



Consultation Response

Non-Jury Trials Justice and Security (Northern Ireland) Act 2007

April 2023

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INTRODUCTION

Consultation on Non-Jury Trials in Northern Ireland

1. On 3 November 2022, the Northern Ireland Office launched a 12-week public consultation¹ seeking views on whether the non-jury trial provisions within the Justice and Security (Northern Ireland) Act 2007² (the 2007 Act) should be extended for a further two years.
2. The consultation closed on 30 January 2023. This Response contains an analysis of the responses received (Pages 7-8) and the subsequent decision that the Secretary of State for Northern Ireland has made (Page 21) on whether to extend the non-jury trial provisions.
3. From 22 March 2022 until 28 March 2023, the threat to Northern Ireland from Northern Ireland-related terrorism was SUBSTANTIAL (an attack is likely). On 28 March 2023, the Secretary of State announced that the threat level had increased to SEVERE (an attack is highly likely). Further information about terrorism threat levels is available here [www.mi5.gov.uk/threat-levels].
4. The public consultation ran from 3 November 2022 to 30 January 2023. Therefore many of the responses provided by respondents were made on the basis of the reduced SUBSTANTIAL threat level which has now been raised to SEVERE.

Consultation Principles

5. This consultation process is being conducted in line with the Cabinet Office consultation principles published in March 2018. A copy of the principles can be found at:
<https://www.gov.uk/government/publications/consultation-principles-guidance>

Equality

6. It is also being conducted in line with the Northern Ireland Office Equality Scheme which can be found at:
<https://www.gov.uk/government/publications/nio-equality-scheme>

¹ The consultation document on non-jury trials can be found here:
<https://www.gov.uk/government/consultations/consultation-launched-on-the-use-of-non-jury-trials-in-northern-ireland>

² The Justice and Security (Northern Ireland) Act 2007 can be found here:
<https://www.legislation.gov.uk/ukpga/2007/6/contents>

7. In accordance with Section 75 of the Northern Ireland Act 1998, the Northern Ireland Office undertook an Equality Screening exercise³ prior to the launch of the consultation to assess whether or not there were equality of opportunity and/or good relations impacts associated with extending the non-jury trial provisions.
8. The outcome of the screening exercise was that the likely impact of extending the provisions was “minor” in respect of two of the Section 75 categories (religious belief and political opinion) and “none” in respect of the other categories. On that basis the Northern Ireland Office made an initial assessment that an Equality Impact Assessment was not necessary, subject to analysis of the consultation responses.⁴
9. Following the conclusion of the consultation, the Northern Ireland Office reviewed the screening exercise in light of the consultation responses and assessed that its initial assessment of the likely impact of the proposals remained accurate.
10. An Equality Screening of the impact of the proposals in this consultation is available on request.

Accessibility

11. This document is publicly available at www.gov.uk/nio. You may make additional copies of this document without seeking permission. It can also be made available, on request, in different formats for individuals with particular needs.
12. If you require any additional copies or have any concerns or questions about this consultation process, you can contact:
 - By email: NJTconsultation@nio.gov.uk
 - In writing: Public consultation
Non-Jury Trial Provisions
Northern Ireland Office (SPG)
Erskine House,
20-32 Chichester St,
Belfast
BT1 4GF

³ More information on the Equality Commission's Section 75 guidance can be found here: <https://www.equalityni.org/S75duties>

⁴ <https://www.gov.uk/government/publications/section-75-equality-screening-form-non-jury-trial-provisions-under-the-justice-and-security-northern-ireland-act-2007>

BACKGROUND

Non-Jury Trials in Northern Ireland

13. The non-jury trial provisions in the 2007 Act, which apply only in Northern Ireland, allow the Director of Public Prosecutions for Northern Ireland (DPPNI) to certify that a trial on indictment (tried in the Crown Court) is to be conducted without a jury where certain conditions are met.
14. These conditions are set out in the 2007 Act, and must be met before the DPPNI can consider issuing a certificate for a non-jury trial (see annex B).
15. In a non-jury trial, a single judge sits alone to hear the case. The judge must give reasons for a conviction. Any person convicted before a non-jury court has a right of appeal against sentence or conviction without leave (meaning that there is no need to seek permission to appeal). The vast majority of Crown Court cases in Northern Ireland are jury trials. The latest available data shows that, during 2021, eight non-jury trials took place. This means that in 2021, only 0.6% of all Crown Court cases in Northern Ireland were conducted without a jury.⁵

Extended Provisions

16. The non-jury trial provisions are temporary, but may be extended for a period of two years by secondary legislation approved in both Houses of Parliament. These provisions have been extended every two years by successive orders since 2007. The provisions were last extended in July 2021 and will expire in July 2023.
17. There are no limits to the number of times these non-jury trial provisions may be extended. However, it is important to note that they were designed to be a temporary measure. The Government does not want these temporary measures to become normalised, and remains fully committed to seeing an end to their use, when it is safe to do so and compatible with the interests of justice.

⁵ Northern Ireland Courts and Tribunals Service
<https://www.justice-ni.gov.uk/publications/nicts-judicial-statistics>

CONSULTATION RESPONSES

Responses Received

18. The consultation received 15 responses. These were from (*in alphabetical order*):

1. The Alliance Party of Northern Ireland
2. The Bar of Northern Ireland
3. The Director of Public Prosecutions for Northern Ireland
4. Jonathan Hall KC (Independent Reviewer of Terrorism Legislation)
5. The Law Society of Northern Ireland
6. MI5
7. The Northern Ireland Human Rights Commission
8. The Office of the Attorney General for Northern Ireland
9. The Office of the Lady Chief Justice of Northern Ireland
10. The Police Service of Northern Ireland (PSNI)
11. Professor Clive Walker (Centre of Criminal Justice Studies, University of Leeds)
12. Professor Marie Breen Smyth (The The Independent Reviewer of National Security Arrangements in Northern Ireland and The Independent Reviewer of the Justice and Security (NI) Act 2007)
13. Sinn Féin
14. The Superintendents Association of Northern Ireland (SANI)
15. The Ulster Unionist Party

17. After analysing the responses, the Northern Ireland office has assessed that:

- **Nine** respondents **support/accept** extending the provisions,
- **Two** respondents **object** to extending the provisions; and
- **Four** respondents **neither clearly support nor object** to extending the provisions.

ANALYSIS OF RESPONSES

Responses Supporting/Accepting

18. There were **nine** responses that the Northern Ireland Office assessed to be in support/accepting of the need to extend the non-jury trial provisions for a further two years.

20. These respondents mainly justified their support/acceptance with reasons such as:

- The SUBSTANTIAL threat level at the time of the consultation from Northern Ireland related terrorism.⁶
- The view that the continued paramilitary activity and coercive control/intimidation of communities necessitates these provisions.
- The view that the non-jury trial provisions in Part 7 of the Criminal Justice Act 2003 (the 2003 Act) are not suited to deal with the unique challenges associated with Northern Ireland related terrorism and wider paramilitary activity. More information on the Criminal Justice Act 2003 can be found on page 18.⁷
- The view that the 2007 Act provisions are needed not just for protecting against jury tampering, but also to protect defendants from perverse judgments as a result of juror bias.
- Several respondents highlighted recent case history. Specifically, the views of Lord Kerr in re Hutchings [[2019] UKSC 26]⁸ that the need for the DPPNI to have their current powers was 'obvious' when considering the difficulties in eliminating the risk of bias with any degree of confidence.
- One response suggested there be a final extension to facilitate transition to sole reliance on the 2003 Act provisions and that a review be conducted to determine whether or not modifications to these provisions are necessary to account for the particular conditions in Northern Ireland.

21. Although, in the view of these respondents, a further extension of the provisions is necessary at this time, most in this category also expressed a will for the provisions to be removed when it was safe to do so and compatible with the interests of justice. This mirrors the Government's vision. There was

⁶ The threat level for Northern Ireland-related terrorism in Northern Ireland is set separately to the UK-wide threat level posed by all forms of terrorism. In the period following the closure of the consultation, the threat level was raised to SEVERE. For more information go to: <https://www.mi5.gov.uk/threat-levels>

⁷ The Criminal Justice Act 2003 can be found here: <https://www.legislation.gov.uk/ukpga/2003/44/contents>

⁸ <https://www.supremecourt.uk/cases/uksc-2018-0040.html>

also frustration amongst some respondents that whilst relying on the 2003 Act provisions would not be appropriate, that the Government had not found an alternative, permanent arrangement for Northern Ireland in place of the emergency powers.

Responses Objecting

22. There were two responses that the Northern Ireland Office assessed to object to the need to extend the non-jury trial provisions for a further two years.

23. Reasons provided objecting to the extension included:

- The view that Northern Ireland should move towards the regime under the Criminal Justice Act 2003.
- The view that the Government needs to move quicker in fulfilling its responsibilities under the Belfast (Good Friday) Agreement to remove emergency powers such as the non-jury trial provisions, in Northern Ireland.
- The view that there are a number of alternative arrangements the Government could pursue to mitigate against the threat of juror intimidation including better juror protection.
- The view that the ability to challenge a non-jury trial certificate is subject to limitations which are too stringent.

24. Some respondents, including one that opposed renewal, noted that the Working Group recommended by the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 (IRJSA) had been set up and expressed frustration at the lack of access to the Working Group's findings. The Working Group was set up to provide briefing documents to the IRJSA on practical measures to reduce the number of non-jury trials taking place and criteria that could be used to indicate when the 2007 Act non-jury trial provisions may no longer be required. Their briefings are provided directly to the IRJSA.

25. While these responses objected to the extension of the provisions, they also acknowledged the continuing threat of paramilitary groups in Northern Ireland and the associated risk they pose to the administration of justice.

Responses Neither Supporting Nor Objecting

27. There were **four** responses which the Northern Ireland Office assessed as neither clearly supporting nor objecting to the need to extend the non-jury trial provisions for a further two years.

28. These respondents had mixed responses. Some examples of views raised included:

- The view that the availability of non-jury trials in NI means there is limited direct evidence that juror tampering/bias exists.
- The view that the Government's Bill of rights Bill could create a legal right to trial by jury.
- The view that the Secretary of State should consider a future review of this policy with a view to making arrangements to transition Northern Ireland to sole reliance on the provisions of the 2003 Act.
- The view that the fact that the DPPNI regularly rejects applications demonstrates there are appropriate checks and balances in the certification process.
- The view that should the provisions not be renewed, it could impact detrimentally on the potential to obtain sufficient jurors to sit in high profile terrorist cases.

INDEPENDENT REVIEWER

Annual Reports

29. In the course of the renewal debates in 2017 when Parliament agreed to the Secretary of State extending the non-jury trial provisions, the then Parliamentary Under-Secretary of State, Chloe Smith MP, committed to keep the provisions under regular independent review by requesting that non-jury trials be covered in the IRJSA's annual report.
30. The first annual report that included a review of the non-jury trial provisions was the Tenth Annual Report (published in April 2018). All reports⁹ published since then have included consideration of non-jury trial provisions.
31. In their Fourteenth Annual Report, published in June 2022, the IRJSA recognised the view shared by many that the security situation in Northern Ireland necessitates the extension of the NJT provisions, but also made several recommendations to alter the certification process. These included; a continuing review of a variety of policies and procedures around non-jury trials, a retrospective comparison of the outcomes of jury trials, and that continuing delays in the Criminal Justice System are examined and reviewed.¹⁰ They also recommended that an assessment of the specific level of risk to juries be completed, and that certain changes be made on how intelligence material is used in the certification process.
32. The IRJSA noted their view of the PPS's position, that in absence of a change to the JSA legislation, it would be inappropriate for the DPPNI to consider a jury trial even where the risk of jury tampering or bias is very low, should the conditions for a certificate be met. The IRJSA recommend that in certain circumstances, the DPPNI should consider going to trial in such cases and that the question of whether legislative amendments are required to afford the DPPNI this discretion should be explored further. The statistics related to the number of certificates approved and refused by the DPPNI are found at Annex C. These show that as well as the small number of certificates approved each year, the DPPNI also regularly refuses applications. The refusal of certificates by the DPPNI was highlighted by some respondents to the consultation as evidence of sufficient checks and balances within the existing system.

⁹ All annual reports of the Justice and Security (Northern Ireland) Act 2007 can be accessed here:

<https://www.gov.uk/government/publications/annual-reports-of-the-independent-reviewer-of-justice-and-security-northern-ireland-act-2007>

¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1102689/E02756398_IRJSA_Report_Web_Accessible.pdf

33. In addition to their recommendation to conduct a threat assessment of the specific level of risk to jurors, the IRJSA recommended that the benefits of a Closed Material Procedure be evaluated by the Working Group. This would provide for a Special Advocate to review the evidence upon which the decision to issue an NJT certificate was made and act on behalf of the accused as far as possible. As previously discussed, a threat assessment of the specific threat to jurors has been completed as part of the consultation processes and provided to the Secretary of State to Northern Ireland. Whilst the contents of this threat assessment are confidential, they have formed a key part of the Secretary of State's decision on whether to seek renewal of the NJT provisions.

