

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

**SIXTEENTH REPORT**

**1 August 2022 – 31 July 2023**

Professor Marie Breen-Smyth

October 2024

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



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**REPORT OF THE INDEPENDENT REVIEWER  
JUSTICE AND SECURITY (NORTHERN) IRELAND) ACT 2007  
SIXTEENTH REPORT: 1 AUGUST 2022 – 31 JULY 2023**

**FOREWORD**

In his letter of 1 February 2021 the Secretary of State for Northern Ireland, appointed me for the three-year period from 1 February 2020 - 31 January 2024 under Section 40 as the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007.

That letter set out my terms of reference as follows: “the functions of the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 are 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
- report annually to the Secretary of State.

In carrying out your duties, you must act in accordance with any request by the Secretary of State to include matters over and above those outlined in sections 21 to 32 of the Act”.

My previous reports and those of my predecessors are available on the GOV.UK website: <https://www.gov.uk/government/publications/annual-reports-of-the-independent-reviewer-of-justice-and-security-northern-ireland-act-2007>.

I now have pleasure in submitting my third report, which is the 16th annual report, covering the period 1 August 2022 - 31 July 2023.

An executive summary of this report can be found at section two.

Marie Breen-Smyth  
February 2024

## **1 INTRODUCTION**

- 1.1 As in previous reports, I review the powers exercised under the Justice and Security (Northern Ireland) Act 2007 (JSA) which are available to police and security services and are additional to those available to the police and prosecution services elsewhere in the UK. These additional powers were designed to address the specific security situation in Northern Ireland when the Act was passed in 2007. At that time, it was considered that additional powers were necessary for the preservation of peace or the maintenance of order. In this report, I once again consider whether this remains the case and the operation of those powers and those affected by them.
- 1.2 The authority for the role of the Independent Reviewer derives from section 40 of the Justice and Security Act (JSA) 2007 and in the 14th report at paragraphs 1.2-1.4; I set this out in detail. In this role, I review the operation of sections 21 to 32 of the Act, which contain powers to stop and question, stop and search and to enter premises to search for munitions, to stop and search vehicles, to take possession of land and to close roads. My review also covers the use of the provisions for Non-Jury Trials (NJT's). My review also considers how they affect those subject to all of these powers. I also review the procedures adopted by the military in Northern Ireland for receiving, investigating and responding to complaints. My report containing these reviews is made annually to the Secretary of State and is then laid before parliament.
- 1.3 This report provides:
- an overview of the security situation during the review period;
  - reviews of the operation of sections 21 to 32 of the Act and those who use or are affected by those sections. These sections provide the police with powers to stop and question, stop and search, to enter premises to search for munitions or wireless apparatus and to stop and search vehicles. Sections 21 to 32 of the Act are summarised in Part 1 of Annex C to this report;

- a review of the authorisations of schedule 3 powers which are subject to specific routine regimes of authorisation by the Secretary of State;
- a review of the use of JSA powers to take possession of land and to close roads from August 2022 – July 2023;
- a review of two aspects of Army operations: Explosive Ordnance Disposal activity (EOD) where the Army supports the PSNI in dealing with explosive material; and the operation of the Army procedures for handling complaints;
- in addition, following the Secretary of State’s request on 6 October 2017, subsequent reports contain a review of Non-Jury Trials (NJT). This report reviews certification of such trials from August 2022 -July 2023.

The provisions in the JSA 2007 relating to NJTs are set out in sections 1 to 9 and are at Annex F. Paragraph 14.2 of the 10th report, and Annex G of this report contain the Public Prosecution Service’s (PPS) internal guidance on how those provisions are to be applied, and these form the basis for this review of NJTs.

1.4 This and previous reports are available on the GOV.UK website as downloadable reports at <https://www.gov.uk/government/publications/annual-reports-of-the-independent-reviewer-of-justice-and-security-northern-ireland-act-2007>.

1.5 The Reviewer is expected to be independent; to have access to secret and sensitive national security information; be able to engage with a cross section of the community; and to produce a prompt report, which informs public and political debate.

1.6 In reviewing NJT determinations by the PPS, the authorisations of powers and cases of stop and search under the JSA 2007, I must review secret material. This requires the reviewer to undergo security clearance at Developed Vetting (DV) level. Further information on this can be obtained at <https://www.gov.uk/government/publications/united-kingdom-security-vetting-clearance-levels/national-security-vetting-clearance-levels>.



- 1.7 Since the JSA provides a legislative bridge between the emergency provisions laws of the Troubles years and the more limited peacetime powers available to the authorities in England and Wales, the continuing need for such a bridge must be kept under review in the context of the condition of the security situation in Northern Ireland. The broad extent of JSA powers and indeed the wider counter-terrorism powers points to the need for regular review and oversight of such powers. Thus, the IRTL, Jonathan Hall KC reviews terrorism legislation throughout the UK and the reports of the Human Rights Advisor to the Northern Ireland Policing Board, John Wadham, examine *inter alia* the JSA powers in the broader context of all the powers available to the PSNI.
- 1.8 It is 16 years since the JSA 2007 was enacted and the security landscape of Northern Ireland has changed since then. These are reviewed at paragraphs 1.12 - 1.14 of the 14th report.
- 1.9 Although the national security threat from terrorism has been set at 'Substantial' for the past number of years for all of the UK, a change to the threat level occurred in August 2021. The threat level in Northern Ireland was reassessed at 'Severe' following a dissident republican attack on PSNI officer John Caldwell in February 2023. The threat level is reassessed regularly, and at the last review, serious consideration was given to reducing it back to its prior level. On balance, it was retained at 'Severe'. However, unless the security situation deteriorates, one might anticipate, and indeed welcome, a return to its previous level in the near future.
- 1.10 My report to parliament contains many recommendations for adjustments and points for the consideration of those who operate the JSA. Once again, I am indebted to those with whom I discuss recommendations and to those within the PPS and the PSNI and elsewhere who have welcomed and embraced some of my suggestions and recommendations. Their positivity, enthusiasm, goodwill and cooperation mean that they are a pleasure to work with. I hope this provides assurance to the public that there are dedicated public servants intent on providing the public services that the people of Northern Ireland deserve.

- 1.11 This report is divided into three Parts. Part 1 deals with the use of the powers in sections 21 to 32. This includes a section on military provisions. Part 2 examines the operation of the NJT system. Part 3 sets out my conclusions relating to the exercise of the powers in respect of NJTs.
- 1.12 I am grateful to all those who have met me either virtually or in person, briefed me and provided me with the information contained in this report. They are listed at Annex B. I am particularly grateful to the public servants in the Northern Ireland Office (NIO), Ministry of Defence (MoD), Police Service of Northern Ireland (PSNI), the Department of Justice (DOJ), Public Prosecution Service (PPS), the Northern Ireland Policing Board (NIPB), and their staff, the Police Ombudsman for Northern Ireland (PONI). I am particularly grateful to the Human Rights Advisor to the NIPB, John Wadham and to Jonathan Hall, KC, The Independent Reviewer of Terrorism Legislation (IRTL) in the UK.
- 1.13 All references in this report to sections are to sections of the JSA 2007 unless otherwise stated.
- 1.14 All references to “mainstream criminal justice legislation” are references to the Police and Criminal Evidence (Northern Ireland) Order 1989, the Misuse of Drugs Act 1971 and the Firearms (Northern Ireland) Order 2004.
- 1.15 As with previous reports, comments may be directed to me personally at [marie-breen-smyth@irjsa.org](mailto:marie-breen-smyth@irjsa.org) or to [thesecretary@nio.gov.uk](mailto:thesecretary@nio.gov.uk).

## EXECUTIVE SUMMARY

- 2.1 The methodology adopted for the report is set out in Section 3. Material for this review was collected from a wide range of stakeholders in government departments, the justice system, the police and armed forces and the security and intelligence services, the political parties and the communities across Northern Ireland.
- 2.2 The methodology for this report was adjusted following a reduction in the level of administrative support available in the previous review period, which has carried through to this period. I have requested meetings with all the key agencies to review progress and responses to my recommendations in the 15<sup>th</sup> report and to review the powers exercised under the Justice and Security Act 2007 (JSA). In addition, where a stakeholder, agency or a member of the public requested a meeting, I met with them in person. Where they sent written comments, these have been incorporated into the report.
- 2.3 Following the recommendations in the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> report the Northern Ireland Office (NIO) are still seeking a legislative vehicle in order to bring in powers to allow for changes to the JSA Code of Practice to allow an extension to the length of authorisation period. Since these changes to the Justice and Security Act 2007 (JSA) are technical in nature, they are not sufficient for a Bill of their own and no suitable legislative vehicle has yet been identified. When such a vehicle becomes available, this work will progress. Since this will effectively half the work of the PSNI, the NIO and the Secretary of State on the renewal cycle, by reducing the frequency to monthly from every two weeks, I hope that such a vehicle is found in the next few months.
- 2.4 Following concerns expressed to me, especially in loyalist communities, in the 14<sup>th</sup> report (paragraph 6.90) and the 15<sup>th</sup> report (paragraph 4.4) I recommended that the security and intelligence services clarify the current division of operations in proceeding against particular organisations or categories of organisations using counter-terrorism law including the JSA. I repeat this recommendation.

- 2.5 Current measures to end paramilitarism in Northern Ireland and thus the need for additional police powers and special provisions for non-jury trials are effective at more or less containing paramilitarism at a comparatively low level. Three outstanding matters remain concerns in spite of current initiatives: taking weapons held by paramilitary groups comprehensively out of circulation; the ending of attempts by paramilitary groups to recruit new members; and the relinquishing of all forms of violence by paramilitary groups. It is difficult to see how they can be achieved without additional moves by the government, specifically the design and implementation of a formal process of transition, which includes direct engagement with the groups, verification of any undertakings and some form of decommissioning of weapons. I urge the UK government to champion this approach with the local political parties and to move these issues forward without further delay.
- 2.6 I recommended that the PSNI produce a specific statement of policy and service objectives in relation to the use of stop and search under the JSA and how it interlocks with the other investigatory powers available to the PSNI. This should include a specific statement about PSNI policy in relation to the use of stop and search with children and young people.
- 2.7 This report outlines a sharp increase of the use of JSA powers in the reporting period. I therefore recommend that the PSNI critically examine the outcome of the research into this upward trend in the use of JSA powers in order to determine its cause and justification.
- 2.8 PSNI having direct engagement with the representatives of the Travelling Community is very welcome as is the commissioning of further research. I recommend that the PSNI use the outcomes of that engagement with Travellers and the research to develop a strategy and a plan to include SMART (Specific, Measurable, Achievable, Relevant and Time Bound) goals for the use of JSA powers with ethnic minorities.
- 2.9 I recommend that when reviewing its policy on JSA stop and search that the PSNI;

- clarify how the best interests of the child are served in the stopping of children
- that this question is specifically considered in the continuous review of the policy
- make available Body Worn Video (BWV) of these stops in the next review period for examination by the Independent Reviewer
- make newly acquired data from the Origin system on stop and search of children available to the Independent Reviewer for future reports.

2.10 I recommend that the PSNI consider elaborating the SMART goals (or equivalent) in relation to the stop and search of children and young people and develop their strategy on the searching of young people.

2.11 I repeat the recommendation that the PSNI implement the plan to establish regional Young People's Independent Advisory Group (YIAGs) without delay.

2.12 I recommend that the PSNI meet with the Children's Law Centre, Northern Ireland Commissioner for Children and Young People and other stakeholder organisations to evaluate the status of current relationships, identify and implement steps to improve collaboration.

2.13 Once again, I recommend that the PSNI continue to consider carefully whether comprehensive JSA authorisations are routinely required and seek authorisation only for areas where the intelligence clearly and unequivocally warrants it. I also recommend that they review and improve their methods of obtaining community feedback that feeds into these authorisations.

2.14 I recommend that the electronic records used by frontline police officers be updated regularly to include information on the status of individuals who are no longer of interest to the police in spite of their past records of convictions or criminal associations.

2.15 I recommend that the PSNI provide at very least a handwritten record of the stop and search record number at the scene of the stop and search. I also recommend that given the longstanding deliberations about the retrieval of stop and search

records from police stations, that the PSNI move rapidly beyond considering the options and select and implement a solution without further delay.

