loyalist communities have not changed significantly in recent years. But violence and intimidation continue to be a concern and will not be tolerated. Regardless of the label applied to these individuals - terrorist, paramilitary or criminal – and whatever their motivation, every effort will be made to bring these people to justice.

Significant resources are being deployed to tackle violence and criminality in loyalist communities. The PSNI has been actively pursuing illegal activity across all communities with a number of recent successes, particularly in east Belfast. Police officers will continue to build an evidence base against suspects.

Although some individuals who are involved in serious criminality have connections to loyalist paramilitary organisations we continue to assess that the collective leaderships of the UDA and UVF remain committed to the peace process and reform of their organisations. This situation is kept under regular review and is discussed regularly between NIO, PSNI and DoJ.

### **Paramilitary Style Shootings and Attacks**

We have witnessed a number of particularly brutal paramilitary style attacks in the last six months. In October, the so-called 'new IRA' claimed to have shot and murdered Kevin Kearney in Belfast. In September, individuals believed to be linked to the east Belfast UVF shot Jemma McGrath, causing serious injury. A number of foreign nationals have also been subjected to a series of racist, paramilitary style attacks.

These crimes and others like them which have caused fear and, in some cases, devastating injuries, are shocking acts. Those who perpetrate these crimes will be held to account by the police and the criminal justice system. We are actively supporting the PSNI as they seek to tackle those involved in criminality within local communities.

### **PSNI Resources & Funding**

The security situation and ongoing public disorder relating to flags and parades have placed a heavy burden on the PSNI in recent months. Over the summer period and faced with significant and sustained public order challenges, the short-term deployment of police officers from forces in Great Britain under mutual aid arrangements proved very successful. As we move forward in 2014, the PSNI is

working closely with its partners in the Department of Justice and the Northern Ireland Policing Board to guarantee longer-term PSNI resource resilience.

This Government continues to offer its full support to the PSNI to ensure that they have the capability they need to tackle the terrorist threat. The PSNI is now three years into a four-year funding package provided by this Government in 2011. This will ensure that the PSNI is in receipt of £199.5 million for the period up to 2015 to tackle the threat faced from terrorism in Northern Ireland. A further £31 million in security funding will be provided in 2015-16. This money is helping to tackle the threat and ensure that PSNI have the resources they need to protect the people of Northern Ireland.

### **Conclusion**

This has been a difficult six months from a security perspective, coming as it did after a sustained period of public disorder relating to flags and parades. However, as a result of the concerted and sustained efforts of the security forces, we have also seen some significant arrests, seizures, convictions and disruptions. We continue to contain the threat from terrorism and remain fully committed to driving it down in the future, keeping the people of Northern Ireland safe and secure. There will be no let up in the pressure we apply to terrorists who reject democracy and who offer nothing but violence.

Looking ahead to the rest of 2014, I am committed to working with the security forces and colleagues in the devolved authorities and in the Republic of Ireland as we seek to build on the achievements of 2013. The success of the G8 Summit held in Fermanagh in June, followed by Derry/Londonderry's enthusiastic embrace of its city of culture status and the highly successful hosting of the World Police and Fire Games showcased Northern Ireland at its very best – prepared, resilient, highly capable and determined.

**14 October 2014**

**The Secretary of State for Northern Ireland (Theresa Villiers):** This is the sixth statement on the security situation in Northern Ireland.

Twenty years have now passed since the 1994 ceasefires in Northern Ireland. There can be no doubt that the security situation has been transformed over the last two decades; the vast majority of people are able to lead their lives unaffected by the current security threat. Throughout the year, Northern Ireland has shown once again that it is moving ahead, successfully hosting high profile events including the Giro d'Italia and the Queen's Baton Relay, all of which passed off successfully and without security incident. The announcement earlier this year that the Open Golf Championship is returning to Royal Portrush in 2019 for the first time since 1951 is further testament to this.

While so much has been achieved, Northern Ireland continues to face a terrorist threat from a small minority of groups who hold democracy in contempt. They are violent and reckless and offer nothing positive to their communities. Not surprisingly, they have almost no popular support. They do, however, retain both lethal intent and capability.

### **Nature and Extent of the Threat**

The threat level in Northern Ireland and Great Britain from Northern Ireland Related Terrorism remains unchanged since my last statement to Parliament in January 2014. The threat to Northern Ireland is currently SEVERE (an attack is highly likely) while the threat to Great Britain is MODERATE (an attack is possible but not likely). There have been 18 national security attacks in 2014.