Working Group

34. As already set out, during the 2021 consultation there was a broad consensus amongst the respondents in support of a Working Group being established consisting of representatives from the PPS, PSNI, the Court Service, the Bar, the Law Society and other independent organisations. The group formally convened ten times over a two year period and produced two papers for the IRJSA that fulfilled their Terms of Reference to;

1. Identify practical measures and legal measures that could be taken to reduce the number of non-jury trials taking place, and
2. Identify the indicators that members would look to in order to be satisfied that the non-jury trial provisions were no longer necessary.

35. The first paper of the Working Group found that no one change is likely to have a significant impact on the number of non-jury trials taking place in Northern Ireland. An assessment of whether non-jury trials should be renewed for a further two years is out of scope of the Working Group's terms of reference. However, as a result of their second paper, the Working Group has identified several key indicators, including an assessment of the threat level against jurors and the level of paramilitary activity, designed to inform the decision as to whether these provisions remain necessary.

36. The Working Group acknowledges that each indicator individually will be an imperfect guide in terms of the reliability of data that can be used to measure each metric. However, the Group recommends they be used in conjunction with one another and the consultation responses to build a contextual picture for the Secretary of State to determine whether the NJT provisions need to be

extended.

Indicators

37. The Working Group identified five indicators to be considered in conjunction with the consultation responses by the Secretary of State when making their decision whether to seek renewal of the provisions. In addition to the identified indicators, the Working Group felt that, although not measurable and therefore not suitable as an indicator, the values inherent in the justice system should be borne in mind. The Secretary of State thanks the Working Group for their work and has considered the suggested indicators when making his decision on whether to seek an extension for these provisions.

A. Assessed threat against jurors in Northern Ireland

- The Working Group recommended that a regular intelligence-based assessment of the threat against jurors in Northern Ireland be carried out. An assessment has been carried out by security partners and formed a key part of the Secretary of State's decision on whether to seek renewal of these provisions.

B. Level of Paramilitary/Terrorist Activity

- The following metrics were deemed by the Working Group as indicative of the level of paramilitary/terrorist activity in Northern Ireland and how it has changed over time.
 - Deaths due to the security situation
 - Paramilitary-style shootings and assaults
 - Security-related incidents
- Chart 1 at Annex D demonstrates that in respect of the number of deaths due to the security situation, there has been a moderate downward trend since 1997. However, when observing the change in the number of deaths since 2007 (chart 2), there is a flat trendline as the numbers have plateaued over the last few years. The number of deaths has been so low since the mid-2000 that caution is necessary when interpreting the data.
- Charts 3 and 4 also show the number of paramilitary-style assaults and shootings that have taken place from 1997-2021. A clear downwards trend is reflected in the graph for both shootings and assaults (chart 3), however there has been little change in the number of paramilitary-style shootings and assaults since the non-jury trial provisions were introduced in 2007.
- Chart 6 shows that both the number of bombings and the number of shootings display a downward trend from 1997 to present. However, since 2007, shooting incidents have been above 2007 levels for 60% of the years, and for

bombing incidents 73.3% of the years.

- Full charts and analysis are set out in Annex C.

C. Level of Intimidation

- The following metrics were deemed indicative of the level of intimidation exerted by terror/paramilitary groups in Northern Ireland and how it has changed over time.
 - Number of people accepted by the NI Housing Executive as homeless due to intimidation
 - Number of intimidation or threat to harm witness offences recorded per year
 - Number of intimidation offences recorded per year
 - Response to NI Life and Times Survey: Paramilitary Groups have a controlling influence in this area
 - Response to NI Life and Times Survey: Paramilitary groups create fear and intimidation in this area
- Chart 7 shows a moderate/strong downwards trend in the number of people accepted as homeless due to intimidation between 1998-2021. However, chart 8 splits the trend line indexed to 2007. This shows a clear downwards trend from 1998-2006 but then an almost flat trend from 2007 onwards.
- Chart 9 shows the number of offences recorded that involved intimidation of, or threat to, harm a witness. There has been little variation in the number of offences recorded from 2007 to date. Chart 10 shows a slight downward trend in the total number of intimidation offences recorded by the PSNI each year. However, the dip in 2007-2013 likely skews the figures.
- Full charts and analysis are set out in Annex D.

D. Level of Use of Terrorism Legislation

- The following metrics were deemed indicative of the usage of terrorism legislation in Northern Ireland and how it has changed over time.
 - Number of persons convicted of an offence under terrorism legislation
 - Persons detained in Northern Ireland under Section 41 of the Terrorism Act 2000
 - Usage of Various Stop and Search/Question Powers in NI
- Chart 14 shows the number of people convicted of an offence under terrorism legislation has a moderate upwards trend. For this metric, terrorism offences are those contained within the Terrorism Act 2000, Terrorism Act 2006 and Counter Terrorism Act 2008.

- Chart 15 demonstrates a moderate downwards trend in the number of people detained in Northern Ireland under S41 of TACT.
- Section 41 of the Terrorism Act 2000 provides that a constable may arrest without a warrant a person whom he or she reasonably suspects to be a terrorist. Chart 16 shows that the usage of the various stop and search powers in Northern Ireland has not changed significantly since 2007. There is a slight upwards trend in the use of the 'without suspicion' s24 power.
- Full charts and analysis are set out in Annex D.

E. Level of Use of Non-Jury Trials

- The following metrics were deemed indicative of the usage of the non-jury trial provisions in the 2007 Act.
 - Non-jury trial cases as a percentage of all Crown Court cases
 - Certificates issued and refused for non-jury trials by the Director of Public Prosecutions
 - Percentage of cases in which each condition met
 - Average percentage of cases in which each condition met
- Chart 18 shows the number of non-jury trial cases per year. Chart 17 displays a downward trend in the number of non-jury trial cases as a percentage of all Crown Court cases.
- Chart 19 shows that there has been a marginal downward trend in the number of non-jury trial certificates issued over time. The percentage of certificates refused by the DPPNI has also held relatively steady.
- Chart 20, shows that when displayed graphically over time the usage of condition four varies the most over the years. Chart 21 shows the average percentage of cases in which each condition was met from 2007-2020.
 - Condition one was met most often (94% of cases)
 - Condition two was next most frequently met (70% of cases)
 - Condition four was met in 51% of cases
 - Condition three was used least frequently (only 7% of cases)
- Full charts and analysis are set out in Annex D.

DISCUSSION

38. As the Northern Ireland Office has stated previously, the Government remains fully committed to seeing an end to the use of the non-jury trial provisions in the 2007 Act, when safe and compatible with the interests of justice.

Consultation Responses

39. The Northern Ireland Office has assessed that the significant majority of respondents expressed a view in favour of extending the non-jury trial provisions in Northern Ireland at this time.

40. This section will explore some of the common themes included in consultation responses in more detail.

Terrorism & Paramilitarism

41. The system under the 2007 Act was designed specifically to address the unique challenges faced by the Northern Ireland criminal justice system. In March 2022, the threat level from Northern Ireland-related terrorism was lowered from SEVERE to SUBSTANTIAL, marking the first time in twelve years the threat level had been altered. The threat level was raised back up to SEVERE in March 2023, and remains under constant review.

42. The consultation period ran during the period of reduced threat level, with respondents both welcoming the change whilst cautioning against complacency. Even in a period of reduced threat level, a significant majority of respondents supported extension to the NJT provisions, referencing the 2022 findings of MI5 that - 'despite the change in the threat level, terrorism remains one of the most direct and immediate risks to our National Security and to communities in Northern Ireland.'¹¹ Respondents who supported the extension of the non-jury trial provisions further referenced the continuing coercive influence paramilitary groups exercise within communities as reasons to extend the provisions for another two years.

43. Among the responses supporting extension, reference was made to publicly available PSNI Security Situation Statistics:

11

<https://www.mi5.gov.uk/news/threat-level-to-northern-ireland-from-northern-ireland-related-terrorism-lowered-to-substantial>

(PSNI Recorded Security Situation Statistics for the period 1 February 2022 to 31 January 2023)¹²

In this reporting period there was;

- one security related death.
- 5 bombing incidents.
- 32 shooting incidents.
- 26 casualties of paramilitary style assaults
- 9 casualties of paramilitary style shootings.
- 108 security related arrests under Section 41 of the Terrorism Act 2000.
- 23 firearms, 0.65KG of explosives, and 1,898 rounds of ammunition seized.

44. A number of specific terrorist incidents were also highlighted including the following;

- November 2022, the attempted murder of two police officers in Strabane.
- November 2022, a viable device placed outside Waterside police station.
- April 2021, the attempted murder of a police staff member at their home.
- Other respondents stated that there continues to be crimes that police are unable to solve due to witnesses being frightened to come forward.

45. In the period since the closure of the consultation there have been further incidents, including the attempted murder of DCI Caldwell on 22 February 2023.

46. Significant influence and control continues to be exerted over communities by paramilitary groups. One response spoke of a perception that during investigations into serious crimes suspected to have been carried out by terrorist groups members of the public are unwilling to speak openly with investigators.

47. The fifth report of the Independent Reporting Commission (December 2022), while recognising the positive work which has been done to tackle paramilitarism and support communities and individuals, noted the continuance of many forms of coercive control which can lead to “communities and individuals adapting their behaviour to avoid the attention of paramilitaries”.

48. Statistics from the Northern Ireland Department for Communities indicate that 177 households were accepted as homeless due to paramilitary intimidation

¹²<https://www.psni.police.uk/sites/default/files/2023-02/Security%20Situation%20Statistics%20to%20January%202023.pdf>

in 2021, the most recent year for which statistics are available.¹³

49. The information provided in paragraphs 41- 48 demonstrate the real fear and intimidation caused by terrorists and paramilitary groups across and within communities in Northern Ireland. Where the defendant or the crime is suspected¹⁴ of being associated with a proscribed¹⁵ organisation, this fear and intimidation could impact the administration of justice in two ways; either via a direct threat to jurors from members or supporters of that organisation or via the perceived threat the jurors feel in participating in such a case. Either could lead to a perverse verdict.

Jury Bias

(Consultation response, February 2023)

“It has been recognised by the courts that a risk to the administration of justice in this jurisdiction arises in the context of historical cases relating to the security situation in Northern Ireland - a risk of jury intimidation may arise in some of these cases but the predominant risk to the administration of justice arises from a juror(s) whose verdict may be affected by bias”.

50. Several respondents raised the issue of bias in historical cases in their responses. In addition to the risk of juror intimidation, there is also the potential for juror bias as a result of a defendant’s suspected association with a proscribed organisation or if the offence being tried is in connection with religious or political hostility. The non-jury trial provisions can therefore be in the interests of the defendant; protecting against the risk of impairment to the administration of justice arising from a hostile jury.

51. Historical cases relating to Troubles-era investigations are often high-profile and garner media attention. There are conditions set out in law that must be met before the DPPNI can consider issuing a certificate for a non-jury trial - the fourth condition deals with offences connected to religious or political hostility. Therefore historical cases may be heard in a non-jury trial to protect the administration of justice.

¹³<https://www.communities-ni.gov.uk/publications/northern-ireland-homelessness-bulletin-july-december-2021>

¹⁴ The Director of Public Prosecution’s decision for issuing a certificate is based on a two-stage test set out in law in section 1 of the Justice and Security (Northern Ireland) Act 2007.

¹⁵ Section 1(10) of the Justice and Security (Northern Ireland) Act 2007 provides that an organisation is a proscribed organisation for the purpose of section 1 in relation to any time if at any time (a) it is (or was) proscribed (within the meaning given by section 11(4) of the Terrorism Act 2000), and (b) its activities are (or were) connected with the affairs of Northern Ireland.

Criminal Justice Act 2003

(Consultation response January 2023)

“The risk of jury bias is distinct from the risk of jury tampering which is the sole ground for action under the Criminal Justice Act 2003. Both types of risk are covered by the JSA 2007, as recognised by the previous consultation process in 2019 and as recognised by Lord Kerr in *Re Hutchings* who stated that the need for NJTs is ‘obvious’.

(Consultation response, January 2023)

(On the issue of relying solely on the Criminal Justice Act provisions) “We consider that there are significant issues in doing so - it would not address the risk of a partial juror(s) that arises in certain types of cases in Northern Ireland, as was recognised in *Hutchings*. Furthermore, we anticipate that the high evidential threshold under the 2003 Act would not be met in many of the cases that are currently certified for non-jury trial and this consequently presents a potential increased risk of perverse verdicts in a number of very serious trials.”