- 2.16 I recommend that the PSNI make available a randomly selected sample of BWV of officers, including those in the ARU (Armed Response Unit) for review jointly by the Human Rights Advisor and by the IRJSA in the next review period.
- 2.17 I once again recommend that loss or damage to seized property be incorporated into the Code of Practice and its application to JSA seizures be made explicit.
- 2.18 I recommend that PSNI policy of JSA Stop and Searches is articulated and published on the PSNI website without any further delay.
- 2.19 I recommend that a policy and protocols for referral on to appropriate agencies be developed where evidence indicates that a complainant to the Army may be in a vulnerable condition. This should include both mental health services and the PSNI, since agencies who engage with members of the public may frequently encounter both mental health problems and breaches of the law in those with whom they engage.
- 2.20 I therefore recommend that the PSNI conduct an urgent review of all cases where JSA powers have been used more frequently than once a month. Such a review should ascertain whether the powers are being used according to the legislation, that the targeting of the individual is justified by contemporary intelligence and that officers using the powers are alive to the risk of allegations of harassment.
- 2.21 I repeat the recommendations of the 15<sup>th</sup> report, namely that:
- appropriate arrangements for the DPP to have sight of the full security assessments, should he wish to do so, so that he has full and focussed information on which to base his judgments; and
  - on the occasion of the next renewal, in addition to the results of the public consultation, I advocate that the NJT indicators are reviewed as part of the decision-making process;

- on the occasion of the next consideration of renewals, a date for the final expiry of the powers be considered and notice provided to the agencies to facilitate their preparation for such an expiry.
- 2.22 I recommend that, on the expiry of the powers and the public consultation on their renewal, that a broader range of human rights and advocacy organisations submit their views to that consultation.
- 2.23 I recommend that the PPS clarify their position on the use of protective measures to protect anonymity, given that the obstacles to the use of protective measures are unlikely to change.
- 2.24 I recommended that the PSNI establish the current response time for requests for further information from the PPS, examine the reasons for any increased delay in response times, and take steps where possible to recover the slippage.
- 2.25 Whilst some risks remain, I recommended that careful future consideration should be given to a return to the status quo ante where jury trial was the norm and the provisions of the CJA were sufficient for the cases where there was interference to the processes of justice.
- 2.26 Whilst the security threat in Northern Ireland is not at a level comparable to that in the rest of the UK and violent paramilitarism has not ended, the continuation of JSA powers is justified. However, once paramilitarism is ended and there are some improvements to security, JSA stop and search powers should be immediately retired.

## **METHODOLOGY**

- 3.1 In conducting this review, I am informed by my local knowledge of Northern Ireland alongside my international experience. My previous roles have involved me in deep work with local communities as well as with government departments within both Northern Ireland, Westminster and elsewhere. My existing and growing network of relationships support the work of this review. As before, the role is part-time, with a budget providing for 3-4 days' work per month although the manner in which I conduct the role has strained this budget.

- 3.2 Work for this review began in August 2023, following the completion of the previous year's review, which was laid before parliament on 29th June 2023.
- 3.3 Material for this review was collected from a wide range of stakeholders in government departments, the justice system, the police and armed forces and the security and intelligence services, the political parties and the communities across Northern Ireland.
- 3.4 The methodology for this report was adjusted following a reduction in the level of administrative support available in the previous review period, which has carried through to this period. I have requested meetings with all the key agencies to review progress and responses to my recommendations in the 15<sup>th</sup> report and to review the powers exercised under the JSA. In addition, where a stakeholder, agency or a member of the public requested a meeting, I met with them in person. Where they sent written comments, these have been incorporated into the report. Where a previously involved person has made no response to my last report and were not involved in the exercise of the powers contained in the JSA, there was no further interaction with them. A full list of all those consulted is at Annex B.
- 3.5 Information was collected by email correspondence, remote meetings, by Webex or Zoom, in-person reviews of files and face-to-face meetings, visits and briefings. In some cases, I had multiple meetings with the same individual or organisation.
- 3.6 The views of those affected by the powers must also form part of my review. My commitment to direct engagement with communities was constrained by the limits of the role but in some instances, I sought meetings with populations that were particularly affected by the exercise of the powers.
- 3.7 As before, I reviewed a range of legislation, codes of practice, jurisprudential material, official reports, policy articles and research papers. Since the powers within the JSA relating to non-jury trials (NJT) are reviewed on a two-year cycle,



on 3 November 2022, the NIO launched a 12-week public consultation inviting views on the extension of non-jury trial provisions within the JSA for a further two years. The consultation closed on 30 January 2023. This response<sup>1</sup> to the consultation is discussed in Part 2 and the role of the Working Group on NJTs, which I set out in Part 2 Section 9 of the 15th report. The subsequent decision of the Secretary of State for Northern Ireland was to extend the non-jury trial provisions.

3.8 The powers within the JSA relating to non-jury trials (NJT) were renewed on its two-year cycle last year and were debated in the House of Commons<sup>2</sup> on 23 May 2023 and House of Lords on Monday 5 June 2023<sup>3</sup>. The Statutory Instrument was laid on 15th of June coming into force on 16th of June for renewal at the end of July 2023.

3.9 Following the recommendations in the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> report the Northern Ireland Office (NIO) are still seeking a legislative vehicle in order to bring in powers to allow for changes to the JSA Code of Practice to allow an extension to the length of authorisation period. Since these changes to the Justice and Security Act 2007 (JSA) are technical in nature, they are not sufficient for a Bill of their own and no suitable legislative vehicle has yet been identified. When such a vehicle becomes available, this work will progress. **Since this will effectively half the work of the PSNI, the NIO and the Secretary of State on the renewal cycle, by reducing the frequency to monthly from every two weeks, I hope that such a vehicle is found in the next few months.**

3.10 The senior officers of the Police Service of Northern Ireland (PSNI) met with me to provide briefings and their responses to my recommendations contained in the

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[https://assets.publishing.service.gov.uk/media/6446a53d529eda00123b0379/HMG\\_response\\_to\\_NJT\\_Consultation\\_2023\\_1\\_1.pdf](https://assets.publishing.service.gov.uk/media/6446a53d529eda00123b0379/HMG_response_to_NJT_Consultation_2023_1_1.pdf)

<sup>2</sup> [https://hansard.parliament.uk/Commons/2023-05-23/debates/5133f772-d249-4b7e-ad7a-6f27061d2476/DraftJusticeAndSecurity\(NorthernIreland\)Act2007\(ExtensionOfDurationOfNon-JuryTrialProvisions\)Order2023](https://hansard.parliament.uk/Commons/2023-05-23/debates/5133f772-d249-4b7e-ad7a-6f27061d2476/DraftJusticeAndSecurity(NorthernIreland)Act2007(ExtensionOfDurationOfNon-JuryTrialProvisions)Order2023)

<sup>3</sup> [https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity\(NorthernIreland\)Act2007\(ExtensionOfDurationOfNon-JuryTrialProvisions\)Order2023](https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity(NorthernIreland)Act2007(ExtensionOfDurationOfNon-JuryTrialProvisions)Order2023)

15th report. I attended a meeting of the Policing and Community Safety Partnerships (PCSP) Managers in Belfast and I attended a meeting of the Performance Committee of the Northern Ireland Policing Board. I attended a briefing by MI5-The Security Service, by the PSNI's Intelligence Branch C3, and by the 38 (Irish) NI Garrison in Aldergrove and I met with the Brigadier. I am grateful for all of their cooperation in compiling Section 8 of this report.

- 3.11 Once again, the staff in the Northern Ireland Statistics and Research Agency (NISRA) responded with patience and cooperation to my requests. The Independent Reviewer of Terrorism Legislation (IRTL) Jonathan Hall KC, and the Human Rights Advisor to the Northern Ireland Policing Board John Wadham once again gave me the benefit of their experience and expertise. I am grateful to those in the NIO who have assisted in room bookings, arranged security briefings and assisted in the proofreading and fact checking of this report and its publication.
- 3.12 Various individuals approached me with specific complaints about being stopped and searched under the JSA. Each individual was advised of the role of the Police Ombudsman and I informed the PSNI of each case. As I pointed out in the 14th and 15<sup>th</sup> report, I am unable to engage with complaints about the conduct of the police. Rather, these are matters for PONI and I refer such cases to them.
- 3.13 As stated in earlier reports, where there was *repeated and frequent* use of the JSA powers on the same individual over a protracted period, I deemed that to fall within my remit.

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

### **SECURITY AND PUBLIC ORDER**

- 4.1 This section follows the format devised by Robert Whalley CB in his 2008 report, namely, it responds to the Secretary of State’s questions for this periodic review:
- Has the progress towards normal security been maintained?
  - What is the assessment of the security threat against which these powers were judged necessary?
  - What has been recent experience on the ground, especially in the handling of the marching seasons?

### **SECURITY ASSESSMENT**

- 4.2 In the 15<sup>th</sup> report, (paragraph 4.2) I reflected in detail on the longer-term comparison of the security situation in Northern Ireland and set out the current contrast with the terrible decades of the Troubles. I also explained the system of threat assessment in use since 2019, where MI5 assess the threat level in Northern Ireland. The threat is assessed at one of the following levels: Low; Moderate; Substantial; Severe; and Critical (see “Threat Levels: The System to Assess the Threat from International Terrorism”, 2006)<sup>4</sup>. This assessment determines the level of protective security response required.
- 4.3 At paragraph 6.81 of the 14th report, I explained how in 2007 national security arrangements in Northern Ireland were brought into line with the rest of the UK and I outlined the responsibility of MI5 for national security intelligence work in Northern Ireland. MI5 sees the political and security situations in Northern Ireland as linked and their focus is largely on Dissident Republican organisations. Responsibility for policing loyalist paramilitaries lies with the PSNI and other agencies involved in the Paramilitary Crime Task Force (PCTF), a Law Enforcement Task Force composed of the Police Service of Northern Ireland (PSNI), The National Crime Agency (NCA) and Her Majesty’s Revenue and Customs (HMRC). Their

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<sup>4</sup> Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/62530/threatlevels.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/62530/threatlevels.pdf)

mission is to “frustrate, disrupt and dismantle paramilitary organised crime groups using robust law enforcement.”

- 4.4 The National Security Strategy and Strategic Defence Review<sup>5</sup> - which informs the work of all the security services - states that the first National Security Objective is “to protect our people – at home, in our Overseas Territories and abroad, and to protect our territory, economic security, infrastructure and way of life.” Following concerns expressed to me, especially in loyalist communities, in the 14th report (paragraph 6.90) and the **15<sup>th</sup> report (paragraph 4.4) I recommended that the security and intelligence services clarify the current division of operations in proceeding against particular organisations or categories of organisations using counter-terrorism law including the JSA. The reason for this recommendation was that this is not well understood by members of the public. I repeat this recommendation here.**

#### **THE CURRENT THREAT LANDSCAPE**

- 4.5 In the 15<sup>th</sup> report at paragraph 4.5, I discussed in some detail the threat level in Northern Ireland in the context of the rest of the UK. On 28 March 2023, the assessment of the threat level increased to “**SEVERE: an attack is highly likely**”, returning it to the level it held from 2010 to 22 March 2022, when it had been lowered to **SUBSTANTIAL**. Should the security situation continue to improve I hope that the threat level can once again be reduced from ‘SEVERE’ (an attack is highly likely) to SUBSTANTIAL (an attack is likely) as it was on 23 March 2022.

#### **ARMED REPUBLICANISM**

- 4.6 Whilst there has been a significant decrease in the number of attacks and attempted attacks categorised as terrorism since 2009, Dissident Republicans (DRs) continue to be active in spite of the actions of the security services. During this review period, they were responsible for the following:

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<sup>5</sup> See National Security Strategy and Strategic Defence and Security Review 2015 First Annual Report 2016 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/575378/national\\_security\\_strategy\\_strategic\\_defence\\_security\\_review\\_annual\\_report\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575378/national_security_strategy_strategic_defence_security_review_annual_report_2016.pdf)

- In August 2022 shots were fired at PSNI personnel policing a bonfire in the Creggan Estate in Derry;
- In November 2022 an attack against the PSNI using an Improvised Explosive Device (IED) in Strabane was claimed by the new IRA (NIRA). There were no casualties.
- In November 2022, masked males placed an IED in a hijacked vehicle and drove it to Waterside PSNI station. This device did not explode and the incident was claimed by ANP (Arm Na Phoblachta);
- On 17 February 2023 a failed attempt was made to hijack a vehicle in Derry Londonderry and a crude IED - most likely abandoned by those conducting the attempted hijacking - was later located;
- On 22 February 2023 in Omagh, a number of armed and masked males shot and severely injured off-duty Detective Chief Inspector John Caldwell in an attempted murder attack that was claimed by the new IRA. A large number of arrests were made subsequently;
- In May 2023 – a crude hoax device in a hijacked vehicle was driven to Omagh PSNI station. Three males were arrested in connection with this incident.