Police and prison officers remain the principal targets for violent dissident republicans; attacks upon them continue to vary considerably in terms of sophistication. Since my last statement, the sterling work of the PSNI and MI5, who co-operate closely with An Garda Síochána and others, has undoubtedly saved lives and helped to tackle the threat. I wish to pay tribute to all that they do to make Northern Ireland a safer place and to acknowledge the ongoing and significant personal risk they bear both on and off duty. As a direct result of their efforts there have been major disruptions, arrests and convictions in recent months as well as seizures of arms and IED components, both north and south of the border, that have impeded violent dissident republican activity.

Since my last statement, law enforcement activity on both sides of the border has impeded the activities of the so-called new IRA. Following the arrest and charge of alleged members of the leadership at the end of 2013, the group's activities were hampered. For some months it resorted to sending letter bombs to Army recruiting offices in GB and to prison officers in Northern Ireland. These crude devices have swollen the number of national security incidents but were designed to do nothing more than garner media attention and intimidate the recipients. However, in March the group demonstrated its continued lethal intent when it used an explosive projectile against a police patrol in a residential area of west Belfast. This reckless

attack was designed to kill police officers, but it came perilously close to injuring or killing an innocent family passing at the time.

The PSNI subsequently seized 2.5kgs of Semtex from this group which was undoubtedly intended for use in further lethal explosive devices. In the Republic of Ireland, An Garda Síochána (AGS) arrested and charged a suspected new IRA bombmaker. Despite these successes, the group continues to mount attacks and in late May it conducted a firebomb attack on a hotel; a month later armed men fired upon an unoccupied vehicle used by G4S staff in Belfast. However, since then the PSNI have had further successes, including the arrest and charge of another individual alleged to hold a leadership role in the group.

Security partners have also had significant success in curtailing the activities of Óglaigh na hÉireann (ONH). In March, the PSNI arrested an individual in Belfast in possession of an explosive device which was ready to be deployed. In May, the AGS arrested a number of individuals in possession of an even larger device, almost certainly destined to be deployed in Northern Ireland.

These arrests and disruptions demonstrate the productive working relationship between security forces north and south of the border and have ensured that ONH has been unable to carry out any significant terrorist attacks since Christmas 2013. Unfortunately, despite this pressure, members of ONH in Belfast persist in resorting to savage vigilante attacks against members of their own community in an attempt to exercise control.

Localised Continuity IRA (CIRA) members continue to plan attacks against police officers. These occasionally materialise but CIRA remains factional and riven by infighting. In March, PSNI recovered a crude under-vehicle explosive device from a roadside in Belfast. It was either abandoned by CIRA members or had fallen off a vehicle. In either case, it had not functioned as intended and was instead left to be found by members of the public. This kind of dangerous, wholly misguided activity is typical of this disparate group which, along with many dissident republicans, continues to use Republicanism as a cover for criminality and self-gain. Not only do dissident republicans exploit and intimidate their local communities, they are also engaged in drug dealing, robbery, extortion and punishment attacks.

These people must be held to account. In May the Court of Appeal in Belfast upheld the judgment against two CIRA members, John Paul Wootton and Brendan McConville, responsible for the murder of PSNI Constable Stephen Carroll in 2009. The road to justice has been a long one for Constable Carroll's family and I pay tribute to their fortitude. More recently, in September, four dissident republicans were convicted of a range of terrorism offences including the use of a terrorist training camp, an excellent result which highlights the sustained pressure that is being brought to bear against violent dissident republicans.

## **Loyalist Paramilitary Organisations**

The two principal loyalist paramilitary organisations, the Ulster Defence Association (UDA) and the Ulster Volunteer Force (UVF) continue to exist. Tensions and in-fighting within both the UDA and UVF also persist and remain a cause for concern.

Overall, we continue to assess that the collective leaderships of the UDA and UVF remain committed to the peace process and, in some cases, have played a positive role in preventing public disorder, particularly around parading. However, I remain concerned that there are areas where militant and criminally focused individuals are seeking to use their paramilitary connections to exploit the discontent which exists in parts of the loyalist community.

This exploitation is mainly for personal gain and can take many different forms including attacks on property belonging to elected representatives, drug dealing, extortion, intimidation and brutal punishment attacks within their own communities. This must be, and is, being tackled robustly. I fully support the action being taken by the PSNI to apprehend those responsible. This is not an easy task and it takes time to build an evidential case but the full force of the law needs to be brought to bear upon these thugs.