52. Part 7 of the Criminal Justice Act 2003¹⁶ (2003 Act), which applies in Northern Ireland and England and Wales, provides for trials to be heard without a jury in very limited circumstances. However the threshold for the use of those provisions is set much higher than the current system under the 2007 Act.

53. The two consultation responses that object to the renewal of the 2007 Act non-jury trial provisions called for reliance instead on the 2003 Act provisions, suggesting this would provide certainty for the administration of justice and move Northern Ireland away from reliance on emergency provisions. The Government is committed to this process as one of its commitments under the Belfast/Good Friday agreement.

54. Other responses that supported or were neutral on the question of renewal, noted that amendments to the provisions in the 2003 Act could be undertaken

¹⁶ The Criminal Justice Act 2003 can be read in full here:
<https://www.legislation.gov.uk/ukpga/2003/44/contents>

to account for the situation in Northern Ireland. This would be aimed at allowing the provisions in the 2007 Act to expire after 2025 whilst safeguarding the administration of Justice.

55. Some respondents expressed concerns about the low threshold required for the DPPNI to grant a non-jury trial certificate as they must only *suspect* one of the four conditions (see annex B) is met and be satisfied, in view of that fact, that there is a risk that the administration of justice might be impaired. In contrast, the 2003 Act requires evidence of a real and present danger that jury tampering would take place.

56. Some respondents saw the removal of the non-jury trial provisions in the 2007 Act and the sole reliance on the 2003 Act as a long-term goal that Northern Ireland should aim towards as a process of normalisation. Others believe Northern Ireland is ready to make that transition now.

57. Several respondents raised concerns that the provisions under the 2003 Act were not designed to deal with Northern Ireland's security situation. They note their serious concerns in the eventuality that Northern Ireland would be required to rely on the 2003 Act alone, noting that many of the cases that require a non-jury trial in Northern Ireland would not be able to be granted under the provisions of that Act.

Alternative Measures

58. Some respondents suggested that alternative methods could be employed to prevent the need for non-jury trials. For example, better protection of jurors. Others suggested that the Government needs to take a more holistic approach to this issue, providing more funding for programmes to tackle paramilitarism and community policing.

59. Any additional measures to protect jurors, however, would not protect a defendant from a perverse verdict resulting from juror bias. In their 13th report, the IRJSA noted that it would be difficult to see how any risk of a perverse verdict arising from a fearful or hostile jury could be mitigated by the available jury measures, including the transfer of a trial to another area.¹⁷

Ability to Challenge

¹⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/979145/Thirteenth_Report.pdf

(Consultation response January 2023)

“The level of subjectivity enjoyed by the DPP is of concern given the lack of requirement to provide reasons for taking a decision. In addition, the narrow limitations to challenge the DPP’s decision does impinge upon a citizen’s right to legal challenge.”

60. Some respondents raised concerns about the grounds for challenging a non-jury trial certificate being too narrowly defined.
61. Under Section 7(1) of the 2007 Act, a legal challenge can be brought against the issue of a non-jury trial certificate only on the grounds of:
- dishonesty;
 - bad faith; or
 - other exceptional circumstances such as lack of jurisdiction or error of law.
62. In the 10th Annual Report, the IRJSA considered the grounds for challenge and determined that “exceptions to this ouster provision in section 7 are so wide that it is not clear in what circumstances a legitimate judicial review could be prevented in reliance on it”.¹⁸

¹⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957084/10th_Report_1617.PDF

SECRETARY OF STATE DECISION

63. The Secretary of State thanks all those who responded to the public consultation on the future of non-jury trial arrangements under the 2007 Act for their considered views on this important topic. A significant majority of respondents have advocated the need to extend the non-jury trial provisions under the 2007 Act for a further two years. Nevertheless, many of these respondents indicated that this was a reluctant position and there were also some respondents who called for an end to these provisions this year in order to further normalise the security arrangements in Northern Ireland.
64. The Secretary of State for Northern Ireland agrees that the continued need for the provisions is regrettable. However, the concerns raised during the consultation of the potential risk to the administration of justice and to individuals if the non-jury trial provisions were to expire imminently, cannot be ignored.
65. The Secretary of State has also considered the indicators developed by the Non-Jury Trial Working Group. The expertise brought together by this group and their hard work over the past two years has been instrumental in the decision making process for whether to seek Parliamentary approval for an extension. Using all of the indicators in combination with each other and with the consultation responses, it is his view that there has not been sufficient change in the security situation in Northern Ireland over the last two years to allow for these provisions to expire.
66. The Secretary of State has also considered the constructive proposals made through the consultation of the possible alternative arrangements which could be put in place in order to allow Northern Ireland to transition away from using the non-jury trial provisions in the 2007 Act as well as some of the concerns raised about the operation of the current system.
67. Having reviewed and analysed the responses to the public consultation on non-jury trials and taken into account the relevant factors, the Secretary of State for Northern Ireland has decided:

- 1) that it is necessary to seek Parliamentary approval for an extension of the non-jury trial provisions under the 2007 Act for a further two years;
- 2) that the operation of the provisions should continue to be kept under regular, independent review; and

3) The Northern Ireland Office will assess the viability of the proposals made in this consultation for alternative arrangements to the non-jury trial provisions in the 2007 Act, as well as those proposals to improve the operation of the current regime.

Statutory Instrument

68. An Order making provision for the extension of the non-jury trial provisions under the 2007 Act will be laid in Parliament on 24 April 2023. The Order will require the approval of both Houses of Parliament before it can be made.

Parliamentary Debates

69. If the Order is approved by both Houses of Parliament, the Order will extend the non-jury trial provisions for a further two years. Their new expiry date will become 31st July 2025. Information on Parliamentary debates can be found on the Parliament website: www.parliament.uk

ANNEX A: FURTHER INFORMATION

- Criminal Justice Act 2003, Section 44
<http://www.legislation.gov.uk/ukpga/2003/44/section/44>
- Justice and Security (Northern Ireland) Act 2007
<http://www.legislation.gov.uk/ukpga/2007/6/contents>
- The Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2021
<https://www.legislation.gov.uk/uksi/2021/876/contents/made>
- Fifth Report of the Independent Reporting Commission (reporting on progress towards ending paramilitary activity):
<https://www.ircommission.org/publications/irc-fifth-report-0>
- *Fourteenth Annual Report of the Independent Reviewer of the Justice & Security (NI) Act 2007*, which was published in April 2020:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1102689/E02756398_IRJSA_Report_Web_Accessible.pdf

ANNEX B: DIRECTOR OF PUBLIC PROSECUTIONS TEST

1. A non-jury trial under the Justice and Security (Northern Ireland) Act 2007 will only take place when the Director of Public Prosecutions for Northern Ireland (DPPNI) issues a certificate for a specific case, in relation to a trial on indictment (tried in the Crown Court).
2. Decisions for non-jury trials are made on a case-by-case basis, taking into account the circumstances of both the offence and the defendant.
3. The decision for issuing a certificate is based on a two-stage test set out in Section 1, subsections (3) to (6), of the Justice and Security (Northern Ireland) Act 2007. The DPPNI must:
 - i. Suspect that one (or more) of the four conditions is met; and
 - ii. Be satisfied that there is a risk that the administration of justice might be impaired if a jury trial were to be held.

Condition One	The defendant is, or is an associate of, a person who: <ol style="list-style-type: none"> (a) is a member of a proscribed¹⁹ organisation, or (b) has at any time been a member of an organisation that was, at that time, a proscribed organisation.
Condition Two	That: <ol style="list-style-type: none"> (a) the offence or any of the offences was committed on behalf of a proscribed organisation, or (b) a proscribed organisation was otherwise involved with, or assisted in, the carrying out of the offence or any of the offences.
Condition Three	An attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and— <ol style="list-style-type: none"> (a) the attempt was made on behalf of a proscribed organisation, or (b) a proscribed organisation was otherwise involved with, or assisted in, the attempt.

¹⁹ Section 1(10) of the Justice and Security (Northern Ireland) Act 2007 provides that an organisation is a “proscribed organisation for the purpose of section 1 if at any time (a) it is (or was) proscribed (within the meaning given by section 11(4) of the Terrorism Act 2000, and (b) its activities are (or were) connected with the affairs of Northern Ireland. More information can be found at: <https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2/proscribed-terrorist-groups-or-organisations-accessible-version#list-of-proscribed-groups-linked-to-northern-ireland-and-related-terrorism>

**Condition
Four**

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

Annex C - CHARTS AND ANALYSIS OF WORKING GROUP INDICATORS

Level of Paramilitary/Terrorist Activity

Chart 1

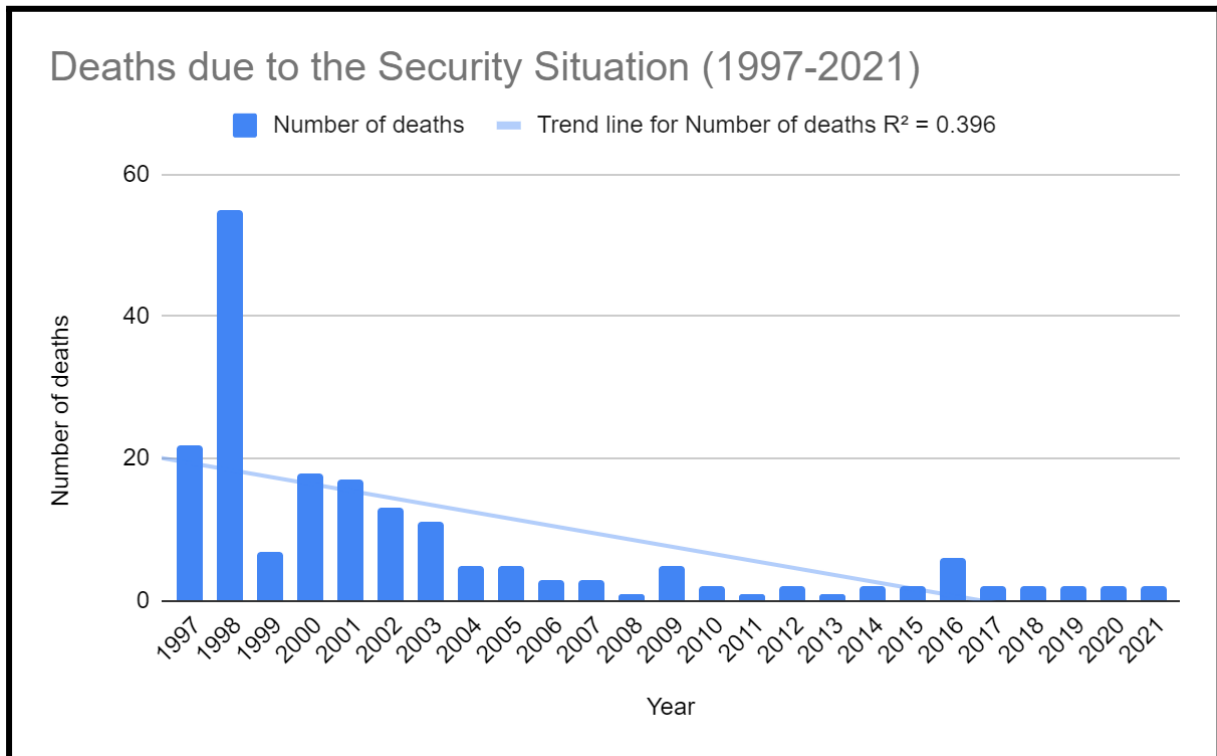
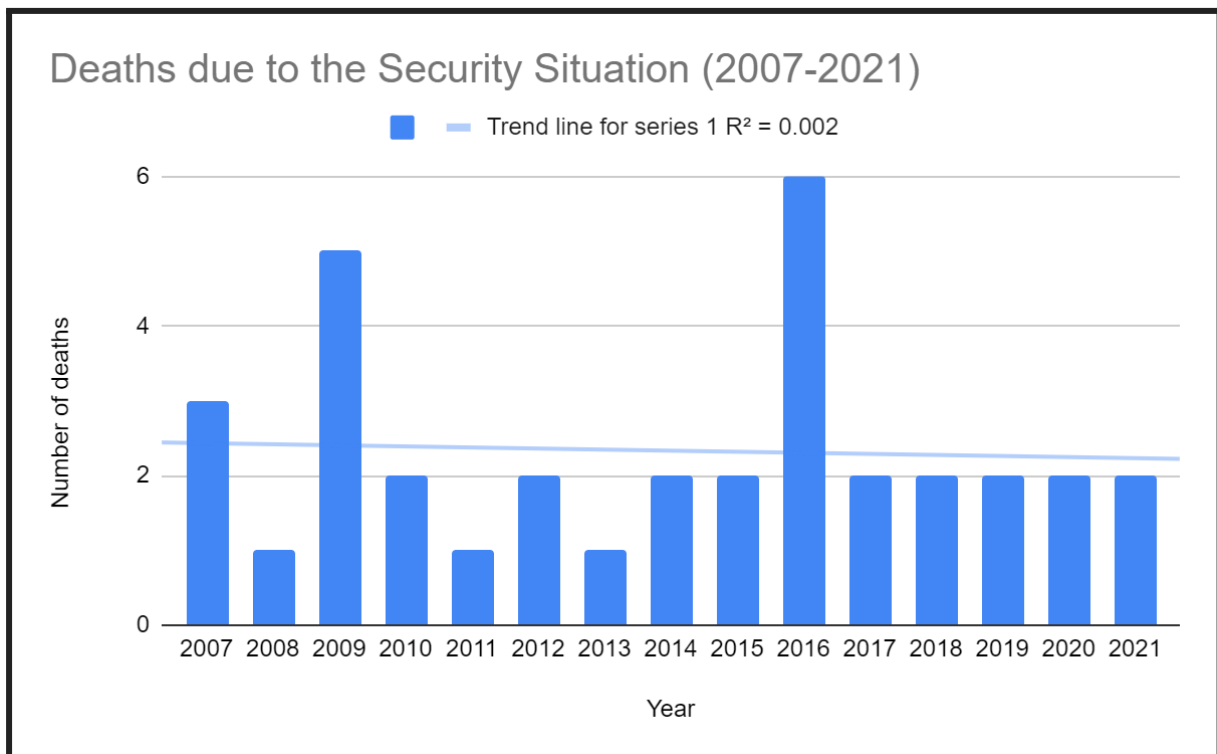


Chart 2



- Chart 1 shows a moderate downward trend since 1997. However, if we look at the change in the number of deaths since 2007 (chart 2), there is a flat trendline as the

numbers have plateaued over the last few years.