4.7 The national security threat in Northern Ireland emanates from two main DR groups: the new IRA and Continuity IRA. Both these groups continue to attempt to plan attacks against national security targets. In addition, ANP, who had previously dissipated, have re-emerged in this review period emanating from a small group of individuals in the North West, so this threat is currently localised.

4.8 PSNI officers remain the primary target for DR violence with the possibility of an attack anywhere within Northern Ireland. DRs remain capable of mounting dangerous attacks, which also may pose danger to the general public.

4.9 The broader security picture includes threats from paramilitarism more generally and serious and organised crime. DRs, as well as other republican and loyalist groups continue to conduct paramilitary-style attacks (PSAs) and intimidation directed at the wider community.

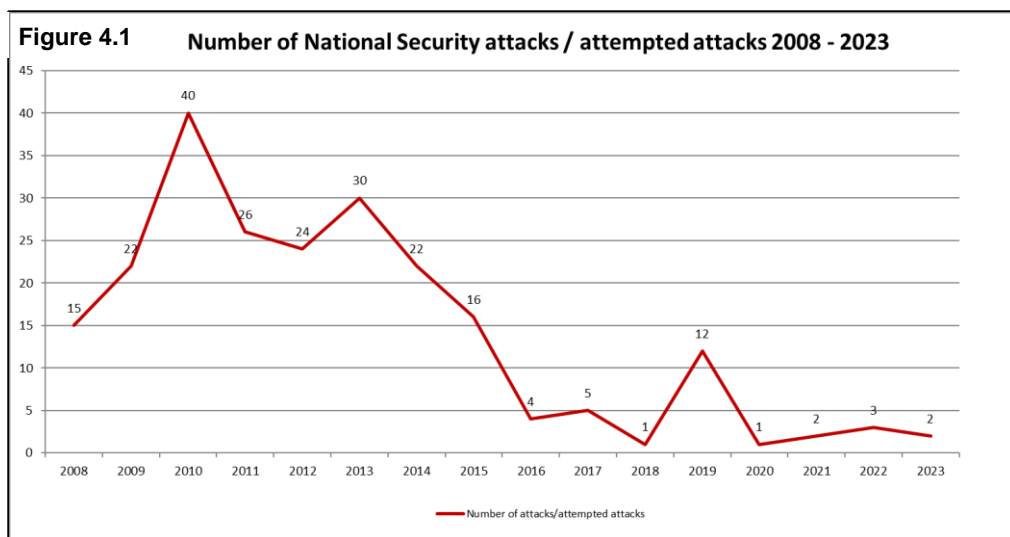
## **ARMED LOYALISM**

- 4.10 There has been no significant change within loyalist groupings in relation to the Northern Ireland Protocol/Windsor Framework. Concerns remain in relation to the implementation of the Stormont Brake and wider constitutional issues perceived to be affecting Northern Ireland. Armed loyalist organisations appear to be content to wait and see whilst remaining broadly supportive of the DUP's position on entering – or not entering – the devolved Assembly. Loyalist disappointment at the Northern Ireland Assembly elections in May, the apparent fragmentation of the unionist vote and perceived apathy of the Protestant Unionist Loyalist (PUL) voters does not seem to have ushered in any change in wider loyalist political or paramilitary policy.
- 4.11 As a result of personal disputes and competition for control of criminality, tensions between loyalist factions in the Ards & North Down area escalated in March 2023. The resulting feud culminated in violent attacks involving the use of pipe bombs, shotguns, threats, arson attacks, and criminal damage over subsequent months. A number of persons were arrested and charged as a result. Whilst tensions have de-escalated, there is a risk of future violence should the underlying issues remain unresolved.
- 4.12 The eleventh night bonfires in 2023 passed off without major difficulties. Efforts made by sections of the PUL community to reshape attitudes towards bonfires are paying off and there has been an increase in requests to remove offensive slogans, imagery and flags. Some communities have opted to use much safer beacons instead of bonfires. However, there continues to be concerns about environmental issues, public safety, and use of political effigies and display of paramilitary linked flags in particular locations.
- 4.13 In spite of heightened tensions in June and contention about the decisions of the Parades Commission, the Twelfth of July parades passed off peacefully. A request for a feeder parade to pass near the Ardoyne shop fronts was perceived as a breach of the local 2016 Agreement between Ligoneil Lodges and Crumlin

Ardoyne Residents Association and the application was later withdrawn. In early July, the 25th Anniversary of Drumcree also passed without significant incident.

4.14 Armed dissident republicans groups remain intent on conducting attacks against security targets and the security forces continue to work to disrupt those threats. Despite successful interdictions by them and almost complete lack of community support for their activities, DRs remain committed to a violence as a strategy. As a result, attacks and attempted attacks remain likely.

4.15 The implementation of the Northern Ireland Protocol/Windsor Framework and any real or perceived impact on the constitutional position of Northern Ireland will remain a significant issue point for the Protestant Unionist Loyalist (PUL) community. This could lead to potential disorder seen in 2021 and as a result an increased threat.



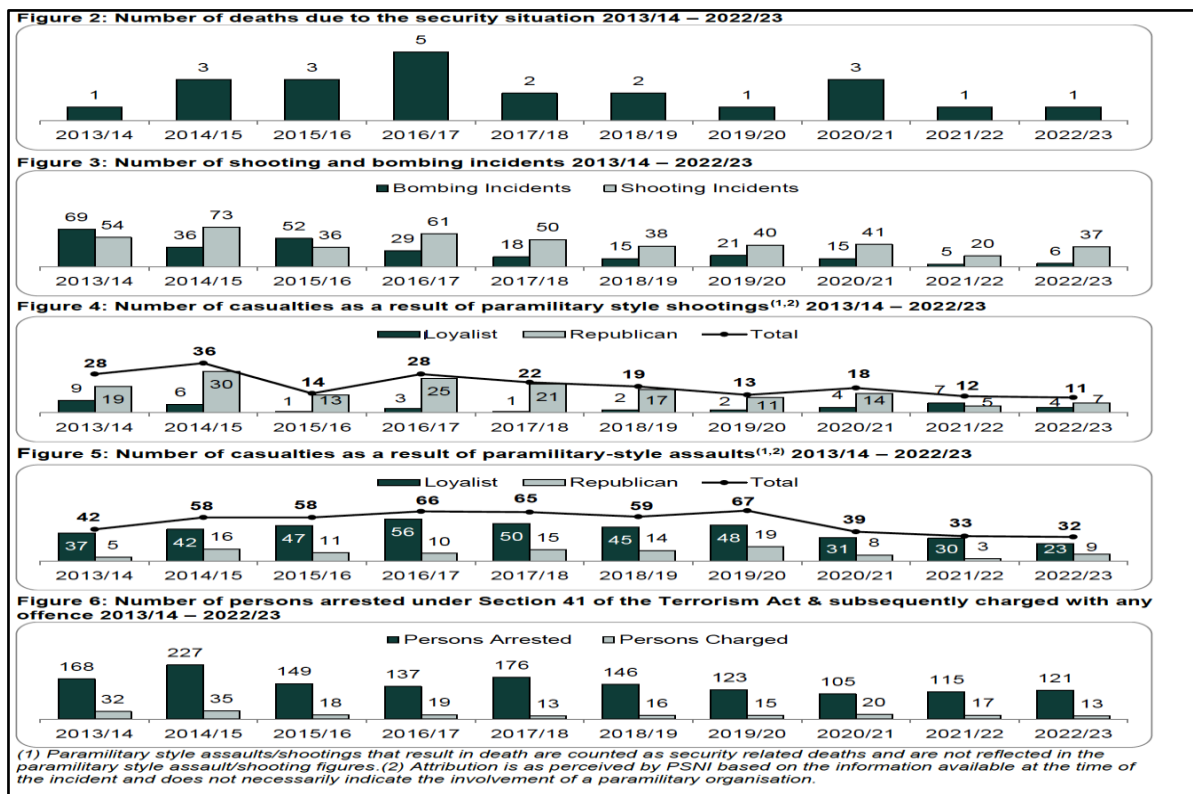
4.16 Figure 4.1 shows the numbers of actual and attempted attacks from 2008 until 2023. The highest number of attacks were conducted in 2010 when the security risk was 'Severe'. This consistently fell until 2022 when the threat level was reduced.

4.17 Figure 4.2 shows a breakdown of PSNI recorded security related incidents, which include both National Security attacks and other security related incidents by type from 2012/13 to the current review period. Again, the downward trend is apparent in all categories, with the exception of shooting and bombing incidents

where there was a rise in the current period. There is a slight increase in the numbers arrested and a moderate decline in the numbers charged (Figure 4.2).

4.18 As was set out in paragraph 4.14 of the previous report, from these figures, the steady longer-term improvement in the security situation is apparent yet the threat level in Northern Ireland remains substantially higher than in the rest of the UK. Using the Office for National Statistics (ONS)<sup>6</sup> data for security-related deaths from April 2003 until 31 March 2021 for the UK compared to Northern Ireland there were 93 and 87<sup>7</sup> respectively. This gives a death rate for the UK of 1:724 and 1:21,876 for Northern Ireland for the same period.

Figure 4.2



Source: PSNI Statistics  
 Paramilitary style assaults/shootings that result in death are counted as security related deaths and are not reflected in the paramilitary style assault/ shooting figures  
 Attribution is as perceived by the PSNI based on information available at the time of the incident and does not necessarily indicate the involvement of a paramilitary organisation.

4.19 Between 1 August 2022 to 31 July 2023<sup>1</sup>:

<sup>6</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-7613/>

<sup>7</sup> <https://cain.ulster.ac.uk/issues/violence/deaths2021draft.htm>

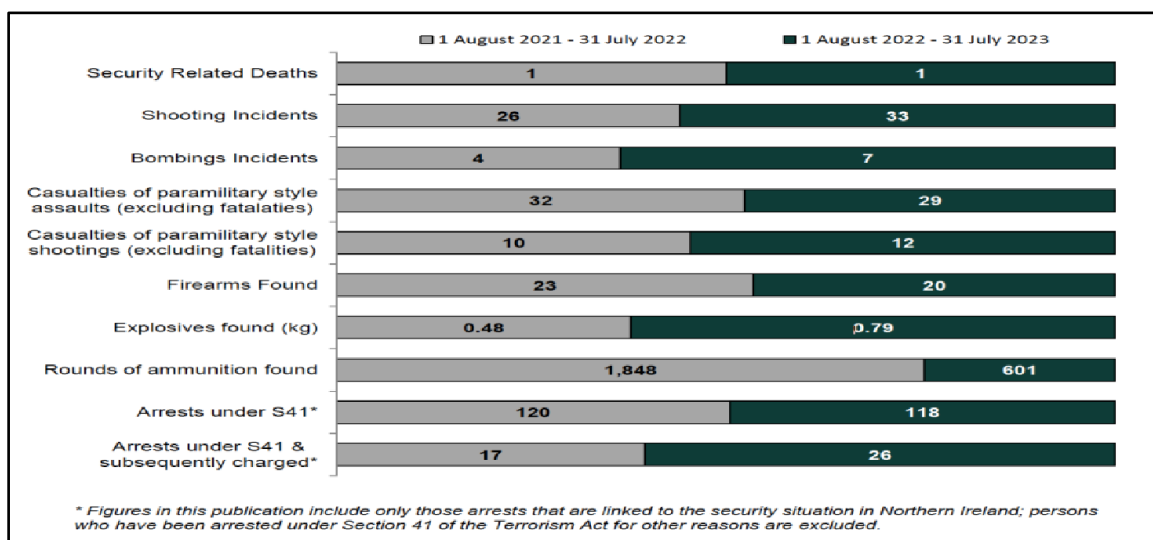


- There was one security related death, the same number as during the previous 12 months.
- There was an increase bombings (7 compared to 4) and shootings (33 compared to 26) compared to the previous 12 months, some of which were conducted by groups that are not deemed a National Security threat.
- There were 30 casualties of paramilitary style assaults, compared to 32 in the previous 12 months. All 30 casualties were aged 18 years or older.
- There were 12 casualties of paramilitary style shootings compared to 10 during the previous 12 months. All 12 casualties were aged 18 years or older.
- There were 118 security related arrests under Section 41 of the Terrorism Act 2000, two less than during the previous 12 months.
- 26 persons were subsequently charged, compared to 17 during the previous 12 months.