While the parading season in Northern Ireland passed off largely peacefully this year thanks to the strong, co-operative approach of all of those involved, efforts must continue to ensure that public disorder of the type witnessed in previous years does not recur in the future.

## **The Government's strategic approach**

This Government is clear that terrorism will never prevail in Northern Ireland. The 2010 National Security Strategy made tackling Northern Ireland Related Terrorism a tier one priority - the highest priority for Government. As Secretary of State I provide regular updates to the Prime Minister and colleagues on the progress being made on tackling the terrorist threat.

This Government has provided additional security funding to PSNI totalling £231million between 2011 and 2015 to support them in tackling the threat. This is significant extra funding at a time when overall budgets are falling and when we also face a very significant threat from international terrorism. It is a matter of great concern that this additional funding will now have less of an impact because of the decision to severely reduce the overall funding provided by the Executive to the PSNI, caused partly by failure to implement welfare reform. There is no doubt that this will have a negative effect on the PSNI's operational capability in some areas, notwithstanding the additional support provided by the Government.

Our strategic approach also involves working closely with our partners in the Republic of Ireland on a range of issues. Co-operation has never been better, both politically and in security terms, and we want to build on this, removing practical barriers to co-operation and maximizing our ability to act against the threat on both sides of the border.

It is worth noting that the inability of the National Crime Agency (NCA) to operate to its full extent in Northern Ireland means there will be proceeds of crime that are not seized and criminals who are not apprehended. The choice on whether to allow the NCA to operate in relation to devolved matters rightly rests with the Northern Ireland Executive. But that choice has consequences. Early resolution of this issue is essential to avoid serious law enforcement gaps emerging in Northern Ireland in response to issues of deep public concern, such as drug enforcement, human trafficking and other forms of serious criminality.

While the limit on the NCA's powers in Northern Ireland does not have a significant direct impact on the terrorist threat, it does make it harder to seize assets from individuals involved in criminality with connections to paramilitary groupings. Depriving Northern Ireland of the full support and operational capacity of the NCA also places further pressure on the PSNI's already limited budgets and resources.

## **Conclusion**

We continue to suppress the threat from terrorism and remain fully committed to tackling it in the future, keeping the people of Northern Ireland safe and secure. This takes considerable effort and we must remain vigilant - there can be no let-up in our efforts. We are totally focused on supporting the vital work that continues on a daily basis in Northern Ireland to combat terrorism.

## Table 1: Police Service of Northern Ireland Summary Sheet

Justice and Security Act – 1<sup>st</sup> August 2013 - 31<sup>st</sup> July 2014

	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Total
<b>1. JSA Section 21 - Number of persons stopped and questioned</b>	140	140	192	228	256	146	117	194	118	87	92	120	<b>1,830</b>
<b>2. JSA Section 23 - Power of Entry</b>	2	6	4	1	0	7	4	0	1	0	0	0	<b>25</b>
<b>3. JSA Section 24 (Schedule 3) - Munitions and Transmitters stop and searches</b>													
No. of persons stopped and searched, public place:	366	279	533	595	485	318	395	515	461	246	235	207	<b>4,635</b>
No. of persons stopped and searched, private place:	11	9	20	25	27	15	17	32	26	11	16	16	<b>225</b>
Persons stopped and searched - total	377	288	553	620	512	333	412	547	487	257	251	223	<b>4,860</b>
<b>JSA Section 24 (Schedule 3) - Searches of premises:</b>													
No. of premises searched - Dwellings:	8	9	35	8	17	0	11	21	28	4	9	4	<b>154</b>
No. of premises searched - Other:	1	12	6	4	0	2	5	4	2	0	3	1	<b>40</b>
No. of occasions items seized or retained	1	3	18	4	9	3	4	9	3	2	4	1	<b>61</b>
<b>JSA Section 24 (Schedule 3) Use of Specialists:</b>													
Use of specialists - No. of occasions 'other' persons accompanied police:	1	2	6	5	2	1	2	3	1	0	0	1	<b>24</b>
<b>4. JSA Section 26 (Schedule 3) - Search of Vehicles</b>													
(1) (a) Vehicles stopped and searched under section 24	504	415	1067	1089	1516	703	663	1059	1015	471	477	328	<b>9,307</b>
(1) (b) Vehicles taken to another location for search	0	1	0	0	0	0	0	0	0	0	0	0	<b>1</b>