- The number of deaths has been so low since the mid-2000 that caution is necessary when interpreting the data.

Chart 3

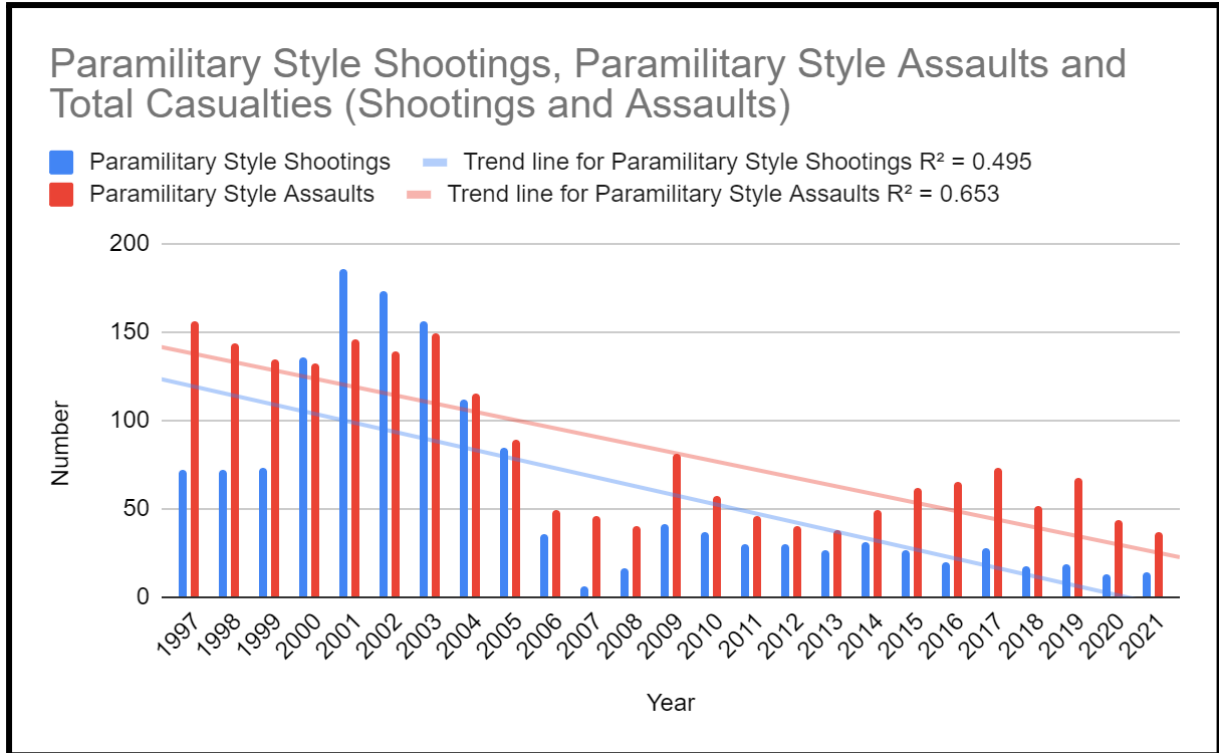


Chart 4

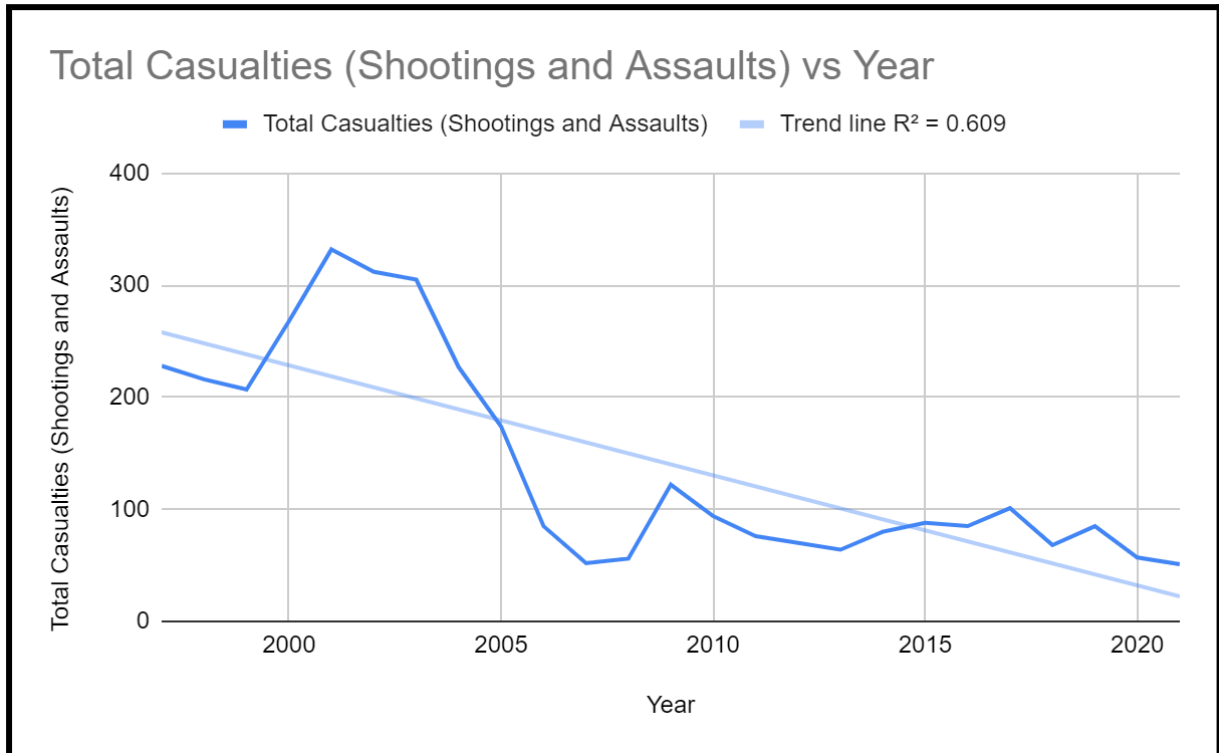
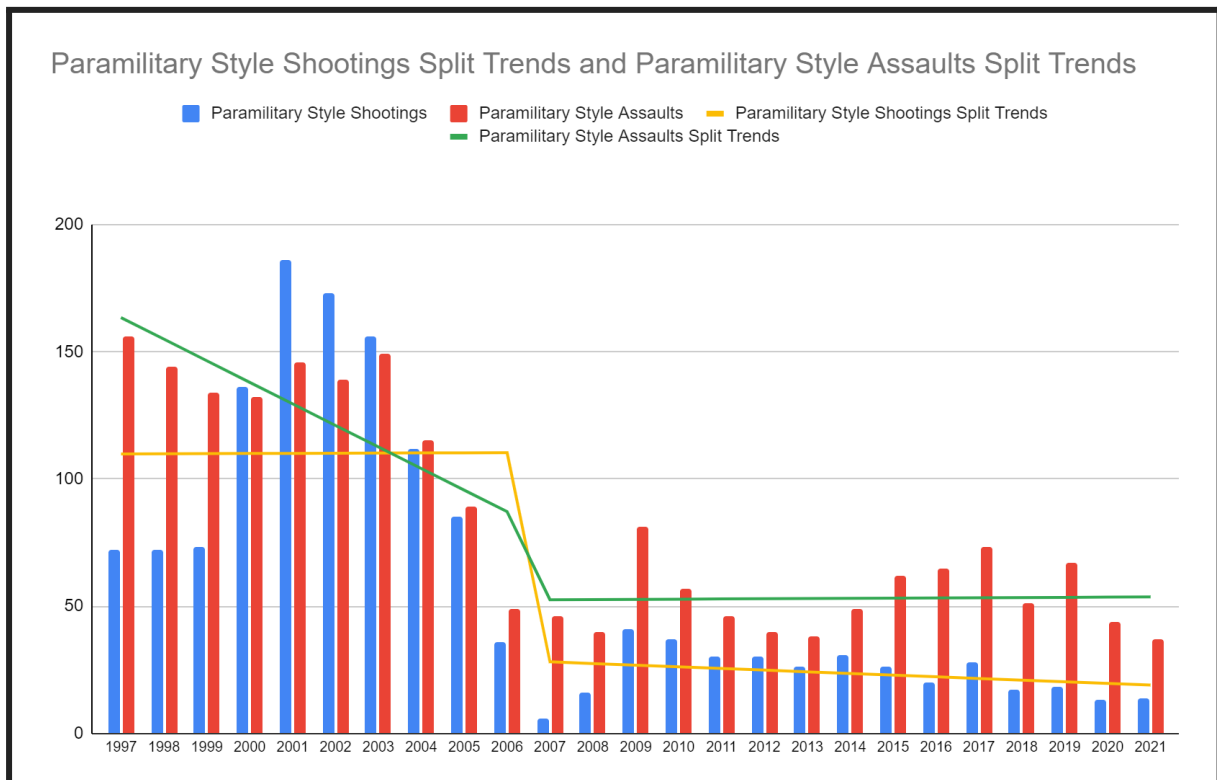
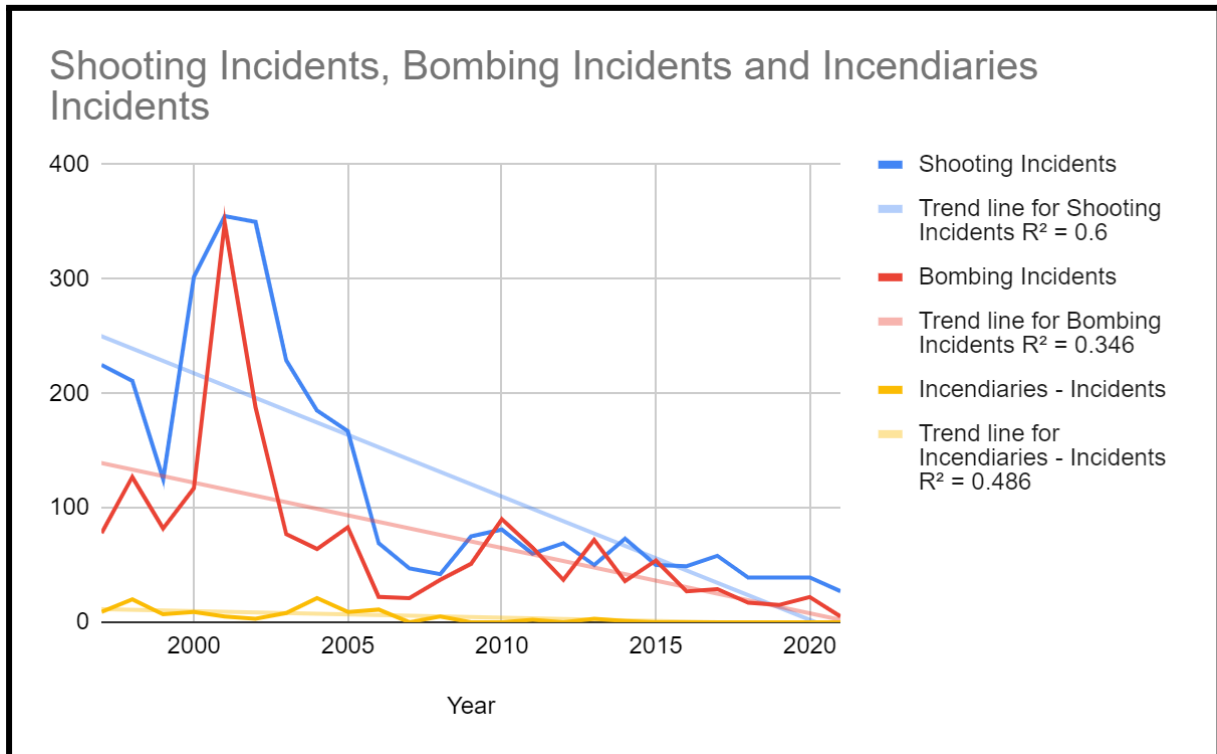


Chart 5



- Charts 3 & 4 show the number of paramilitary-style assaults and shootings that have taken place from 1997-2021. There is a moderate correlation between the annual percentage change in both shootings and assaults, this shows that on average, shootings and assaults see the same direction of change in the data (e.g. if shootings increase one year, assaults are also likely to increase that year).
- When looking at the data back to 1997, a clear downwards trend is reflected in the graph for both shootings and assaults (chart 3)
- However, chart 5 demonstrates split trends indexed to 2007. Paramilitary style assaults show a sharp downward trajectory between 1997-2006 and then a flat trend with marginal increase between 2007-2021. Paramilitary style shootings show a flat trend between 1997-2006 and then a very low/marginal downwards trend between 2007-2021.
- There has been little change in the number of paramilitary-style shootings and assaults since the NJT provisions were introduced in 2007.