<b>Figure 4.3: Security situation statistics in Northern Ireland by attribution</b>				
	<b>August 22 – July 23** (Aug 21 – July 22)</b>			
	<b>***Republican</b>	<b>***Loyalist</b>	<b>Unknown</b>	<b>Total (annual change)</b>
Security Related Deaths	1	0	0	1
Shooting Incidents	18 (14)	13 (12)	2 (0)	33 (+7)
Bombing Incidents	4 (2)	3 (2)	0	7 (+3)
Casualties of paramilitary-style assaults	8 (5)	22 (27)	0	30 (-2)
Casualties of paramilitary style shootings	8 (3)	4 (7)	0	12 (+2)
Firearms found	3 (0)	6 (9)	11 (14)	20 (-3)
Explosives found (kg)	0.62 (0.48)	0.17 (0)	0	0.79 (+0.31)
Rounds of ammunition found	69 (0)	45 (1,238)	487 (610)	601 (-1,247)
Arrests under S41 TACT	96 (88)	22 (32)	0	118 (-2)
Arrests under S41 TACT and subsequently charged	20 (8)	6 (9)	0	26 (+9)
<b>Source: PSNI Statistics</b>				
*Further information, including definitions of the above types of incidents, can be found in the Security Situation Statistics User Guide at the following link: <a href="https://www.psni.police.uk/official-statistics/security-situation-statistics">https://www.psni.police.uk/official-statistics/security-situation-statistics</a>				
** Figures are provisional and subject to change				
*** Attribution is as perceived by PSNI based on the information available at the time of the incident and does not necessarily indicate the involvement of a paramilitary organisation				
Where there has been a change from the previous review period, the previous period is shown in brackets beside the current one. The variance is calculated in the totals.				

4.20 Figure 4.4 summarises the number of security related incidents during the past 12 months compared to the previous 12 months.

**Figure 4.4: Comparison of security incidents between 1 August 2021 – 31 July 2022 and 1 August 2022 – 31 July 2023.**



4.21 From Figure 4.4 whilst security-related deaths (1) have remained stable, shooting and bombing incidents have increased (shooting incidents by 7, bombings by 3), as have casualties of paramilitary style shootings (+2). Only paramilitary style assaults declined (by 2). The numbers of firearms and ammunition found declined (-3 and -1,247) respectively), explosive finds increased by 0.31kg. Overall numbers of arrests declined (-2) whereas the numbers charged increased (+9).

4.22 The comparison between Loyalist and Republican data is noteworthy. Shootings, bombings and casualties of paramilitary shootings and assaults at the hands of both Republican and Loyalist paramilitaries, whereas casualties of paramilitary shootings and assaults at the hands of Loyalist paramilitaries have decreased). The numbers of firearms and explosive finds increased for both groupings, whereas ammunition finds increased for Republican paramilitaries but firearms finds declined substantially for Loyalist groups. In terms of enforcement, there was a marked increase in the numbers of Republicans arrested and charged under S41 of TACT whilst there was a decrease in the numbers of Loyalists in both categories.

4.23 In both the 14th and 15th reports, I have discussed at length how the continued existence of armed paramilitary organisations in Northern Ireland not only poses a security threat but also provides the basis for the continued exercise of powers under the JSA. The persistence of paramilitarism is therefore a core concern for any

review of powers, such as those exercised under the JSA, that rely on paramilitarism's continued existence.

4.24 Thus, according to the Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2023<sup>8</sup> laid before parliament on 15th of June 2023 for renewal of non-jury trial provisions at the end of July 2023:

*“The Northern Ireland Office states that these provisions continue to be necessary, citing continued paramilitary activity and an increase in the terrorism threat level in NI from “Substantial” to “Severe” in March 2023.”*

4.25 According to the PSNI and the secret intelligence services, there is considerable overlap between paramilitarism and organised crime; although not all members of paramilitary groups are involved in organised crime. The JSA powers available to the Public Prosecution Service and the Director of Public Prosecutions ensure that members of paramilitary organisations may be tried without a jury. Organised crime is ubiquitous across the UK and the island of Ireland and is tried in England and Wales under the appropriate legislation. This entails jury trials in the first instance for those accused of organised criminality and only where there is proof of jeopardy to a fair trial do the non-jury provisions of the Criminal Justice Act (CJA) become available to the courts. Thus, the key element in the retention of non-jury provisions in Northern Ireland under the JSA is paramilitarism.

4.26 Similarly, the additional ‘suspicionless’ powers exercised by the PSNI in searching for illegal munitions and wireless apparatus in stop and search operations continue to be available whilst paramilitarism persists. These powers are in addition to the powers available to police in England and Wales under Section 60 of the Criminal Justice and Public Order Act 1994 (CJPOA). Thus, the ending of paramilitarism could usher in the retirement of the additional JSA powers and an assumption of the rule of law pertaining elsewhere in the UK. As a result of these factors, continued paramilitarism is a core concern for this review.

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<sup>8</sup> <https://committees.parliament.uk/publications/39905/documents/194510/default/page/27>

4.27 In both the 14<sup>th</sup> report ( paragraphs 4.10 - 4.14) and the 15<sup>th</sup> report (paragraphs 4.18-4.23) I have set out in some detail the multiple and sustained government initiatives aimed at ending paramilitarism and the work undertaken by the Northern Ireland Executive to end paramilitarism. The cross-Executive Tackling Paramilitarism, Criminality and Organised Crime<sup>9</sup> programme is based on the work of the Fresh Start panel in 2007. A key goal was the ending of paramilitarism “once and for all”.

4.28 The website describes the projects the Executive supports as follows:

*“Some projects prevent harm before it occurs (like a flexible education initiative to stop children being vulnerable to criminal exploitation); some aim to deal with harm immediately as it is happening – to stabilise the situation and prevent it worsening (like the multi-agency youth stream of a Support Hub to support young people who are at risk of being involved with, influenced by, or exploited by paramilitary gangs; and some projects are about reducing the long term impact of paramilitarism and organised crime (for example young men who have previously been involved in paramilitary / criminal activity).”*

4.29 The Northern Ireland Executive programme reflects the increasing overlap between paramilitarism and organised crime and the programme includes both in its broad remit. The programme aims to intervene in a number of ways and involves multiple agencies and communities. It prioritises building resilience to paramilitarism, providing a range of support at community level and focuses largely on communities most at risk, localising intervention according to the degree of such risk.

4.30 Evaluation of the impact of the Executive programme is conducted by the collection of baseline data on perceptions of paramilitarism collected since 2017 by The Northern Ireland Life and Times Survey (NILT) incorporating Young Life and Times (YLT). Although public perception plays an important role in the sense of security prevailing, data on it must be treated with caution given how perception is merely

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<sup>9</sup> See the is #ENDINGTHEHARM website for full details <https://www.endingtheharm.com>

that, and we know for example that data on fear of crime indicates that perception may be considerably at odds with actual crime levels. “Typically, people are inclined to believe crime is on the increase, even if it is not, and that the situation is worse at the regional level than in their own local area.<sup>10</sup>” Bearing in mind this caution, the data on perceptions of paramilitarism in Northern Ireland is worth scrutinising.

- 4.31 NILT reports that over the five years from 2017-2022 these data indicate that opinion is somewhat mixed about the threat posed by paramilitarism. A significant increase in the percentage of respondents who strongly agree that paramilitary groups create fear and intimidation in their area sits alongside a significant decrease in those who strongly disagreed with this statement. Those ‘agreeing’ and ‘disagreeing’ overall showed no significant change, but there was a significant increase in those who neither agree nor disagree.
- 4.32 Consistently across all years, those in urban areas and living in Loyalist areas were more likely to agree that paramilitaries created fear and intimidation in their areas. Other groups who were likely to think this were males in the 18-34 age group, those not in paid employment and those with no religious affiliation.
- 4.33 NILT also reported a polarisation amongst those who thought that paramilitaries had too much influence over young people, with increases in both those who strongly agreed and strongly disagreed. A consistently low number of people reported not feeling safe living in their areas.
- 4.34 A summary of the significant NILT findings from 2017-2022 is below in Figure 4.5 and is contained in ‘Perceptions of Paramilitarism in Northern Ireland: Summary Findings from the Northern Ireland Life and Times Survey 2017 -2022.’<sup>11</sup>

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<sup>10</sup> [https://www.justice-ni.gov.uk/sites/default/files/publications/doj/nics-2014-2015-perceptions-of-crime-bulletin%20%28Web%29%20-%20Final\\_1.pdf](https://www.justice-ni.gov.uk/sites/default/files/publications/doj/nics-2014-2015-perceptions-of-crime-bulletin%20%28Web%29%20-%20Final_1.pdf) page 3.

<sup>11</sup> <https://www.justice-ni.gov.uk/sites/default/files/publications/justice/NILT%20Dashboard%20Summary%20Report%202017-2022%20final.pdf>

Figure 4.5 Infographic summary of NILT findings.



4.35 Taking the data on paramilitary crime reported above in the summary of the security situation and the NILT data on paramilitarism, it is clear that the goal of the programme to end paramilitarism “once and for all” is still some distance from being achieved.

4.36 The Independent Reporting Commission (IRC) whose remit is to examine progress on what they term the “Twin Track approach to ending paramilitarism<sup>12</sup>” in initiatives by the NI Executive and UK and Irish Governments comment in their fifth report:

*“While we report on these positive developments, the reality is that there remains much to be concerned about, and much work to be done in ending paramilitarism definitively. We remain concerned about the risks posed to society by the continuing existence of paramilitary structures and groups which can be harnessed for the purposes of violence or the threat of violence.<sup>13</sup>”*

4.37 Whilst law enforcement and intelligence work together with building resilience in communities and offering paths to transition to individuals who may wish to forswear paramilitarism can achieve much, the best that can be achieved appears

<sup>12</sup>“combined policing and justice responses with a wide range of measures aimed at addressing the systemic socio-economic challenges besetting communities where the paramilitaries mainly operate” <https://www.ircommission.org/files/ircommission/2023-03/IRC%20Fifth%20Report%20-%20Web%20Accessible.pdf> page 5

<sup>13</sup> published December 2023.

from the data to be a holding pattern, although EPPOC personnel reported to me a much more positive evaluation of their results than this. They have referenced other evaluative methods which I requested sight of, but unfortunately it was not provided to me. However, there is little indication that any of the main armed groups are going out of business. Some of the largest proscribed organisations retain consistent leadership and armouries alongside the ability – whether they exercise it or not – to recruit new members. Dismantling these organisations and taking their weapons out of circulation, all of which is necessary to end paramilitarism, is beyond the remit of any of the existing programmes of intervention.

4.38 On the continued existence of paramilitary structures, in their fifth report, the IRC say that:

*“One reason for our concern is the absence, to date, of a plan to address the continuation of the structures and infrastructure of paramilitarism – which we believe would be best addressed by our proposal for a process of engagement with Paramilitary Groups themselves with a view to Group Transition and disbandment. We see Group Transition as a necessary addition to, and working in parallel with, the Twin Tracks of a policing and criminal justice response and addressing the socio-economic challenges of the communities concerned.<sup>14</sup>”*

4.39 The view of the IRC in relation to transition is widely shared amongst the various security professionals, who, for obvious reasons, profess themselves to be ‘fans of paramilitary transition.’

4.40 Independent Reporting Commission, who have argued the case for direct engagement with the armed groups in previous reports said in their fifth report<sup>15</sup>:

In this report, we develop our thinking on our previous Recommendation of the need for consideration of a process of Group Transition. We remain firmly of the belief that a formal process of engagement is

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<sup>14</sup> <https://www.ircommission.org/files/ircommission/2023-03/IRC%20Fifth%20Report%20-%20Web%20Accessible.pdf> page 6

<sup>15</sup> <https://www.ircommission.org>



needed if Group Transition and disbandment are to be achieved. We urge the two governments, the NI parties and civic society to give urgent consideration to a comprehensive process of Group Transition, building on models from elsewhere, including the concept of DDR (Disarmament, Demobilisation and Reintegration). In addition, we believe there would be merit in preparing the ground for a formal process. This could be done, for instance, by the Governments appointing (with the support of the Executive) an Independent Person who would be authorised to speak to the various interested parties including the Paramilitary Groups themselves. (p6)

- 4.41 In March 2022, the Northern Ireland Affairs Select Committee (NIAC) instituted an inquiry<sup>16</sup> into “The effect of paramilitary activity and organised crime on society in Northern Ireland.” At their invitation, I provided oral evidence to the Committee on Wednesday 23 November 2022. A full transcript<sup>17</sup> of my evidence and a video recording<sup>18</sup> of the session is available online. At the evidence session, I advocated direct engagement with the paramilitary groups.
- 4.42 In my evidence, I, too, argued that the government should be willing to engage with those parts of larger organisations that are willing to engage in a transition process, even if the rest of their organisation was minded otherwise. This is advocated by a range of workers who are engaged directly with the various armed groups in work aimed at preparing them for a transition out of paramilitarism. NIAC invited me to commit these views to writing.
- 4.43 The Secretary of State for Northern Ireland gave evidence to the NIAC Inquiry on Wednesday 8 March 2023, where the issue of transition *inter alia* was discussed. The Secretary of State told the NIAC:

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<sup>16</sup> <https://committees.parliament.uk/work/6630/the-effect-of-paramilitary-activity-and-organised-crime-on-society-in-northern-ireland/>

<sup>17</sup> <https://committees.parliament.uk/oralevidence/11925/pdf/>

<sup>18</sup> <https://parliamentlive.tv/event/index/85d5995a-4af5-4225-b306-30fee0d86593>

“I have had conversations with the IRC, and it has done a huge amount of work in this space, which I truly welcome. Its idea of appointing an independent person or even independent people to carry out exploratory engagement on the issues of group transition is an interesting idea, one I have taken very seriously and have had lots of other conversations about.”