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 1<sup>st</sup> August 2013 and 31<sup>st</sup> July 2014**

<b>TABLE 2A</b>	
<b>Section 21 – Stop and Question</b>	
<b>Year</b>	<b>Number of Persons Stopped and Questioned</b>
<b>2013</b>	
August	140
September	140
October	192
November	228
December	256
<b>2014</b>	
January	146
February	117
March	194
April	118
May	87
June	92
July	120
<b>August 13 - July 14</b>	<b>1,830</b>

<b>TABLE 2B</b>	
<b>Section 23 – Power of Entry</b>	
<b>Year</b>	<b>Number of Premises Entered</b>
<b>2013</b>	
August	2
September	6
October	4
November	1
December	0
<b>2014</b>	
January	7
February	4
March	0
April	1
May	0
June	0
July	0
<b>August 13 - July 14</b>	<b>25</b>

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

<b>TABLE 2C</b>			
<b>Section 24 (Schedule 3)</b>			
<b>Munitions and Transmitters Stops and Searches</b>			
<b>Year</b>	<b>Number of Persons Stopped and Searched by Police</b>		
	<b>Public</b>	<b>Private</b>	<b>Total</b>
<b>2013</b>			
August	366	11	377
September	279	9	288
October	533	20	553
November	595	25	620
December	485	27	512
<b>2014</b>			
January	318	15	333
February	395	17	412
March	515	32	547
April	461	26	487
May	246	11	257
June	235	16	251
July	207	16	223
<b>Aug. 13 – July 14</b>	<b>4,635</b>	<b>225</b>	<b>4,860</b>

<b>TABLE 2D</b>				
<b>Section 24 (Schedule 3)</b>				
<b>Searches of Premises</b>				
<b>Year</b>	<b>Searches of Premises by Police</b>			
	<b>Dwellings</b>	<b>Other</b>	<b>Occasions items seized or retained</b>	<b>Occasions 'other' persons accompanied police</b>
<b>2013</b>				
August	8	1	1	1
September	9	12	3	2
October	35	6	18	6
November	8	4	4	5
December	17	0	9	2
<b>2014</b>				
January	0	2	3	1
February	11	5	4	2
March	21	4	9	3
April	28	2	3	1
May	4	0	2	0
June	9	3	4	0
July	4	1	1	1
<b>Aug. 13 – July 14</b>	<b>154</b>	<b>40</b>	<b>61</b>	<b>24</b>

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
<b>2013</b>		
August	504	0
September	415	1
October	1067	0
November	1089	0
December	1516	0
<b>2014</b>		
January	703	0
February	663	0
March	1059	0
April	1015	0
May	471	0
June	477	0
July	328	0
<b>August 13 - July 14</b>	<b>9,307</b>	<b>1</b>

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, Terrorism Act and Justice & Security Act)**

<b>1 August 2013 – 31 July 2014</b> <b>Persons stopped and searched under:</b>	<b>Aug-13</b>	<b>Sep-13</b>	<b>Oct-13</b>	<b>Nov-13</b>	<b>Dec-13</b>	<b>Jan-14</b>	<b>Feb-14</b>	<b>Mar-14</b>	<b>Apr-14</b>	<b>May-14</b>	<b>Jun-14</b>	<b>Jul-14</b>	<b>Aug 13 -Jul 14</b>
PACE / MDA / F Order	1,831	1,809	3,016	2,153	1,729	1,785	2,044	2,222	1,946	1,794	1,705	1,694	<b>23,728</b>
TACT S43	12	12	7	3	11	3	8	1	14	4	15	6	<b>96</b>
TACT S43A	1	5	0	2	5	0	2	1	3	1	4	1	<b>25</b>
TACT S47A	0	0	0	0	0	0	0	0	0	0	0	0	<b>0</b>
JSA Section 21	140	140	192	228	256	146	117	194	118	87	92	120	<b>1,830</b>
JSA Section 24	377	288	553	620	512	333	412	547	487	257	251	223	<b>4,860</b>
Other Legislations	29	26	53	24	42	37	35	30	27	29	21	20	<b>373</b>
<b>Total (Powers Used)</b>	<b>2,390</b>	<b>2,280</b>	<b>3,821</b>	<b>3,030</b>	<b>2,555</b>	<b>2,304</b>	<b>2,618</b>	<b>2,995</b>	<b>2,595</b>	<b>2,172</b>	<b>2,088</b>	<b>2,064</b>	<b>30,912</b>