Chart 6



- Chart 6 shows that both the number of bombings and the number of shootings display a downward trend from 1997 to present.
- However, since 2007, shooting incidents have been above 2007 levels for 60% of the years, and for bombing incidents 73.3% of the years.
- There is a medium to high correlation between shooting and bombing incidents, in that the more shooting incidents the more bombing incidents and vice-versa.

Chart 7

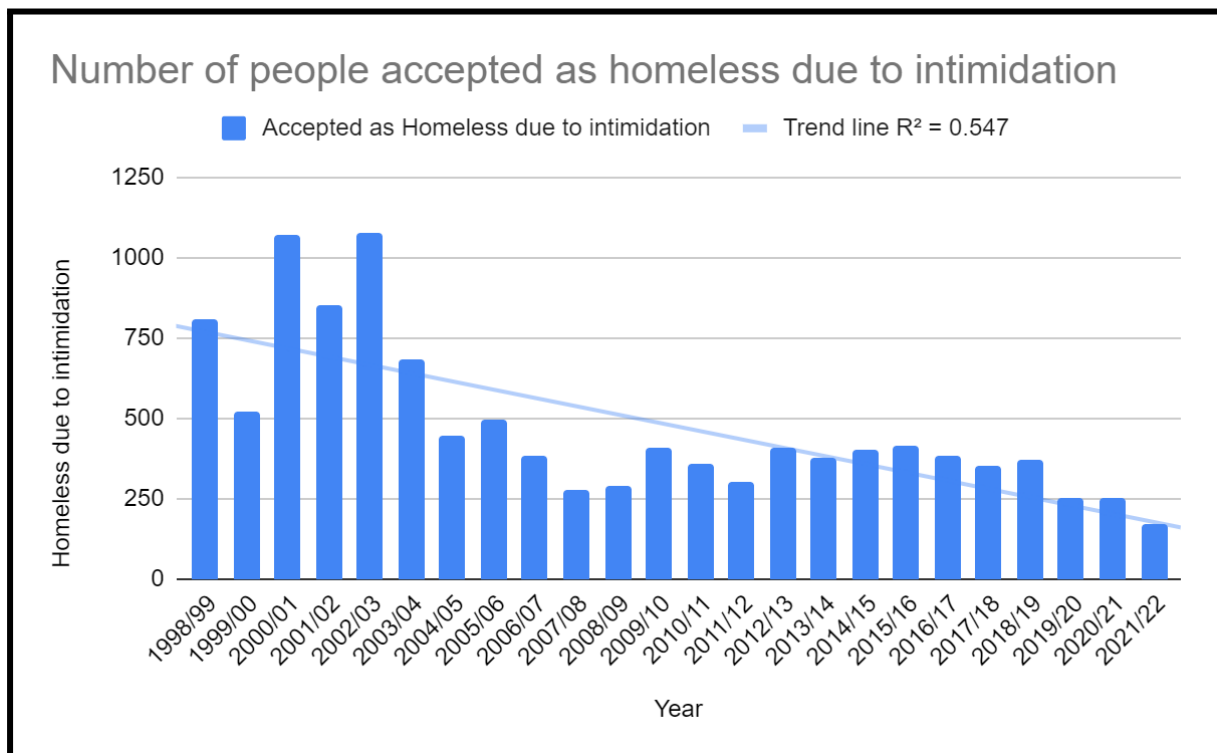
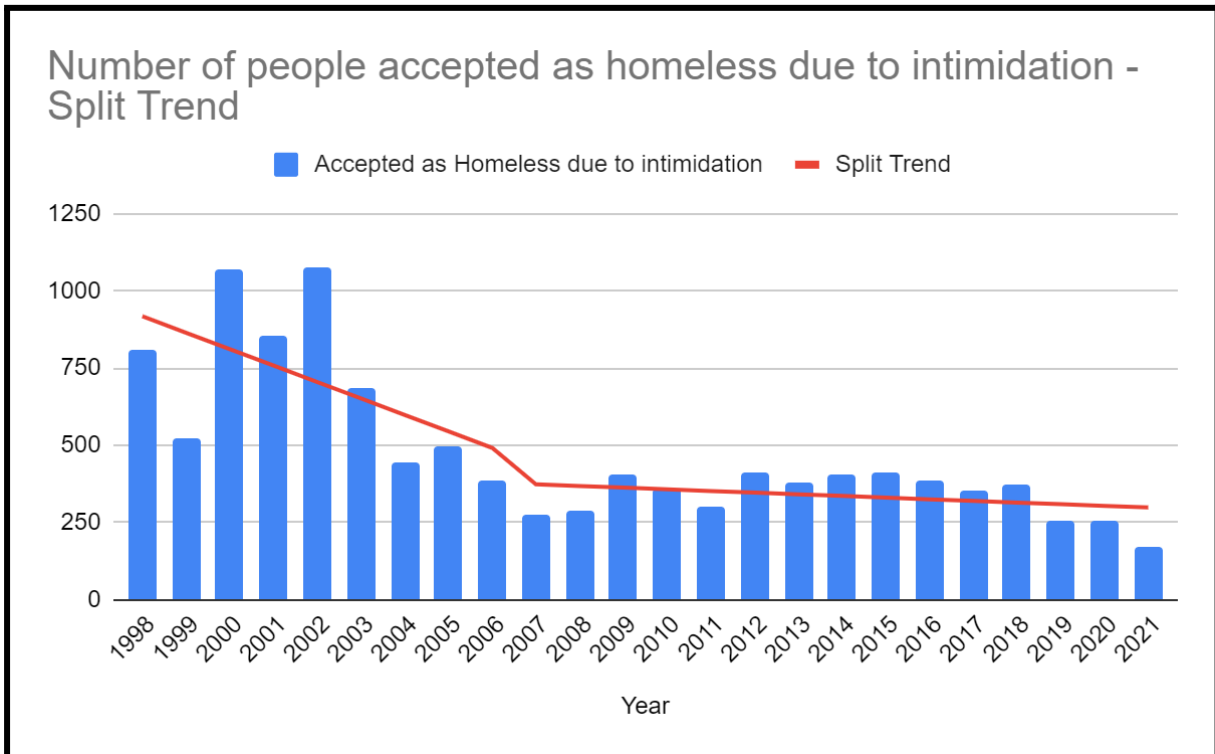


Chart 8

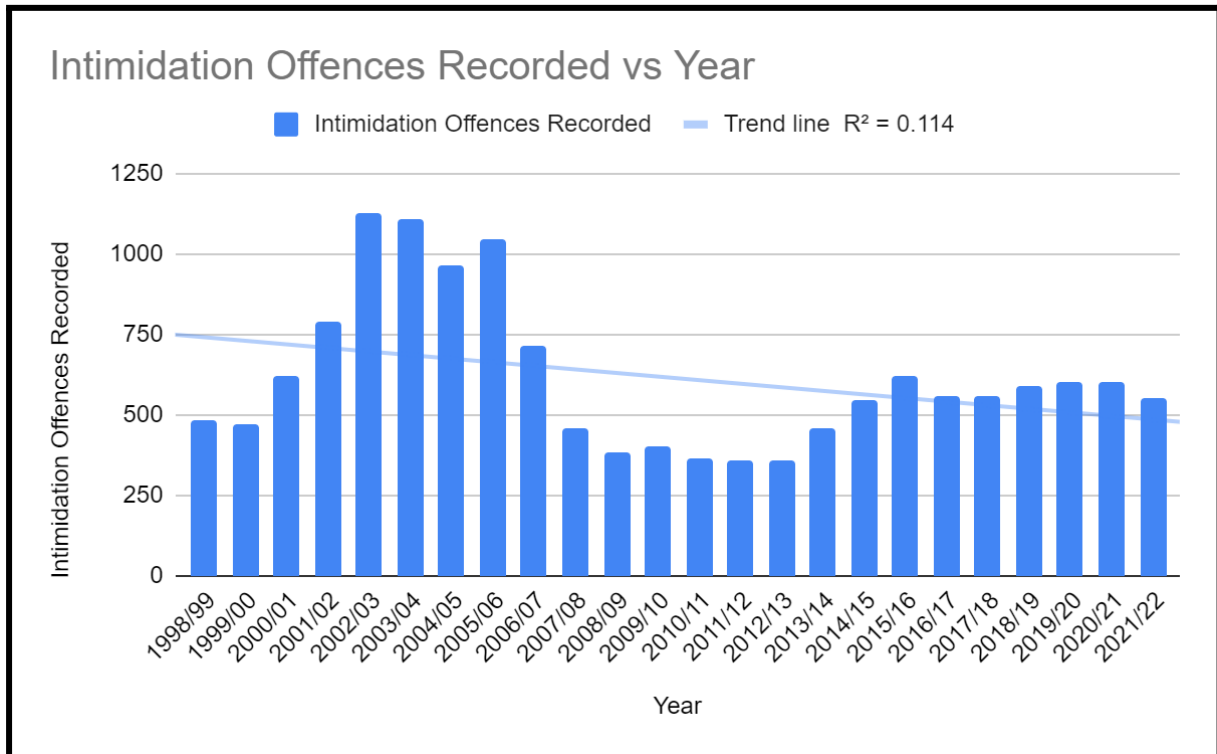


- Chart 7 shows a moderate/strong downwards trend in the number of people accepted as homeless due to intimidation between 1998-2021.
- However, chart 8 splits the trend line indexed to 2007. This shows a clear downwards trend from 1998-2006 but then an almost flat trend from 2007 onwards.

Chart 9



Chart 10



- Chart 9 shows the number of offences recorded that involved intimidation of, or threat to, harm a **witness**. There has been little variation in the number of offences recorded from 2007 to date.
- Chart 10 shows a slight downward trend in the total number of intimidation offences recorded by the PSNI each year. However, the dip in 2007-2013 likely skews the figures. A Pearson's correlation coefficient of 0.38 demonstrates a very low trend.