I have tested wider views on that recommendation with all sorts of people, including statutory and community partners in Northern Ireland. I discussed this issue and other aspects of the IRC’s fourth and fifth reports with the Irish Government at the October and January meetings of the British-Irish Intergovernmental Conference. We are continuing to talk about this, because there seems to be a view that in the past attempts to get group transition have fallen down at different hurdles. Maybe there is someone who could be a halfway house in the communication process to guide people who want to go on this journey and help them through it. It would be very difficult to go to someone in Government or the policing service and ask this, but someone independent could help point people to the right expertise. There is value in it. I am seriously looking at that recommendation<sup>19</sup>.

4.44 Stephen Farry MP of the Alliance Party asked the Secretary of State if he could: *“see some of the potential pitfalls people have raised around this? For example, if this involved money to paramilitaries in the context of what is a very straitened time, that might seem unfair to people. There is also a fear that this is simply disingenuous, in the sense that organisations are reforming under different labels but continuing some of the coercive control.”*

4.45 The Secretary of State responded: *The IRC recommendation on group transition is quite straightforward. To go down this route, you have to end recruitment to your group; give up your structures and activity; cease the mobilisation of your members; cease coercive power and control of communities; end paramilitary-style attacks and other forms of violence; end the threat of violence or intimidation; dispose of any weaponry and material; allow*

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<sup>19</sup> <https://committees.parliament.uk/oralevidence/12801/pdf/> Q467

*people to exit your group without cost or consequence; publicly support the PSNI and the criminal justice system in tackling criminality; commit to democracy and the rule of law; and engage with legacy bodies. If they are willing to do that, we should be willing to allow these people to make that change.*

- 4.46 On my return to Northern Ireland, I drafted a paper outlining the idea of sub-group transition and circulated it to all the interested parties in the armed groups and those working with them. I amended the paper to take account of their views and submitted it to the NIAC. My additional paper to the Northern Ireland Affairs Committee's **Inquiry into the effect of paramilitary activity and organised crime on society in Northern Ireland**<sup>20</sup> was submitted and is available online.
- 4.47 Any consideration of direct engagement with paramilitary groups has been stymied by the involvement of some branches of each of the paramilitary groups in violence, intimidation and criminality. If the paramilitary groups are dealt with as single units, then those wings of sub-groups of the organisation who are involved in violence, intimidation and other forms of crime are obstacles to those in other sub-groups within the same organisation, who have forsworn such illegal activities, from advancing towards transition. **Some form of sub-group direct engagement with a view to transition may well be worthy of serious consideration**
- 4.48 The idea of direct official engagement with those armed groups who are intent on transiting out of paramilitarism is in line with the Independent Reporting Commission's (IRC) recommendations that such engagement with a view to opening a path to transition for paramilitary groups should begin. Direct engagement with some paramilitary groups or subgroups may be appropriate especially in more rural locations and with groups or elements not involved in criminality. The work undertaken by the Reference Group, the International Committee of the Red Cross and others has successfully built an appetite for peaceful change amongst significant numbers across a number of areas. Significant numbers of those in paramilitary groups have been readying themselves for transition.

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<sup>20</sup> See <https://committees.parliament.uk/writtenevidence/117412/pdf/>

4.49 Following the evidence of the Secretary of State to the NIAC and subsequent press coverage<sup>21</sup> in March 2023 indicating that he was giving serious consideration to the appointment of an interlocutor, Carla Lockhart of the DUP indicated her opposition to the idea in the same press report. From a meeting in December, it was clear that the Alliance Party were not well disposed to the idea and from email correspondence in February, it was clear that the SDLP also had reservations.

4.50 Following these developments, those within the paramilitaries who were intent on transition were greatly encouraged, but there followed a period when no further developments occurred. On 19 March, I wrote to the Secretary of State:

*Your attention to the issue of paramilitarism and your giving serious consideration to moving forward on the issue of transition has greatly encouraged those ...[those interested in transition].. Whilst this has, perhaps inevitably, contributed to certain tensions ... the sense that this issue is finally moving forward is palpable at grass-roots level. My only concern is that, in the interregnum due to the marking of the Belfast Good Friday Agreement anniversary and the holiday period, that momentum is lost and as a result malign influences may gain ground.*

4.51 On 17 April, the Secretary of State replied on the issue of the appointment of an independent interlocutor to take forward the issue of paramilitary transition:

*As you know, this is a complex and sensitive issue and the public debate in recent weeks has demonstrated the wide range of views. For a formal process of engagement to have a reasonable prospect of success, it must also have the support of the political parties and wider society in Northern Ireland. It is not clear that there is consensus around establishing such a process. My officials continue to engage widely on the recommendation, and I will continue to give the issue serious consideration, including with Irish government counterparts. I do not believe this is an issue on which the UK Government can proceed unilaterally. Securing a return of the Executive should create the circumstances in which mature, challenging conversations on the issue of tackling paramilitarism can take place.*

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<sup>21</sup> <https://www.bbc.com/news/uk-northern-ireland-64892556>

4.52 The British Irish Intergovernmental Conference met in June 2023<sup>22</sup> and reported: *The Conference gave further consideration to the Independent Reporting Commission's recommendations on potential mechanisms to support the transition of paramilitary groups to disbandment and agreed to continue close co-operation to make further progress on the issue.*

4.53 Current measures to end paramilitarism in Northern Ireland and thus the need for additional police powers and special provisions for non-jury trials, measures are effective at more or less containing paramilitarism at a comparatively low level, as is apparent by the security statistics. Three outstanding matters remain concerns in spite of current initiatives: taking weapons held by paramilitary groups to comprehensively out of circulation; the ending of attempts by paramilitary groups to recruit new members; and the relinquishing of all forms of violence by paramilitary groups. The achievement of these would definitively end paramilitarism and allow clarity about the criminal identity and intent of those remaining armed and dangerous in our communities. It is difficult to see how they can be achieved without additional moves by the government, specifically the design and implementation of a formal process of transition, which includes direct engagement with the groups, verification of any undertakings and some form of decommissioning of weapons. **I urge the UK government to champion this approach with the local political parties and to move these issues forward without further delay.**

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<sup>22</sup> <https://www.gov.ie/en/press-release/8f05a-british-irish-intergovernmental-conference-june-2023-joint-communiqué/>

## SECTIONS 21-28: STOP AND SEARCH RELATED POWERS

- 5.1 As set out in paragraphs 5.1–5.2 of the 14th report, the PSNI have additional stop and search powers under the JSA which dispense with the ‘reasonable suspicion’ requirement. The closest equivalent powers in England and Wales were the powers under section 44/47A of the Terrorism Act 2000 (TACT) which were amended by the Protection of Freedoms Act 2012 (PoFA) following *Gillan and Quinton v. the United Kingdom* in 2010<sup>23</sup> which found that the stop and search powers under section 44 of TACT, amounted to the violation of the right to a private life. Following *Gillan*, an authorisation process was introduced for the JSA powers in order to take cognisance of the European Court judgement.
- 5.2 Police in England and Wales also have suspicionless powers of stop and search under section 60 of Criminal Justice and Public Order Act 1994, which must be authorised by a senior police officer for 24 hours, extendable by a further 24 hours, in a designated locality. Section 60 permits any uniformed police officer to stop any pedestrian, vehicle driver or passenger and search them and their property for offensive weapons or dangerous items, whether or not there are any grounds for suspecting they possess such items. Police in Northern Ireland also have suspicionless powers under TACT S47A and where a senior police officer believes that incidents involving serious violence may take place in any locality, under 23b of Public Order (Northern Ireland) Order 1987.
- 5.3 In the 15th report when reviewing the data on the use of JSA Stop and Search powers, I noted at paragraph 5.4 that “when a vehicle is stopped containing 4 passengers who were searched, 4 separate records for each person would be submitted by the officer; this would be reported in the data figures as 4 persons searched. NISRA confirm that all of the statistics they have provided to me refer to the number of persons stopped and searched/questioned but which may **also** involve vehicles being searched during the same incident. The data excludes vehicle-only searches where no persons are searched during the

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<sup>23</sup> [https://www.parliament.uk/globalassets/documents/joint-committees/human-rights/HRJGillan\\_HomeSec\\_090910.pdf](https://www.parliament.uk/globalassets/documents/joint-committees/human-rights/HRJGillan_HomeSec_090910.pdf)

incident.” As a result, I recommended that “the PSNI ensure that data collection methodology for JSA stop and search is made capable of collecting both the numbers of stops and the numbers of individuals stopped and that the collected data is analysed so that this differentiation is always clear.” The PSNI have responded that “Stop and search data is recorded via the PSNI’s Origin application in accordance with paragraph 4.5 of Code A PACE Code of Practice. Each stop and search record has a unique reference number, enabling the number of stop and searches to be counted and reported. Data collated and published by PSNI Statistics Branch refers to the number of stop and searches carried out, a similar approach as that taken by the Home Office for reporting England and Wales stop and search statistics. There is no unique incident number recorded on a PSNI stop and search record (unlike other non-stop and search incidents recorded on Niche) that would enable the number of stop and search incidents to be counted and reported.” There are no plans to alter this practice. Thus, the statistics on stop and search should be read with this in mind.

- 5.4 In the 15th report, I noted the overall downward trend in the use of stop and search powers since 2017 remarking that the figures presented there were the lowest overall stop and search figures in ten years. That downward trend is now definitively at an end, with an increase of 28% this review period in the use of all stop, search and question powers. With the exception of the powers under the Firearms Order, where there has been an increase in the arrest rate from 22% to 27%, for all other powers the arrest rate has either declined (PACE, TACT S43, or ‘other’ powers) or remained the same (Misuse of Drugs Act, TACT S43A which remains 0%, and JSA Sections 21 and 24 which remain at 1%).
- 5.5 Figures in tabular form allow for a direct comparison, and the trends are visible in diagrammatic form in Figure 5.2.

**Figure 5.1 Number of times each power was used for a stop and search/question during August 2022 to July 2023 compared to the previous 12 months<sup>(1)</sup>**

Legislation	August 2021 - July 2022		August 2022 - July 2023	
	Number of persons stopped	Subsequent arrest rate <sup>(2)</sup>	Number of persons stopped	Subsequent arrest rate <sup>(2)</sup>
PACE	2,482	21%	2,636	20%
Misuse of Drugs Act	14,801	5%	18,081	5%
Firearms Order	41	22%	75	27%
TACT S43	50	8%	138	2%
TACT S43A	13	0%	96	0%
TACT S47A	0	.	0	.
JSA Section 21	379	1%	861	1%
JSA Section 24	2,605	1%	4,254	1%
Other <sup>(3)</sup>	57	4%	106	3%

(1) As more than one legislative power can be used to stop and search/question a person, the sum of the powers used will be greater than the total number of persons stopped and searched/questioned.

(2) For those persons stopped under a combination of legislative powers (1% of stops) and subsequently arrested, the arrest will be counted under each power. Reason for arrest may not be linked to the initial reason of the stop and search. Arrest rates are rounded to the nearest whole number.