Please note that this is not the total number of persons stopped and searched/questioned as a stop and search/question can be carried out under a combination of different legislations e.g. JSA S24 and JSAS21. PACE figures are inclusive of the Misuse of Drugs Act (MDA) and the Firearms Order as in previous years. Other legislations captures stops / searches conducted under less frequently used powers such as the Wildlife Order. Figures on persons stopped under Article 23B Public Order are also within the 'Other legislative powers' category

**Note: The above statistics for the period Apr14 – Jul14 are provisional and may be subject to minor amendment.**

<b>1 August 2012 – 31 July 2013</b> <b>Persons stopped and searched under:</b>	<b>Aug-12</b>	<b>Sep-12</b>	<b>Oct-12</b>	<b>Nov-12</b>	<b>Dec-12</b>	<b>Jan-13</b>	<b>Feb-13</b>	<b>Mar-13</b>	<b>Apr-13</b>	<b>May-13</b>	<b>Jun-13</b>	<b>Jul-13</b>	<b>Aug 12 -Jul 13</b>
PACE / MDA / F Order	1,753	2,504	2,713	2,004	1,313	1,135	1,275	1,730	2,092	2,277	1,664	1,806	<b>22,266</b>
TACT S43	9	12	11	21	24	11	4	4	11	18	28	12	<b>165</b>
TACT S43A	0	0	2	7	9	2	1	1	6	6	13	6	<b>53</b>
TACT S47A	0	0	0	0	0	0	0	0	0	69	1	0	<b>70</b>
JSA Section 21	174	171	204	436	195	173	140	240	303	184	316	134	<b>2,670</b>
JSA Section 24	439	362	792	1073	483	522	446	606	872	536	674	515	<b>7,320</b>
Other Legislations	7	4	11	37	55	87	25	40	38	27	18	58	<b>407</b>
<b>Total (Powers Used)</b>	<b>2,382</b>	<b>3,053</b>	<b>3,733</b>	<b>3,578</b>	<b>2,079</b>	<b>1,930</b>	<b>1,891</b>	<b>2,621</b>	<b>3,322</b>	<b>3,117</b>	<b>2,714</b>	<b>2,531</b>	<b>32,951</b>

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 on use of Stop/Search/Question Powers by PSNI 2004/05 – 2013/14**

<b>Legislation</b>	<b>2004/05</b>	<b>2005/06</b>	<b>2006/07</b>	<b>2007/08</b>	<b>2008/09</b>	<b>2009/10*</b>	<b>2010/11*</b>	<b>2011/12*</b>	<b>2012/13*</b>	<b>2013/14*</b>
PACE / Misuse of Drugs Act / Firearms Order	14,434	16,036	16,174	15,362	20,011	23,990	22,785	20,746	20,910	24,428
No. of uses of TACT sect 84	3,838	3,299	1,576							
No. of uses of TACT sect 89	2,684	1,906	718							
No. of uses of TACT sect 44	N/A	448	913	3,358	9,548	28,770	9,156	0	0	0
No. of uses of TACT sect 43 / 43A	N/A	N/A	N/A	13	56	97	375	254	186	173
No. of uses of TACT sect 47A										70
No. of uses of JSA sect 21				28	112	5,285	5,355	3,511	2,803	2,350
No. of uses of JSA sect 24				251	372	621	11,721	12,699	7,687	6,239
No. of uses of Other legislative powers ***									294	417
<b>Total uses of each legislative power</b>	<b>20,956</b>	<b>21,689</b>	<b>19,381</b>	<b>19,012</b>	<b>30,099</b>	<b>58,763</b>	<b>49,392</b>	<b>37,210</b>	<b>31,880</b>	<b>33,677</b>
<b>Total no. of persons stopped/searched **</b>	<b>20,956</b>	<b>21,689</b>	<b>19,381</b>	<b>19,012</b>	<b>30,099</b>	<b>53,885</b>	<b>45,394</b>	<b>35,268</b>	<b>30,502</b>	<b>32,590</b>
PACE	69%	74%	83%	81%	66%	41%	46%	56%	66%	73%
Terrorism Act	31%	26%	17%	18%	32%	49%	19%	1%	1%	1%
JSA	0%	0%	0%	1%	2%	10%	35%	44%	33%	26%
Other legislative powers	0%	0%	0%	0%	0%	0%	0%	0%	1%	1%
	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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

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

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

\*\*\*Other legislative powers include less frequently used powers such as under the Wildlife Order since Q1 2012/13. It also includes use of Article 23B Public Order legislation.