Chart 12

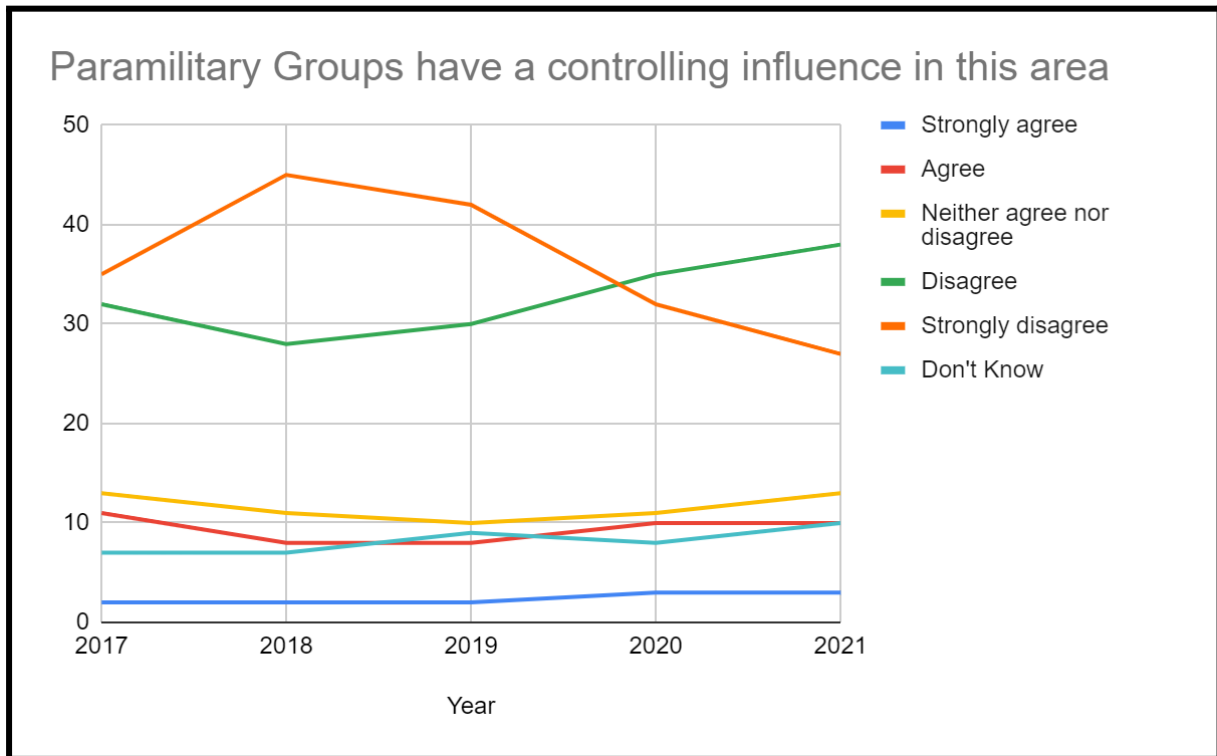
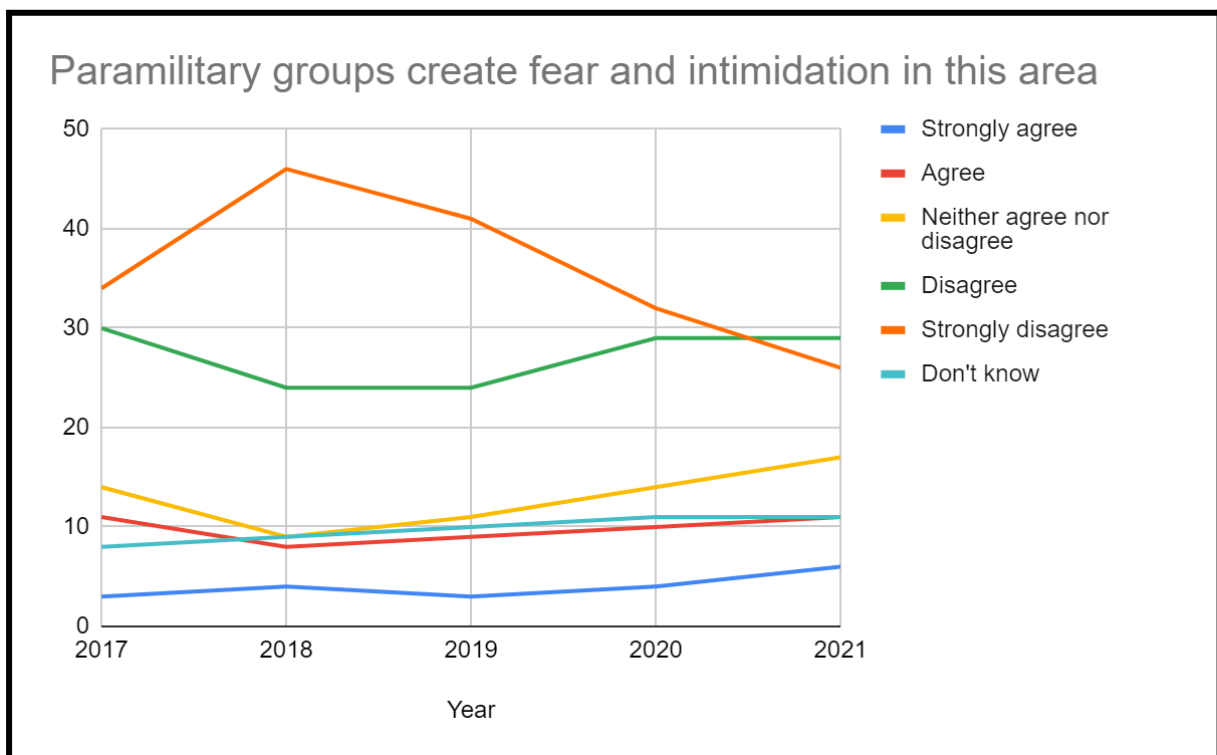
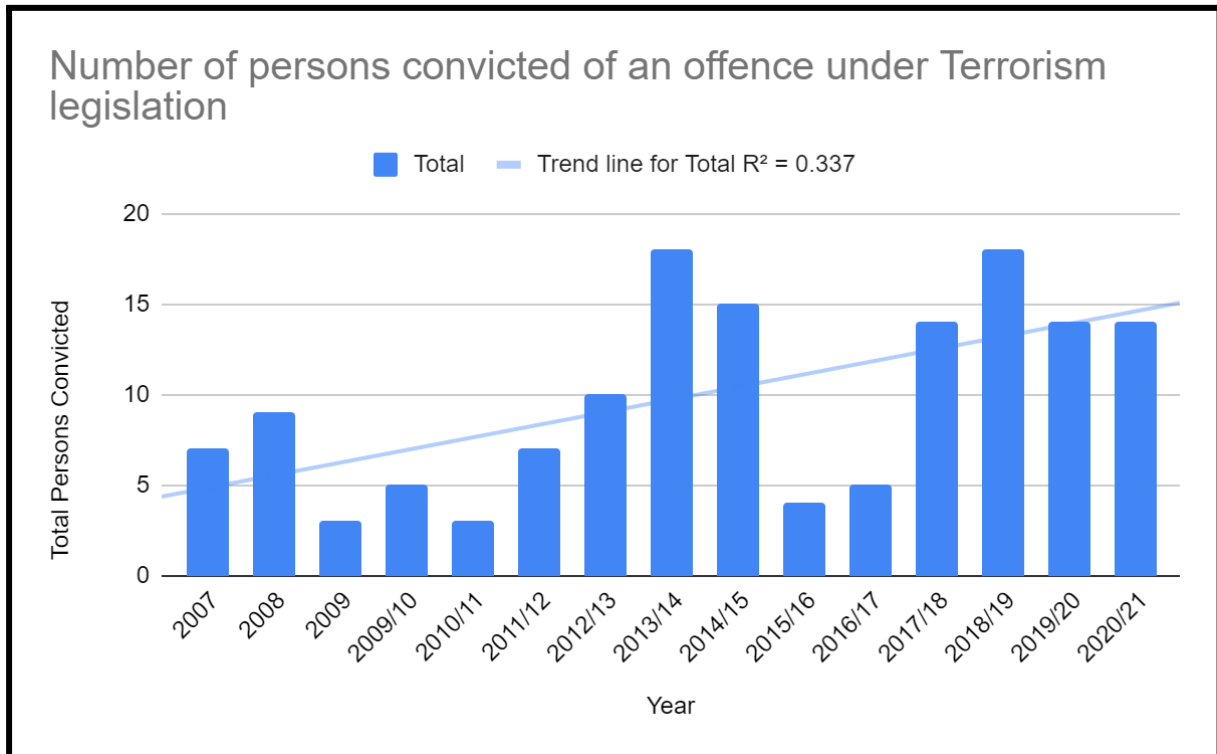


Chart 13



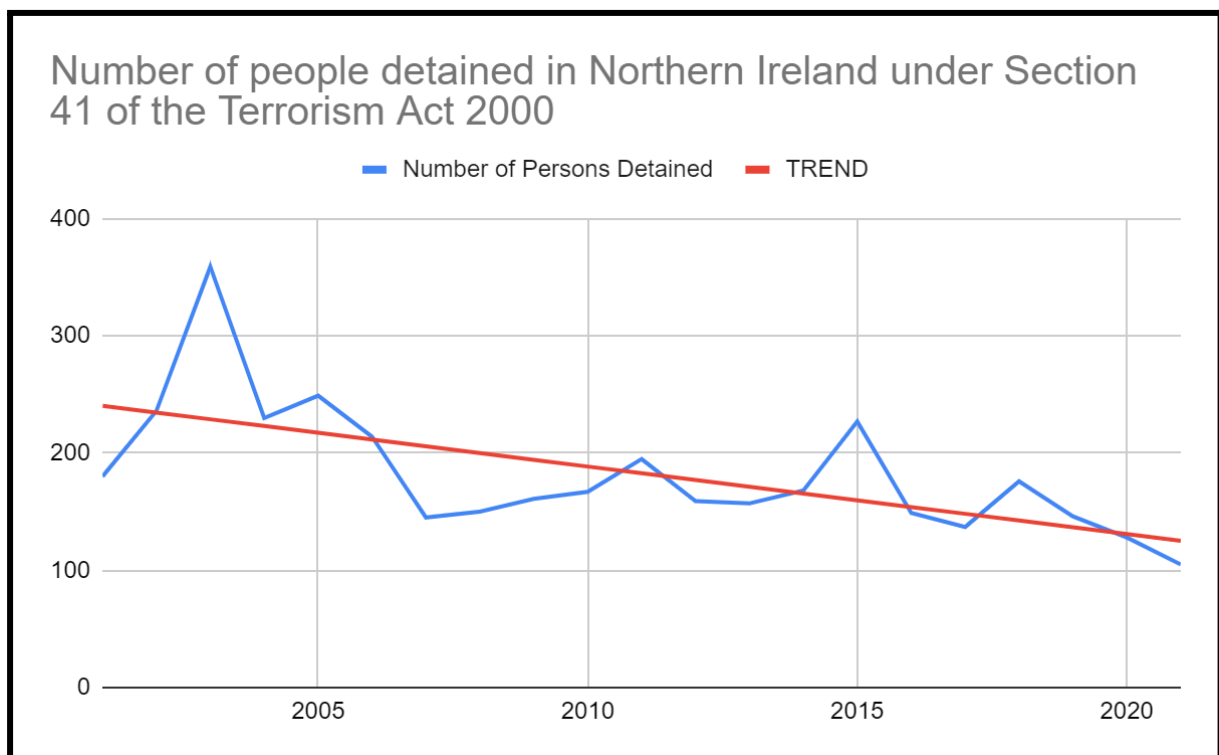
- Charts 12 and 13 are unlikely to be useful as tools to aid decision-making but they provide contextual information.
- The majority of people questioned disagree that paramilitary groups have a controlling influence and/or create fear and intimidation in their areas.

Chart 14



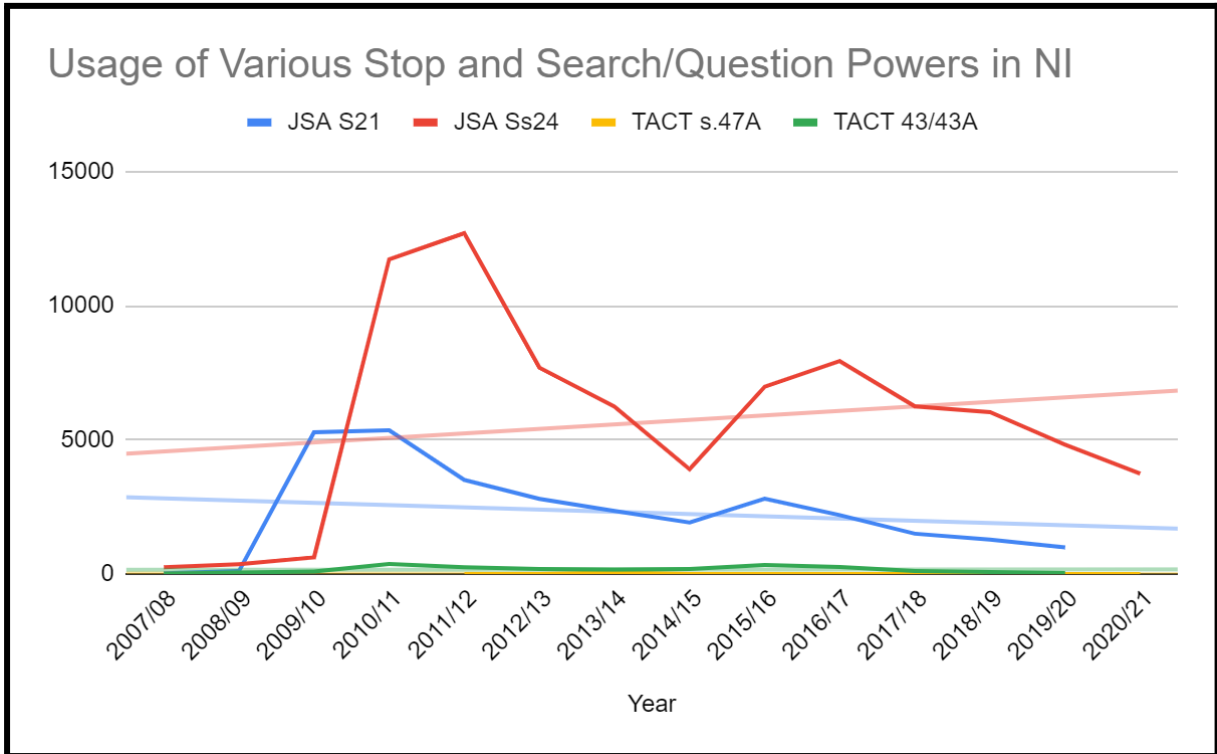
- Chart 14 shows the number of people convicted of an offence under terrorism legislation has a moderate upwards trend.
- For this metric, terrorism offences are those contained within the Terrorism Act 2000, Terrorism Act 2006 and Counter Terrorism Act 2008.