(3) 'Other' legislative powers are listed in Section 10.2 of the Stop and Search user guide, which can be found at the following link: <https://www.psn.police.uk/about-us/our-publications-and-reports/official-statistics/stop-and-search-statistics>

#### 5.6 During the 12 months between 1 August 2022 and 31 July 2023:

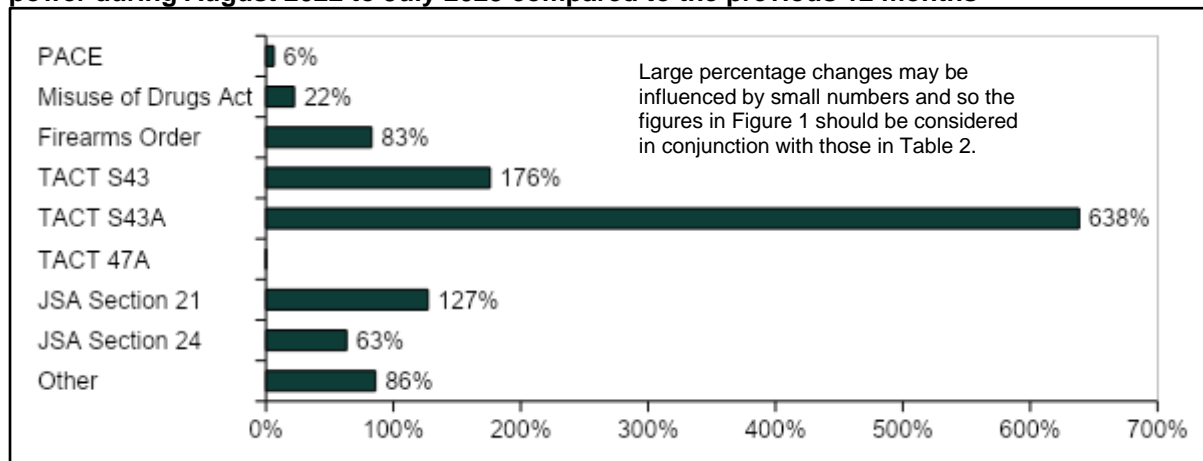
- 26,247 persons were stopped and searched/questioned under all powers, an increase of 5,819 or 29% on the previous 12 months;
- Of those 69% were conducted under the Misuse of Drugs Act<sup>24</sup> (arrest rate 5%) compared with 72% in the last review period, and the second most frequently used power was the JSA Section 24 which accounted for 16% of all stops compared with 13% last review period, with the arrest rate of 1%.
- Stops under PACE<sup>25</sup> were 10% of all stops compared with 12% in the last review period, with a slightly reduced PACE arrest rate of 20%, down from 21%.

<sup>24</sup> Alone or in combination with other powers

<sup>25</sup> Alone or in combination with other powers



**Figure 5.2 Percentage change in the number of stop and searches/questions by power during August 2022 to July 2023 compared to the previous 12 months**



5.7 In summary, in this review period, there has been a marked increase in the number of stop and searches under all stop and search powers when compared to the previous 12 months, namely:

- PACE NI increased by 6%,
- MDA increased by 22%,
- JSA Section 21 increased by 127%
- the JSA section 24 increased by 63%

5.8 In my last report to parliament, I welcomed ‘the overall downward trend in the use of stop and search powers [that] has remained consistent... since 2017’ (paragraph 5.5). There has been a dramatic departure from this pattern of decline in this review period, with the use of JSA Section 21 more than doubling. The increase is of such a measure that cannot be accounted for by the usual variance that is found on reviewing powers that are used year on year.

5.9 Such an increase, may, of course be justified by a significantly deteriorated security situation. In Section 4 of this report, I provide a detailed account of the security situation during this review period. I note that in the view of the IRC there is some considerable distance to travel before paramilitarism in Northern Ireland is at an end. Although the threat level was increased in March 2023 to “SEVERE: an attack is highly likely”, this increase was a return to the level it held from 2010 to 22 March 2022, when it had been lowered to SUBSTANTIAL. During the time from 2010 when the threat level was SEVERE the use of JSA powers of

stop and search fell far short of what I report them to be during this review period. I conclude that the increase in the security assessment cannot account for the exponential rise in the use of JSA Section 21.

5.10 I can only conclude that there has been a strategic decision made by the PSNI to move in this direction. In the 14th report I noted that:

“I note a previous recommendation in the Policing Board’s 2019 stop and search thematic review requiring PSNI to have a clear stand-alone policy on the use of TACT and JSA stop and search. Although a stand-alone policy was developed, it was never finalised due to it being superseded by an overarching policy covering all searches. I also note that Joanne Hannigan QC in her review of authorisations of JSA powers on behalf of the NIPB concluded, “it does not articulate a specific PSNI policy in respect of searches under TACT or JSA on the website.” She recommended that this be rectified as a matter of urgency. At that time, PSNI’s Assistant Chief Constable Alan Todd advised that, in his view, the overarching policy in conjunction with the guidance already set out in the JSA and TACT Codes of Practice provides sufficient safeguards. Nonetheless, the role of these JSA powers within the range of the PSNI’s investigatory tools remains unarticulated.” (Paragraph 6.68)

I then recommended that:

**The PSNI produce a specific statement of policy and the service objectives in relation to the use of stop and search, under the JSA and how it interlocks with the other investigatory powers available to the PSNI. This should include a specific statement about PSNI policy in relation to the use of stop and search with children and young people and their use within the programme for Tackling Paramilitarism. (paragraph 6.68)”**

**This matter remains outstanding.** In the absence of any explicit policy statement from the PSNI about their use of JSA stop and search powers I am unable to account for this increase by a shift in policy or strategic direction by the PSNI.

5.11 I met with the PSNI to discuss possible reasons for this marked increase in the use of JSA powers. They observed that the increase may have followed the shooting of DCI Caldwell in February 2023, and I consider this explanation with reference to the monthly figures at Figure 5.3 below.

5.12 In the 14th report I referred to *Ramsey*<sup>26</sup> who ruled that “If the power is properly exercised therefore it will be used against known DRs and others otherwise involved in munitions”. In the 15th report, I pointed out that “If the power is used in compliance with this ruling, its use will be infrequent and specific to locations where known DRs and others are located. Used alongside other powers to stop and search which require reasonable suspicion, JSA powers should be powers of last resort.” (paragraph 5.5). As I point out in the 15th report, the JSA **powers are only to be used for the purposes of searching for illegal munitions or wireless apparatus, as the law requires, and for no other purpose.**

5.13 The PSNI responded as follows:

*“Origin stop & search recording system only allows for the selection of “Munitions & Wireless Apparatus” as the object of search, when carrying out a stop and search under section 24(3) of the Justice & Security (NI) Act 2007. This means that when officers are carrying out a stop search under this act and creating the search record, they must complete this mandatory field and the Origin application will not allow for the selection of any other object of search, ensuring that Munitions & Wireless Apparatus are the only options available to the officer. The PSNI’s internal intranet stop and search operational officer guidance pages also outline that “Section 24 Schedule 3 of the Justice and Security (NI) Act 2007 allows a police officer to stop and search a person to ascertain if they are in possession of munitions or wireless apparatus in a public place. The power to do so must be with the authorisation of a senior officer of at least Assistant Chief Constable rank and be confirmed by the Secretary of State for Northern Ireland.”*

5.14 In a similar vein, in relation to the use of the Section 21 power, the PSNI say:

*... regarding the section 24(3) power, the PSNI’s Origin stop & search recording system only allows for the selection of “MOVEMENTS” & “STOP AND QUESTION RE IDENTITY” as the object of the stop, when carrying out a stop and question under section 21 of the Justice & Security (NI) Act 2007. This means that when officers are carrying out a stop and question under this act and creating the record, they must*

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<sup>26</sup> Ramsey (Stephen) Application No2 [2020] NICA 14 [30] citing para 7.9 of Eighth Report of the Independent Reviewer

*complete this mandatory field and the Origin application will not allow for the selection of any other reason, ensuring that “**MOVEMENTS**” & “**STOP AND QUESTION RE IDENTITY**” are the only options available to the officer.*

5.15 The PSNI go on to explain that an Aide Memoire which is regularly circulated to operational officers by PSNI e-mail, states:

- “Sec 21 JSA 2007 - power to ask questions to ascertain
- Identity - Name, Address, DOB (Note re D.O.B - Only if it is necessary to ascertain identity). Questions on identity may not be asked where identity is already known
- Movements - e.g. Coming from, Going to.
- Record on PACE 1/TA (in addition to search power if used). Note - There is a requirement to record a basis for a stop and question under section 21”

5.16 The Aide Memoir also states:

“Obstruction Offences

Justice & Security (NI) Act 2007

S21(3) - A person commits an offence if they fail to stop or refuses/fail to answer to the best of their knowledge and ability a question addressed to them under S21(3).

Note - Where a person fails to provide required details under S21 of the 2007 Act, he can only be prosecuted for that statutory offence and dealt with by the punishment contained in that statute. It is not an option to prosecute for obstructing a police officer under S66 of the 1998 Act, as there is no duty to provide the requested details outside of that contained in the 2007 Act.”

5.17 It is therefore with considerable dismay that I find the sharp increase in the use of the JSA powers. It is particularly surprising and worrying in the more general climate of opinion about the use of suspicionless stop and search powers. In May 2021, the [Criminal Justice Alliance \(CJA\)](https://www.criminaljusticealliance.org/cja-resources/more-harm-than-good/) lodged a super-complaint<sup>27</sup> with His Majesty’s Inspectorate of Constabulary, Fire and Rescue Service (HMICFRS) in relation to the use of the suspicionless powers available section 60 of the Criminal

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<sup>27</sup> <https://www.criminaljusticealliance.org/cja-resources/more-harm-than-good/>

Justice and Public Order Act 1994, and the scrutiny of all stop and search powers. The super-complaint, entitled '[More harm than good](#)', raises concerns about "harms caused by 'suspicion-less' stop and searches. The super-complaint raises the same concerns raised in me and my predecessors' reports to parliament about the JSA powers. Although this act does not apply in Northern Ireland, it highlights the danger of overusing suspicionless powers.

5.18 Figure 5.3 shows the number of premises searched under JSA s24 by month and district during the current reporting period, August 2022 to July 2023. I have included the figures for the previous review period in brackets in the right hand column.

**Figure 5.3 Number of premises searched under JSA S24 by month and district: 1 August 2022 - July 2023<sup>(1)</sup>**

	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Total (21-22) <sup>(2)</sup>
Belfast City	2	2	1	2	0	0	2	5	9	0	2	2	27 (22)
Lisburn & Castlereagh City	1	0	0	0	0	0	0	0	0	0	0	0	1 (0)
Ards & North Down	0	0	1	0	0	0	0	1	2	1	0	0	5 (2)
Newry, Mourne & Down	0	0	0	0	0	1	0	0	0	1	0	0	2 (4)
Armagh City, Banbridge & Craigavon	0	0	0	0	0	0	0	0	0	0	0	0	0 (0)
Mid Ulster	0	0	0	0	0	0	1	2	0	3	0	0	6 (1)
Fermanagh & Omagh	0	0	0	0	0	0	5	3	1	8	0	0	17 (2)
Derry City & Strabane	3	7	0	13	5	1	7	12	4	10	5	0	67 (35)
Causeway Coast & Glens	0	5	1	2	0	0	2	3	0	0	1	0	14 (17)
Mid & East Antrim	0	4	0	0	0	0	0	1	1	0	0	1	7 (4)
Antrim & Newtownabbey	0	2	0	0	0	0	0	3	1	0	1	1	8 (0)
<b>Northern Ireland</b>	<b>6</b>	<b>20</b>	<b>3</b>	<b>17</b>	<b>5</b>	<b>2</b>	<b>17</b>	<b>30</b>	<b>18</b>	<b>23</b>	<b>9</b>	<b>4</b>	<b>154 (87)</b>

(1) Data is provided as management information sourced from administrative systems. Data is based on information recorded as at October 2023.

(2) Data for previous review period for comparison

5.19 Whereas in 2021-2022 there were three districts, Lisburn and Castlereagh City; Armagh City, Banbridge and Craigavon; and Antrim and Newtownabbey where

the JSA section 24 powers were not used, in this review period Armagh City, Banbridge and Craigavon is the only district where they were not used. The use of JSA S24 powers to search premises increased by:

- 750% (from 2 to 17) in Fermanagh and Omagh;
- 600% (from 1 to 6) in Mid Ulster;
- 91% (from 35 to 67) in Derry City and Strabane;
- an absolute increase from 0 to 8 in Antrim in Newtownabbey and from 0 to 1 in Lisburn and Castlereagh;
- 75% (from 4 to 7) in Mid & East Antrim;
- 150% (from 2 to 5) in Ards and North Down;
- 23% (from 22 to 27) increase in Belfast;
- 77% (from 87 to 154) increase overall across all districts.