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

**Table 4**

**EOD Call Outs: 1 August 2013 to 31 July 2014**

<b>DATE</b>	<b>IED</b>	<b>EXPLOSION</b>	<b>HOAX</b>	<b>FALSE</b>	<b>INCENDIARY</b>	<b>FINDS</b>	<b>TOTAL</b>
August 2013	9	1	6	1	0	7	<b>24</b>
September 2013	3	0	4	8	0	13	<b>28</b>
October 2013	15	1	19	10	0	13	<b>58</b>
November 2013	6	3	13	6	0	12	<b>40</b>
December 2013	1	4	3	8	1	10	<b>27</b>
January 2014	12	0	8	4	0	7	<b>31</b>
February 2014	3	3	6	2	0	6	<b>20</b>
March 2014	8	5	6	5	0	10	<b>34</b>
April 2014	2	0	2	6	0	11	<b>21</b>
May 2014	0	3	3	2	1	12	<b>21</b>
June 2014	6	2	1	2	0	10	<b>21</b>
July 2014	2	0	3	5	0	12	<b>22</b>
<b>Total</b>	<b>67</b>	<b>22</b>	<b>74</b>	<b>59</b>	<b>2</b>	<b>123</b>	<b>347</b>

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:**

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**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 <input type="checkbox"/>	Map Attached <input type="checkbox"/>
Specific Area <input type="checkbox"/>	Map Attached <input type="checkbox"/>

**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).

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**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
	.....

**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).

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**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).

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

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

Cancellation / Amendment	Date signed.....
Signature.....	Time signed.....
Print Name/Rank.....	

Details of cancellation / amendment:

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

**JSA 1**

<b><u>Point 2</u></b>	<p><b><u>Length of authorisation</u></b></p> <p>Start time is the time and date at which the authorising officer gives an oral authorisation or signs a written authorisation, whichever is earlier. The <b>maximum</b> period for an authorisation is <b>14 days</b>, and authorisations should <b>not</b> 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 <b>must</b> assure themselves that the Authority does <b>not</b> run for more than the statutory 14 day limit. In the case of a new authorisation, an authorisation can be given before the expiry of the previous one if necessary.</p> <p>PSNI may authorise the use of section Para 4A, Schedule 3 powers for less than forty-eight hours, however, <b>continuous use of 48 hour-long authorisations, whereby the powers could remain in force on a “rolling” basis is not justifiable and would constitute an abuse of the provisions.</b></p>
<b><u>Point 4</u></b>	<p><b><u>Reason for exercising Para 4A, Schedule 3 powers</u></b></p> <p>The test for authorising JSA powers is that the person giving it: must reasonably suspect that the safety of any person might be endangered by the use of munitions or wireless apparatus and reasonably considers the authorisation necessary to prevent such an act and that the area(s) or place(s) specified in the authorisation are no greater than is necessary and the duration of the authorisation is no longer than is necessary to prevent such an act.</p>