Chart 15



- Section 41 of the Terrorism Act 2000 provides that a constable may arrest without a warrant a person whom he or she reasonably suspects to be a terrorist.
- Chart 16 demonstrates a moderate downwards trend in the number of people detained in Northern Ireland under S41 of TACT.

Chart 16



- Chart 15 shows that the usage of the various stop and search powers in Northern Ireland has not changed significantly since 2007. There is a slight upwards trend in the use of the 'without suspicion' s24 power.

Chart 17

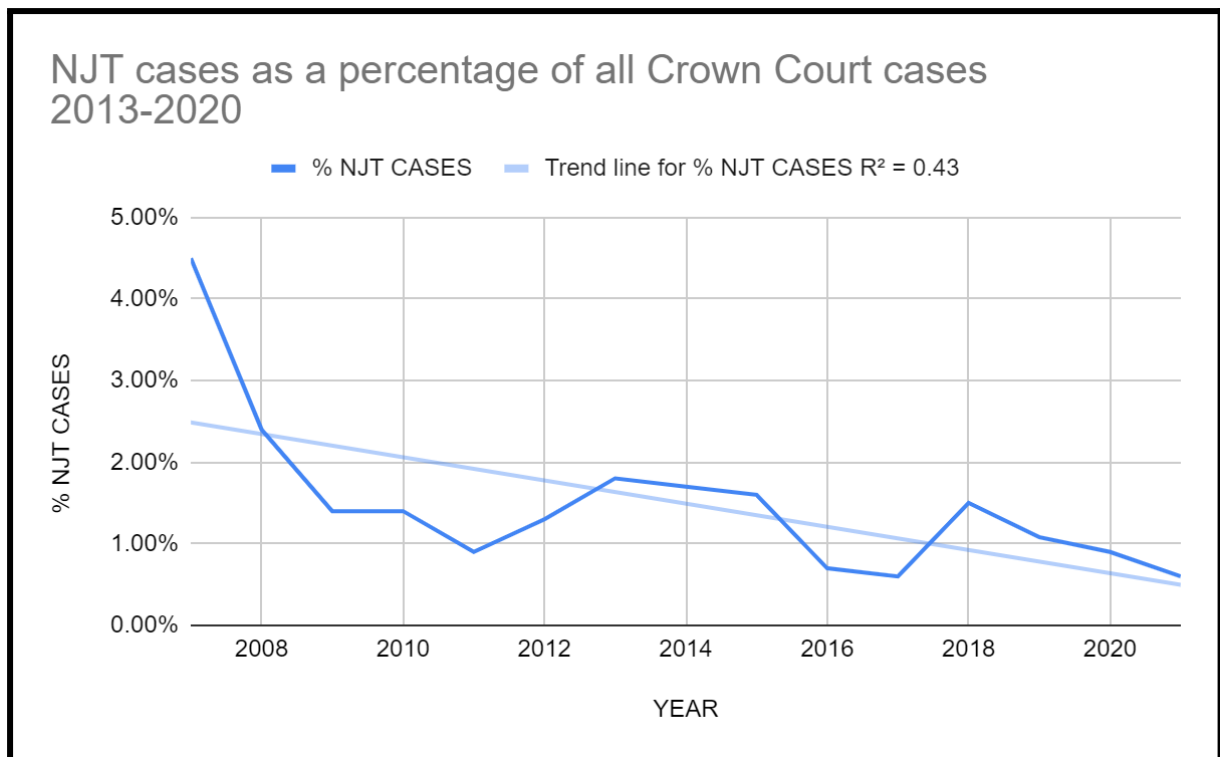
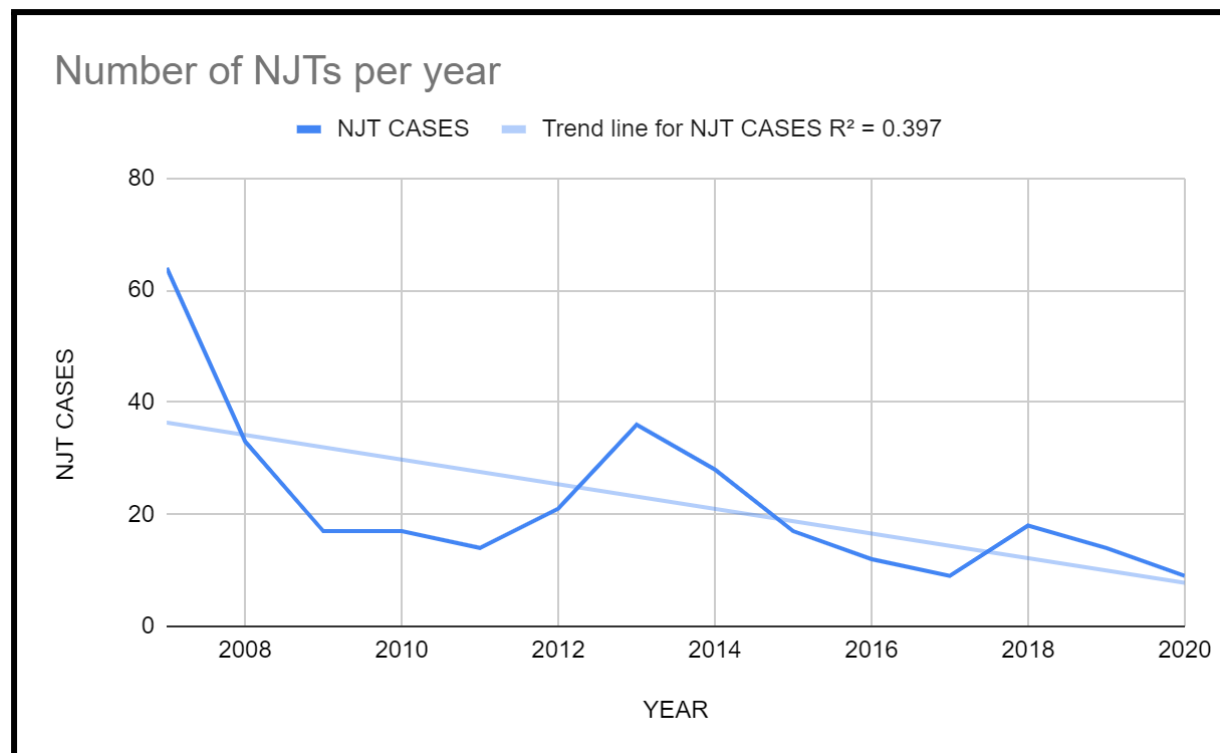


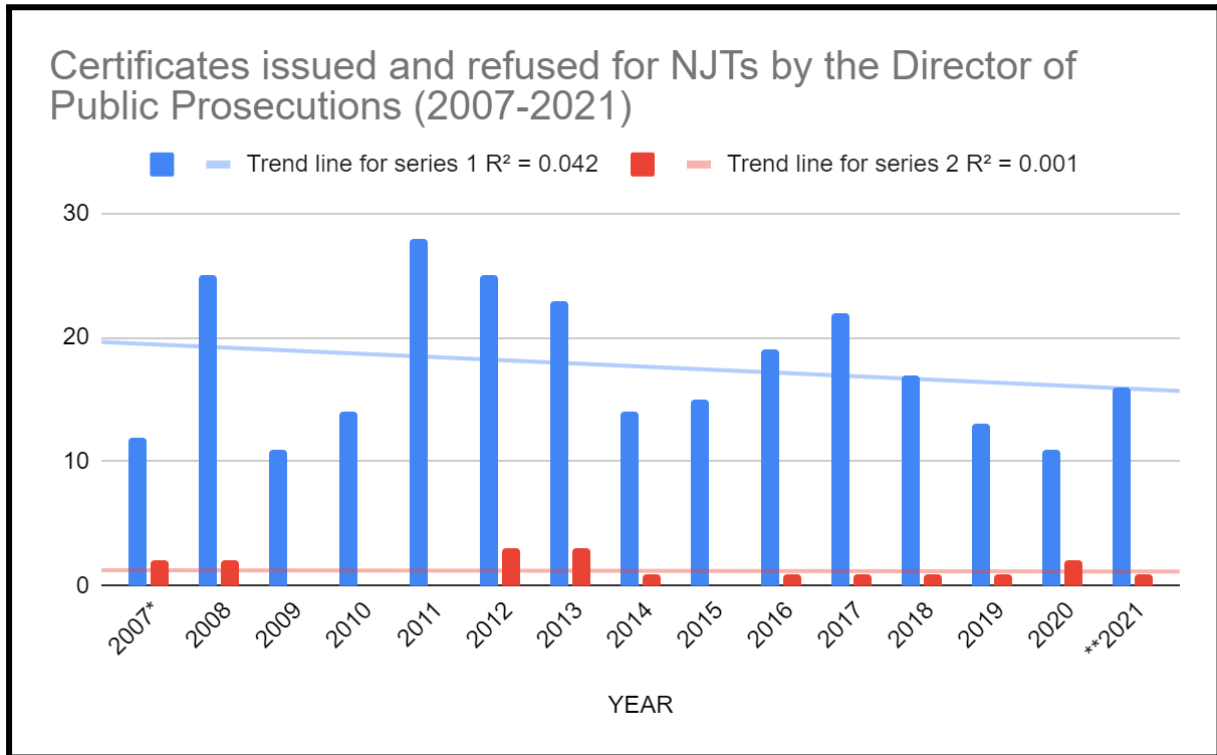
Chart 18



- Chart 17 displays a downward trend in the number of NJT cases as a percentage of all Crown Court cases. A Pearson's correlation coefficient of 0.65 indicates that this is a moderate trend.
- Chart 18 shows the number of NJT cases per year. When isolated, we can see that the overall numbers of NJT cases are on a greater decline (Pearson's correlation

coefficient of 0.66) than the number of NJTs as a percentage of all Crown Court cases.

Chart 19:



- Chart 19 shows that there has been a marginal downward trend in the number of NJT certificates issued over time. However, the R^2 value of 0.042 and a Pearson's Coefficient of 0.2 both indicate that this downward trend is not statistically significant.