The variation in usage between districts can be accounted for at least in part by the differential threat level *between* districts. The increase within districts, on the other hand, ought to reflect a variation *within* that district of the threat level. Considering the point that the overall increase is due to the aftermath of the attack on DCI Caldwell in February 2023, only two districts, Belfast and Antrim and Newtownabbey, show any significant increase in the months following that incident, and neither is the district in which the shooting took place. Therefore, I do not think the increase can be attributed to that one incident.

5.20 Previously The Northern Ireland Human Rights Commission wrote to me asking whether the downward trend in the use of JSA powers was proportionate to the noted improving security situation. In my previous report, I commented that the reduction in the overall use of JSA stop and search would appear to reflect the improved security situation. I point out that JSA powers are both responsive to the security situation and anticipatory of it and that policing operations must not only respond to attack but also preemptively mitigate risks. However, applying these principles to the marked increase in the use of the powers in the current period I cannot discern a sufficient deterioration in the overall security situation that would explain the uplift. On the contrary, I am informed that a lowering of the threat level in the near future is a distinct possibility. **I therefore recommend**

**that the PSNI critically examine this upward trend in the use of JSA powers in order to determine its cause and justification.**

5.21 If the total number of times S24 powers were used in this review period (4,254 from Figure 5.1) are set alongside the total number of premises searched (154 from Figure 5.3), it seems clear that some premises targeted were searched frequently during this review period. Some premises will have been searched more frequently and some less.

5.22 Figure 5.5 shows that although there has been a marked increase in the numbers of people stopped under S21 powers and a small reduction in the numbers under S24. If we compare the number of times each power was used (see Figure 5.1: S21=861 and S24=4,254) with the number of people stopped and searched or questioned (S21= 616 and S24 3,037) it is clear that a number of people are stopped more than once under both S21 (at least 245) and S24 (at least 1,217).

5.23 NISRA has explained that the stop and search database is essentially standalone, with no unique identifier on stop and search records that would enable the number of persons stopped multiple times to be accurately measured.

Historically, any such analysis was based on crude matching of basic details such as name or date of birth, which may or may not have been input consistently or accurately and inevitably, a degree of manual quality assurance and intervention was required. As a result, information in relation to multiple stops is not produced as standard nor published as an official statistic. More recently, it has become possible for personal details to be securely populated in an automated way, including a unique reference number.

5.24 I am grateful to NISRA for the additional work involved in answering my questions as follows: “Whether we can find out more about multiple stops of the same person? Will the system allow for more detail to be extracted, for example the numbers stopped by the times stopped?”

5.25 NISRA responded that, “having assessed the coverage and quality of the data it was found that 13% of the JSA stop and search records had no unique identification

number recorded and so the analysis is based on 87% coverage rather than all persons stopped under JSA powers.” NISRA found that between 1 August 2022 and 31 July 2023 there were 4,999 stop and searches/questions under the Justice and Security Act (Sections 21 and 24), of which 4,351 (87%) had a unique personal identification number recorded on the stop and search record. These 4,351 stop and search/question encounters involved 2,431 unique persons. Table 5.4 shows the distribution of the number of times these 2,431 persons were stopped.

**Table 5.4**

Number of times stopped	Number of unique persons stopped	%
Once	2,028	83%
Twice	205	8%
3 times	59	2%
4 times	31	1%
5 times	19	1%
6-10 times	48	2%
11-20 times	20	1%
21-30 times	7	<0.5%
31-40 times	6	<0.5%
41-50 times	4	<0.5%
More than 50 times	4	<0.5%
<b>Total</b>	<b>2,431</b>	<b>100%</b>

- (1) Figures were produced using a unique identification number that has not been validated. The unique identification number was recorded on 87% of all JSA stop and search records, meaning 13% of JSA stops have been excluded from the above table.
- (2) Persons may have been stopped under JSA S21 and/or S24 in conjunction with other non-JSA powers.
- (3) Figures are provisional and subject to minor amendment.

**Source: PSNI Statistics Branch**

5.26 From Table 5.4, some 21 individuals have been subject to very frequent stops and searches. Seven individuals were stopped roughly once every two week, ten were stopped more frequently than every two weeks, and four individuals were stopped more than 50 times during the review period. At paragraph 5.55 of the 15<sup>th</sup> report, I set out the legislative requirements for the justification of an authorisation of JSA powers, where authorised searches may be used only for the purpose of discovering unlawfully held munitions or wireless apparatus and officers must consider whether other search powers including those that require reasonable suspicion could be used instead. I deal with this more fully at



paragraph 5.70 below. During this and previous review periods, several individuals have provided me with evidence of repeated stops and searches, without any finds being made, and given that the PSNI have confirmed in at least one case that there is no fresh intelligence on the individual rendering them a person of interest. It is matter of concern that officers are using JSA powers to repeatedly stop and search individuals for purposes other than the detection of unlawful munitions or wireless apparatus. Indeed, the frequency with which some of these individuals have been stopped gives rise to concerns about harassment on the one hand and the waste of police time on the other. Furthermore, at least one individual who has provided me with evidence is attempting to distance themselves from their previous paramilitary associations. Very frequent unwanted and unwarranted police attention runs the risk of deflecting that person from this path and further alienating them from authority in general and the police in particular. **I therefore recommend that the PSNI conduct an urgent review of all cases where JSA powers have been used more frequently than once a month. Such a review should ascertain whether the powers are being used according to the legislation, that the targeting of the individual is justified by contemporary intelligence and that officers using the powers are alive to the risk of allegations of harassment.**

**Figure 5.5: Ten year trend in the use of stop and search/question powers – persons stopped**

	13/1	14/1	15/1	16/1	17/1	18/1	19/2	20/2	21/2	22/2
	4	5	6	7	8	9	0	1	2	3
PACE / Misuse of Drugs / Firearms	24,4	22,1	25,1	21,8	22,6	21,0	19,8	22,5	19,1	19,9
TACT - Section 43/43A	28	89	51	76	28	62	42	30	36	77
- Section 47A <sup>(3)</sup>	173	192	344	265	118	74	38	35	57	91
JSA - Section 21	70	0	0	0	0	0	0	0	0	0
- Section 24	2,35	1,92	2,81	2,20	1,50	1,28	997	456	471	616
Other legislative powers	0	2	2	0	5	3				
	6,23	3,90	6,98	7,93	6,24	6,03	4,81	3,73	3,19	3,03
	9	6	0	5	5	5	8	9	5	7
<b>Total uses of each legislative power <sup>(2,4)</sup></b>	<b>417</b>	<b>190</b>	<b>97</b>	<b>140</b>	<b>32</b>	<b>79</b>	<b>21</b>	<b>49</b>	<b>93</b>	<b>85</b>
<b>Total number of persons stopped and searched/questioned <sup>(2,4)</sup></b>	<b>33,6</b>	<b>28,3</b>	<b>35,3</b>	<b>32,4</b>	<b>30,5</b>	<b>28,5</b>	<b>25,7</b>	<b>26,8</b>	<b>22,9</b>	<b>23,8</b>
	<b>77</b>	<b>99</b>	<b>84</b>	<b>16</b>	<b>28</b>	<b>33</b>	<b>16</b>	<b>09</b>	<b>52</b>	<b>06</b>
	32,5	27,5	34,1	31,2	29,8	28,1	25,4	26,5	22,8	23,6
	90	39	71	74	82	16	50	90	23	50

5.27 Figure 5.5 shows the numbers of persons stopped under the various stop and search powers associated with counter-terrorism compared with stops carried out under criminal law. From 2017 onwards, the number of persons stopped under the ordinary criminal law has steadily risen and it stands at 84% in this

review period. This is an encouraging trend. Conversely, the number of persons stopped using all counterterrorism stop powers has declined from a high of 32% of all stops in 2016-17 to its current rate of 16%.

**Figure 5.6: Percentage of stops carried out under non-counter terrorism powers and counter-terrorism powers**

	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23
PACE / Misuse of Drugs / Firearms	73%	78%	71%	67%	74%	74%	77%	84%	83%	84%
Counter Terrorism Powers <sup>(5)</sup>	26%	21%	29%	32%	26%	26%	23%	16%	16%	16%
Other legislative powers	1%	0.7%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%
<b>All Powers <sup>(6,7)</sup></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>	<b>100%</b>

- (1) Figures in this section are based on financial year.
- (2) The difference between **total uses of each legislative power** and **total number of persons stopped and searched/questioned** will be due to persons stopped under combinations of powers being counted under each legislation used (e.g. someone stopped under PACE and the Misuse of Drugs Act will have a count of one under each of these powers).
- (3) TACT Section 47A has been in place since March 2011 although the power has only been authorised for use during one period in May 2013.
- (4) Searches under the authority of a warrant and searches that have been carried out after an arrest have been excluded from the 2017/18 figures onwards (impact is an approximate 2.5% reduction in the total number of persons stopped).
- (5) TACT S43, S43A and JSA S21, S24.
- (6) Percentages may not sum to 100% due to rounding.
- (7) Figures from 2004/05 can be found in the accompanying spreadsheet at the following link: <https://www.psnipolice.uk/about-us/our-publications-and-reports/official-statistics/stop-and-search-statistics>

5.28 Previously the Northern Ireland Human Rights Commission (NIHRC) also asked whether there were searches being conducted under other powers that may have previously been conducted under the JSA. Whilst these figures do not directly address their question, the trend in the use of the powers is indicative of a shift to the use of ordinary criminal law powers.

## RATES PER POPULATION

5.29 Comparing the stop and search rate for England and Wales (for the period 1st April 2022 to 31st March 2023<sup>28</sup>, the latest comparative data available) it appears that the PSNI overall stop and search rate, not including their use of JSA powers, was 11 per 1000 population<sup>29</sup>. If JSA were to be included, it would be higher than

<sup>28</sup> Source: Use of Stop and Search Powers by the Police in Northern Ireland, PSNI Statistics Branch and Police powers and procedures, England and Wales, year ending March 2023 Available at [https://www.psnipolice.uk/sites/default/files/2023-11/PSNI%20Stop%20and%20Search%20Report%20Q2%202023\\_2024.pdf](https://www.psnipolice.uk/sites/default/files/2023-11/PSNI%20Stop%20and%20Search%20Report%20Q2%202023_2024.pdf)

<sup>29</sup> PSNI overall stop and search rate is 12 per 1,000 population for the period April 2020 to March 2021 if stops under JSA Section 21 and Section 24 are excluded.

this. From Figure 5.4, there is a total of 3,653 people stopped under Sections 21 and 24; the population of Northern Ireland on 21 March 2021 was 1,903,175<sup>30</sup> giving an additional rate per thousand for JSA stops of 1.9 per thousand for JSA alone. This means that the true stop and search rate for Northern Ireland is 12.9 or 12 per 1000 in whole numbers. The comparable rate for England and Wales was 9 per 1000, but was dwarfed by a Merseyside rate of 37 per 1000 population, the Metropolitan Police rate was 20 per 1000 population.

5.30 Comparing arrest rates, the PSNI has the lowest stop and search arrest rate of any force in the UK at 7% overall, 6% if JSA is included; the rate for England and Wales is 14%. The highest arrest rate was 21% in Sussex and Suffolk. However, it should be noted that arrest is only one of a number of possible outcomes.

5.31 Some policing districts in Northern Ireland use JSA powers more than others.

Figure 5.7 shows the numbers of JSA section 24 stops across PSNI districts for the past five years broken down by review period. In all districts but one district – Mid and East Antrim - there has been an increase in the use of S24 powers compared with the last review period. Ards and North Down multiplied their use of S24 by more than five whilst Antrim and Newtownabbey tripled their use of S24.