**JSA 2**

<b><u>Point 1</u></b>	<p>If an authorisation is one which covers a similar geographical area to one which immediately preceded it, information should be provided as to how the intelligence has changed since the previous authorisation was made, or if it has not changed, that it has been reassessed in the process of making the new authorisation, and that it remains relevant, and why.</p> <p><b>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.</b></p>
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<p><b><u>Point 4</u></b></p>	<p><b><u>Assessment of the threat</u></b></p> <p>The Authorising Officer should provide a detailed account of the intelligence which has given rise to reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. This should include classified material where it exists. Threat Assessments from International Terrorism and Dissident Irish Republican Terrorism are provided by JTAC and Security Service. Assessments of the threat to various aspects of the UK infrastructure, such as aviation, transport, military establishments are available and if necessary should be sought. If reference is made to JTAC or Security Service assessments, Authorising Officers should ensure that these references are to current material.</p> <p>A high state of alert may seem enough in itself to justify an authorisation of powers; however it is important to set out in the detail the relation between the threat assessment and the decision to authorise.</p> <p>Intelligence specific to particular dates may still be included, even if the relevant date has passed, if it is still believed to be current.</p>
<p><b><u>Point 5</u></b></p>	<p><b><u>Information and/or circumstances over the recent period</u></b></p> <p>Authorising Officers should provide information relating to recent events that are <b>specific</b> to the authorisation. Under this section an Authorising Officer should identify any current situations where terrorist activity may have increased <b>and</b> there is evidence to suggest this.</p>
<p><b><u>Point 6</u></b></p>	<p><b><u>The use of Para 4A, Schedule 3 of the Justice &amp; Security Act (Northern Ireland) 2007 rather than other powers of stop and search</u></b></p> <p>Given they require reasonable suspicion in order to be exercised, Authorising Officers should consider the powers under sections 43 and 43A of the Terrorism Act 2000 and PACE for the purposes of stopping and searching individuals for the purposes of preventing or detecting an act of terrorism <b>before</b> the use of the no suspicion powers under Para 4A, Schedule 3 are considered.</p> <p>The powers authorised by Para 4A, Schedule 3 are only to be considered where it is not sufficient to use the powers in sections 43 or 43A or other PACE powers.</p>
<p><b><u>Point 7</u></b></p>	<p><b><u>Description of and Reasons for Geographical Extent of an Authorisation</u></b></p> <p>Authorisations which cover all of Northern Ireland should <b>not</b> be made unless they can be shown to be necessary. The wider a geographic area authorised, the more difficult it will be to demonstrate necessity.</p> <p>An authorisation should not provide for the powers to be used other than where they are considered necessary. This means authorisations must be as <b>limited</b> as possible and linked to addressing the suspected act of endangerment. In determining the area(s) or place(s) it is necessary to include in the authorisation it may be necessary to include consideration of the possibility that offenders may change their method or target of attack, and it will be necessary to consider what the appropriate operational response to the intelligence is (e.g. which areas would be necessary to authorise to intercept a suspect transporting a weapon). However, any authorisations must be as limited as possible and based on an assessment of the existing intelligence. New authorisations should be sought if there is a significant change in the nature of the particular threat or the Authorising Officer's understanding of it (and in such circumstances it will be appropriate to cancel the previous authorisation). Single authorisations may be given which cover a number of potential threats if that situation occurs. Authorisations should set out the nature of each threat and the operational response.</p>

<p><b><u>Point 8</u></b></p>	<p><b><u>Description of and Reasons for Duration of Authorisation</u></b></p> <p>Authorising Officer should identify the duration of the authorisation and should outline the reasons why the powers are required for this time. The duration of an authorisation should be “No greater than necessary”</p>
<p><b><u>Point 9</u></b></p>	<p><b><u>Details of Briefing and Training provided to Officer using Para 4A, Schedule 3 Powers</u></b></p> <p>Information should be provided which demonstrates that all officers involved in exercising Para 4A, Schedule 3 powers receive appropriate briefing and training in the use of the powers, including the broad reason for the use of the powers on each relevant occasion.</p>
<p><b><u>Point 10</u></b></p>	<p><b><u>Practical Implementation of Powers</u></b></p> <p>The Authorising Officer should provide information about how the powers will be used and why. This may include the use of vehicle checkpoints, stops and searches of individuals operating in the area of the residences of security force members or security force establishments or other recognised targets of terrorist attack (depending on the nature of the threat). The authorising officer should indicate whether officers will be instructed to conduct stops and searches on the basis of particular indicators (e.g. behavioural indicators, types of items carried or clothes worn, types of vehicles etc), or whether the powers will be exercised on a random basis. If the powers are to be exercised on a random basis, the authorising officer should indicate why this is necessary and why searches based on particular indicators are not appropriate.</p>
<p><b><u>Point 11</u></b></p>	<p><b><u>Community engagement</u></b></p> <p>Authorising Officers should demonstrate that communities have been engaged as fully as possible throughout the authorisation process. When using the power, PSNI may use existing community engagement arrangements. However, where stop and search powers affect sections of the community with whom channels of communication are difficult or non-existent, these should be identified and put in place.</p> <p>Independent Advisory Groups (IAGs) should be as fully engaged as possible at all stages of an authorisation.</p>
<p><b><u>Point 12</u></b></p>	<p><b><u>Policing Board engagement</u></b></p> <p>Authorising Officers should notify and engage with the Policing Board. The Policing Board has an essential role in working with the PSNI to build community confidence in the appropriate use of stop and search, and can provide practical advice and guidance to help raise awareness of stop and search.</p>

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