Chart 20

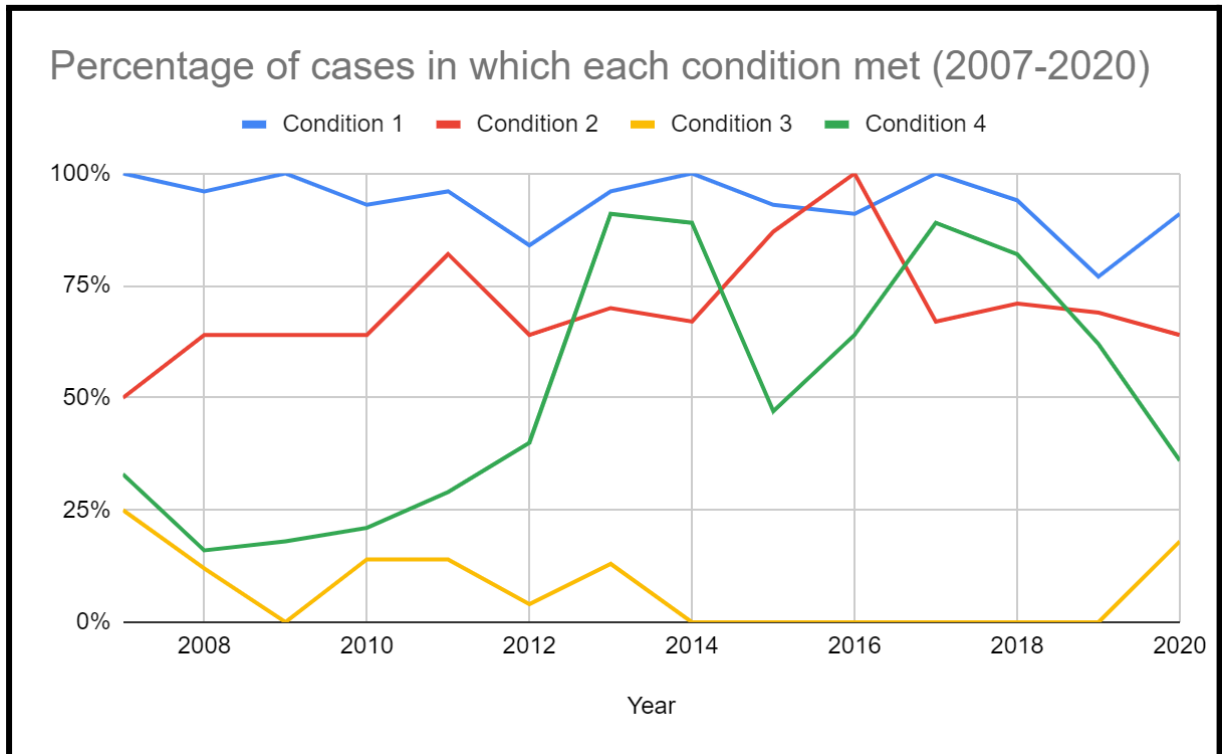
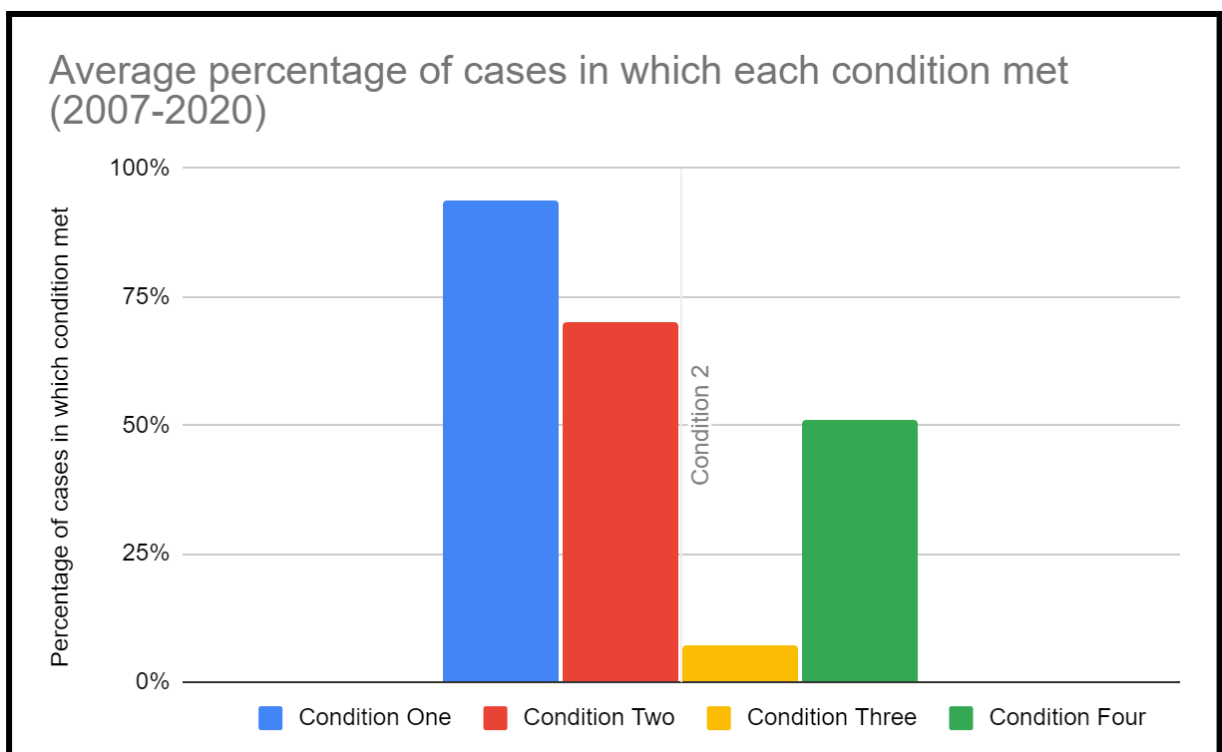


Chart 21



1. When displayed graphically over time in Chart 20, we can see that the usage of condition four varies the most over the years.
2. Chart 21 shows the average percentage of cases in which each condition was met from 2007-2020.

- a. Condition one was met most often (94% of cases)
- b. Condition two was next most frequently met (70% of cases)
- c. Condition four was met in 51% of cases
- d. Condition three was used least frequently (only 7% of cases)

ANNEX D: WORKING GROUP, INDICATOR STATISTICS TABLES

Table 1

Deaths due to the Security Situation (1997-2021)	
Year	Number of deaths
1997	22
1998	55
1999	7
2000	18
2001	17
2002	13
2003	11
2004	5
2005	5
2006	3
2007	3
2008	1
2009	5
2010	2
2011	1
2012	2
2013	1
2014	2
2015	2
2016	6
2017	2
2018	2
2019	2
2020	2
2021	2

[Source: PSNI Security Statistics Bulletin](#)

Table 2

Paramilitary Assaults 1997-2021			
Year	Paramilitary Style Shootings	Paramilitary Style Assaults	Total Casualties (Shootings and Assaults)
1997	72	156	228
1998	72	144	216
1999	73	134	207
2000	136	132	268
2001	186	146	332
2002	173	139	312
2003	156	149	305
2004	112	115	227
2005	85	89	174
2006	36	49	85
2007	6	46	52
2008	16	40	56
2009	41	81	122
2010	37	57	94
2011	30	46	76
2012	30	40	70
2013	26	38	64
2014	31	49	80
2015	26	62	88
2016	20	65	85
2017	28	73	101
2018	17	51	68
2019	18	67	85
2020	13	44	57
2021	14	37	51

[Source: PSNI Security Statistics Bulletin](#)

Table 3

Security Related Incidents			
Year	Shooting Incidents	Bombing Incidents	Incendiaries - Incidents
1997	225	78	9
1998	211	127	20
1999	125	82	7
2000	302	117	9
2001	355	349	5
2002	350	188	3
2003	229	77	8
2004	185	64	21
2005	167	83	9
2006	69	22	11
2007	47	21	0
2008	42	37	5
2009	75	51	0
2010	81	90	0
2011	60	65	2
2012	69	37	0
2013	50	72	3
2014	73	36	1
2015	50	54	0
2016	49	27	0
2017	58	29	0
2018	39	17	0
2019	39	15	0
2020	39	22	0
2021	27	5	0

[Source: PSNI Security Statistics Bulletin](#)

Table 4

Files Received by PPS with a complaint of Intimidation 01 April 2016 - 31 March 2021	
Financial Year	Number of Cases
16/17	117
17/18	86
18/19	79
19/20	78
20/21	55
Total	415
Source: PPS	

Table 5

People accepted as homeless due to intimidation	
Year	Accepted as Homeless due to intimidation
1998/99	807
1999/00	524
2000/01	1071
2001/02	853
2002/03	1077
2003/04	685
2004/05	447
2005/06	494
2006/07	385
2007/08	278
2008/09	288
2009/10	406
2010/11	361
2011/12	303
2012/13	411

2013/14	380
2014/15	405
2015/16	414
2016/17	387
2017/18	355
2018/19	374
2019/20	255
2020/21	256
2021/22	171
Source NIHE	

Table 6

Paramilitary Groups have a controlling influence in this area						
Year	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't Know
2017	2	11	13	32	35	7
2018	2	8	11	28	45	7
2019	2	8	10	30	42	9
2020	3	10	11	35	32	8
2021	3	10	13	38	27	10
Source: NI Life and Times Survey						

Table 7

Paramilitary groups create fear and intimidation in this area						
Year	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know
2017	3	11	14	30	34	8
2018	4	8	9	24	46	9
2019	3	9	11	24	41	10
2020	4	10	14	29	32	11
2021	6	11	17	29	26	11
Source: NI Life and Times Survey						

Table 8

Recorded Intimidation or threat to harm witness offences (1 April 2011 – 31 March 2022)	
Year	Intimidation or threat to harm witness etc
2007/8	105
2008/9	160
2009/10	176
2010/11	156
2011/12	164
2012/13	149
2013/14	167
2014/15	171
2015/16	187
2016/17	197
2017/18	150
2018/19	152
2019/20	154
2020/21	129
2021/22	163
<u>Source: PSNI</u>	

Table 9

Police Recorded Crime: Intimidation	
Year	Intimidation Offences Recorded
1998/99	481
1999/00	469
2000/01	622
2001/02	787
2002/03	1,128

2003/04	1,109
2004/05	962
2005/06	1,043
2006/07	714
2007/08	461
2008/09	383
2009/10	404
2010/11	368
2011/12	362
2012/13	358
2013/14	456
2014/15	548
2015/16	619
2016/17	556
2017/18	557
2018/19	590
2019/20	604
2020/21	605
2021/22	554
Source: Police Recorded Crime In NI	

Table 10

Number of persons convicted of an offence under Terrorism legislation			
Year	Crown Court	Magistrates' Court	Total
2007	6	1	7
2008	8	1	9
2009	2	1	3
2009/10	4	1	5
2010/11	2	1	3
2011/12	3	4	7
2012/13	7	3	10
2013/14	17	1	18
2014/15	11	4	15

2015/16	4	0	4
2016/17	5	0	5
2017/18	5	9	14
2018/19	6	12	18
2019/20	2	12	14
2020/21	10	4	14

Source: Northern Ireland Courts and Tribunals Service.

Table 11

Usage of Various Stop and Search/Question Powers in NI				
Year	JSA S21	JSA Ss24	TACT s.47A	TACT 43/43A
2007/08	28	251	-	13
2008/09	112	372	-	56
2009/10	5285	621	-	97
2010/11	5,355	11,721	-	375
2011/12	3,511	12,699	0	254
2012/13	2,803	7,687	0	186
2013/14	2,350	6,239	70	173
2014/15	1,922	3,906	0	192
2015/16	2,812	6,980	0	344
2016/17	2,200	7,935	0	265
2017/18	1,505	6,245	0	118
2018/19	1,283	6,035	0	74
2019/20	997	4,818	0	38
2020/21		3,739	0	

Table 12

Persons detained in Northern Ireland under Section 41 of the Terrorism Act 2000	
Year	Number of Persons Detained
2001	180
2002	236
2003	359

2004	230
2005	249
2006	214
2007	145
2008	150
2009	161
2009/10	167
2010/11	195
2011/12	159
2012/13	157
2013/14	168
2014/15	227
2015/16	149
2016/17	137
2017/18	176
2018/19	146
2019/20	128
2020/21	105
Source: NI Terrorism Bulletin	

Table 13: NJT cases as a percentage of all Crown Court cases 2013-2020

YEAR	NJT CASES	OTHER	TOTAL	% NJT CASES
2007	64	1367	1431	4.50%
2008	33	1338	1371	2.40%
2009	17	1219	1236	1.40%
2010	17	1233	1250	1.40%
2011	14	1472	1486	0.90%
2012	21	1656	1677	1.30%
2013	36	1917	1953	1.80%
2014	28	1660	1688	1.70%
2015	17	1063	1080	1.60%
2016	12	1628	1640	0.70%
2017	9	1400	1409	0.60%
2018	18	1163	1181	1.50%

2019	14	1281	1295	1.08%
2020	9	956	965	0.90%
2021	8	1350	1358	0.60%
TOTAL	317	20703	21020	Average: 1.49%
Source: NI Courts & Tribunals Service				

Table 14: Certificates issued and refused for NJTs by the Director of Public Prosecutions (2007-2021)

Year	Certificates Issued	Certificates Refused
2007*	12	2
2008	25	2
2009	11	0
2010	14	0
2011	28	0
2012	25	3
2013	23	3
2014	14	1
2015	15	0
2016	19	1
2017	22	1
2018	17	1
2019	13	1
2020	11	2
**2021	16	1
Source: Northern Ireland Director of Public Prosecution's Office		

*Provisions under the 2007 Act were brought into effect on 1 August 2007

Table 15: Number of Cases in which each condition was met per year

Year	Number of Cases in which Condition Met				Certificate s Issued
	Condition 1	Condition 2	Condition 3	Condition 4	
2007	100%	50%	25%	33%	12
2008	96%	64%	12%	16%	25
2009	100%	64%	0%	18%	11

2010	93%	64%	14%	21%	14
2011	96%	82%	14%	29%	28
2012	84%	64%	4%	40%	25
2013	96%	70%	13%	91%	23
2014	100%	67%	0%	89%	18
2015	93%	87%	0%	47%	15
2016	91%	100%	0%	64%	11
2017	100%	67%	0%	89%	9
2018	94%	71%	0%	82%	17
2019	77%	69%	0%	62%	13
2020	91%	64%	18%	36%	11
Average	94%	70%	7%	51%	

Source: Northern Ireland Director of Public Prosecution's Office