District	Reporting period 1 August – 31 July					Total
	Aug18-Jul19	Aug19-Jul20	Aug20-Jul21	Aug21-Jul22	Aug22-Jul23	
Belfast City	1,268	681	869	897	1,001(+12%)	<b>4,715</b>
Lisburn & Castlereagh	456	262	192	82	206 (+151%)	<b>1,198</b>
Ards & North Down	177	142	90	125	757 (+506%)	<b>1,291</b>
Newry, Mourne & Down	381	299	188	73	132 (+81%)	<b>1,073</b>
Armagh City, Banbridge & Craigavon	669	676	334	166	175 (5%)	<b>2,020</b>
Mid Ulster	270	263	239	136	221 (63%)	<b>1,129</b>
Fermanagh & Omagh	227	211	123	57	70 (+23%)	<b>688</b>
Derry City & Strabane	1,254	872	778	659	913 (+39%)	<b>4,476</b>
Causeway Coast & Glens	424	291	282	104	125 (+20%)	<b>1,226</b>

<sup>30</sup> <https://www.nisra.gov.uk/statistics/census/2021-census>

<b>Figure 5.7: Number of persons stopped and searched under JSA s24 during the past 5 years</b>						
	<b>Reporting period 1 August – 31 July</b>					
<b>District</b>	<b>Aug18-Jul19</b>	<b>Aug19-Jul20</b>	<b>Aug20-Jul21</b>	<b>Aug21-Jul22</b>	<b>Aug22-Jul23</b>	<b>Total</b>
Mid & East Antrim	415	630	474	198	168 (-15%)	<b>1,886</b>
Antrim & Newtownabbey	116	214	328	108	486 (+350%)	<b>1,252</b>
<b>Total</b>	<b>5,657</b>	<b>4,541</b>	<b>3,897</b>	<b>2,605</b>	<b>4,254 (+63%)</b>	<b>20,954</b>
<b>Source: PSNI Statistics</b>						

5.32 Belfast has surpassed Derry City and Strabane as the most prolific users of JSA section 24 powers. The Derry City and Strabane rate surpasses Belfast, an area of 44.4 square miles serving a population of 341,877 with an additional transient population of approximately 120,000<sup>31</sup>. The stop rate per 1,000 people for JSA section 24 for Belfast is 2.1 if the transient population is included and 2.9 per thousand if it is not, compared with 2.8 in the previous review period. The population of the Derry City and Strabane District Council (DCSDC) area is estimated at 150,680<sup>32</sup>. This gives a JSA section 24 stop and search rate of 6.1 per thousand people in the DCSDC area, up from 4.5 in the last review period. The DCSDC area has a younger population profile than that for Northern Ireland (NI) as a whole, with 33.5% aged 24 and younger whereas the figure is 31.9% for the whole of Northern Ireland.

5.33 Placing these data in the context of the use by the PSNI of all stop and search powers, the generally increased rate in stops and searches becomes apparent. The overall stop and search rates for all powers are shown in Figure 5.8 as a rate per 1000 of population. For Northern Ireland as a whole, the rate for this review period is 14 people per 1000 population, compared with the previous review period when the rate was 11 per 1000 population. It is notable that the highest stop and search rate per 1000 for all powers (21, compared with 18 in the last review period) is found in Belfast City, considerably higher than Derry City and Strabane (17, compared with 13 in the last review period) where the VDR (violent

<sup>31</sup> PSNI website <https://www.psnipolice.uk/about-us/local-policing/belfast-city>

<sup>32</sup> <https://www.derrystrabane.com/Subsites/Derry-and-Strabane-Statistics/Population>

dissident republican) threat is highest. This rate reflects the use of all powers, including those targeting illegal drugs and other forms of criminality.

**Figure 5.8 PSNI District Stop and Search Rates (all powers): August 2022 to July 2023**

PSNI District	Arrest Rate	Stop and Search rate per 1000 population <sup>(1)</sup>
Belfast City	8%	21
Lisburn & Castlereagh	7%	11
Ards & North Down	3%	12
Newry & Mourne	4%	11
Armagh, Banbridge & Craigavon	6%	11
Mid Ulster	3%	11
Fermanagh & Omagh	3%	14
Derry City & Strabane	6%	17
Causeway Coast & Glens	6%	8
Mid & East Antrim	3%	13
Antrim & Newtownabbey	4%	11
<b>Northern Ireland</b>	<b>5%</b>	<b>14</b>

*Source: PSNI Statistics Branch 2023*

(1) Rates per 1,000 are calculated using NISRA's mid-2022 [population estimates](#), the latest available data at police district level.

## OUTCOMES

5.34 Figure 5.8 also shows the arrest rate for each district for all powers of stop and search. These rates vary between 3% (Mid-Ulster), 8% in Belfast and down to 6% from 7% in the previous review period in Derry City and Strabane. They provide some indication of the effectiveness of stop and search at intercepting offenders. Between 97% and 93% of stops and searches do not lead to an arrest.<sup>33</sup> Of course, there are other criminal justice outcomes than arrest as is seen in Figure 5.8 and 5.9, which deal with JSA stops and searches.

**Figure 5.9: Outcome of stop and question under JSA s21: 01 August 2022 – 31 July 2023**

Outcome	Number	%
Arrest	5	1%
Community Resolution	3	<1%

<sup>33</sup> For context, 6% of all stops across all policing districts during the reporting period resulted in an arrest. An additional 16% of all stops resulted in another form of outcome, i.e. Community Resolution, Penalty Notice for Disorder or report to the PPS.

<b>Figure 5.9: Outcome of stop and question under JSA s21: 01 August 2022 – 31 July 2023</b>		
Penalty Notice for Disorder	3	<1%
Report to PPS	10	1%
No Further Action Disposal	840	98%
<b>Total</b>	<b>861</b>	<b>100%</b>
(1) The outcome may not be linked to the initial reason of the stop and search. For example if an individual is stopped under JSA S21 and during that encounter an officer finds illegal drugs, the individual may get a community resolution for possession of drugs. On the stop and search record that outcome will be recorded against a stop under JSA S21. (2) Percentages may not sum to 100% due to rounding.		

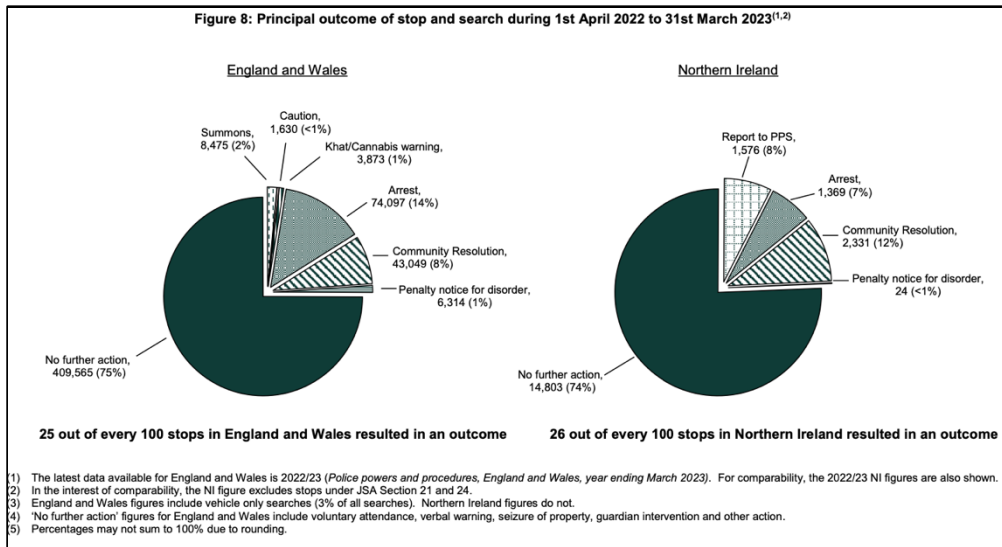
5.35 We see, however, that all stop and searches under all powers are a broad brush that often does not appear to yield results yet inconvenience members of the public and utilise police time. The effect that this inconvenience (and worse) has on police-community relations is unlikely to be beneficial. We will return to the issue of effectiveness when we consider the authorisation process for JSA stop and search below.

5.36 From Figures 5.8 and 5.9, which show the outcomes for all JSA section 21 and section 24 stops for this review period, I calculate the overall outcome rate for s21 stops at 2.4% and for s24 at 3.6%. Once again, this places the overall JSA outcome rates for both s21 and s24 at the lower end of the outcome rate for all powers as seen in Figure 5.7.

<b>Figure 5.10: Outcome of stop and search under JSA s24: 01 August 2022 – 31 July 2023</b>		
Outcome	Number	%
Arrest	48	1%
Community Resolution	42	1%
Penalty Notice for Disorder	1	<1%
Report to PPS	61	1%
No Further Action Disposal	4,102	96%
<b>Total</b>	<b>4,254</b>	<b>100%</b>
(1) The outcome may not be linked to the initial reason of the stop and search. For example if an individual is stopped under JSA S24 and during that search an officer finds illegal drugs, the individual may get a community resolution for possession of drugs. On the stop and search record that outcome will be recorded against a stop under JSA S24. (2) Percentages may not sum to 100% due to rounding.		

5.37 Figure 5.11 compares PSNI stop and search outcomes with those in England and Wales for all stop and search powers with the exception of stops under the JSA powers in Northern Ireland since JSA powers are not available to the police in England and Wales. In England and Wales the overall outcome rate is 25%, or 25 in every 100 stops result in some kind of outcome, the comparable rate for

Northern Ireland is 26% or 26 stops result in an outcome of some kind. The arrest rate of 14% in England and Wales compares with an arrest rate of 7% in Northern Ireland.



5.38 In my last report, I recommended that a discussion of outcome rates is included in future applications for authorisation. This is discussed further in the discussion of authorisations.

## RACE AND ETHNICITY

5.39 Figure 5.12 shows the breakdown of people stopped and searched/questioned under all legislative powers in NI by ethnicity during the review period.

**Figure 5.12: Number of persons stopped & searched/questioned & subsequently arrested & percentage of population stopped under all legislative powers during August 2022 to July 2023, by ethnicity.**

	Persons stopped and searched/questioned	Persons subsequently arrested	Percentage of population stopped and searched/questioned <sup>(2,3)</sup>
White	24,426	1,269	1.3%
Irish Traveller <sup>(1)</sup>	386	51	14.8%
Other Ethnic Group	429	48	6.2%
Black	289	29	2.6%
Asian	218	19	0.7%
Mixed	120	6	0.8%
Not specified	105	6	-
<b>Total</b>	<b>25,973</b>	<b>1,428</b>	<b>1.4%</b>

(1) Ethnicity may be officer perceived. A degree of undercounting may exist for the Irish Traveller category, as some Irish Travellers are likely to be categorised as White.

(2) Figures based on 2021 Census figures.

(3) Percentage figures rounded to one decimal place.

5.40 Once again, Irish travellers are over ten times more likely to be stopped under all powers than White people are. The arrest rates for each group for the last period for all powers are shown in brackets alongside the percentages for this period and are as follows:

- White: 5.1% (6.0%)
- Irish traveller: 13.2% (15.3%)
- Other ethnic group: 11.1% (7.4%)
- Black: 10% (6.6%)
- Asian: 8.7% (7.0%)
- Mixed: 5% (7.1%)
- Not specified: 5.7% (0%)

Irish travellers are also over twice as likely to be arrested as White people are. The arrest rates for White, Irish travellers, and Mixed have declined whereas the arrest rates for Other ethnic group, Black, Asian and not specified increased.



**Figure 5.13 Number of persons stopped and searched/questioned and subsequently arrested and the percentage of the population stopped under JSA powers during August 2022 to July 2023, by ethnicity.**

	Persons stopped and searched/questioned	Persons subsequently arrested	Percentage of population stopped and searched/questioned <sup>(2,3)</sup>
White	4,818	46	0.3%
Irish Traveller <sup>(1)</sup>	33	0	1.3%
Other Ethnic Group	61	0	0.9%
Black	10	1	0.1%
Asian	39	1	0.1%
Mixed	17	2	0.1%
Not specified	21	0	-
<b>Total</b>	<b>4,999</b>	<b>50</b>	<b>0.3%</b>

(1) Ethnicity may be officer perceived. A degree of undercounting may exist for the Irish Traveller category, as some Irish Travellers are likely to be categorised as White.

(2) Figures based on 2021 Census figures.

(3) Percentage figures rounded to one decimal place.

5.41 Figure 5.13 shows the figures for the use of JSA powers. Once again, the share of Irish Travelers subject to the use of JSA powers is higher than for any other ethnic group. In the last report I pointed out that both the Irish Traveller Community and the Black population in Northern Ireland are protected under the Race Relations (NI) Order 1977 as amended by the Race Relations Order 1991 (Amendment) Regulations (NI) 2012 yet these large differentials between ethnic groups are difficult to explain except by referring to policing practices. Racism and anti-Traveller prejudice are ubiquitous in Northern Ireland and elsewhere yet, we must expect the highest standards from guardians of the law in the exercise of these powers. These figures continue to be a matter of great concern.

5.42 In my previous report, I recommended that the PSNI consider whether this level of surveillance is appropriate and lawful under the legislation. I also recommended that the views and experiences of JSA stop and search powers by Irish travellers are sought by the PSNI and taken into account in operational reviews of the exercise of these powers. I am informed that the PSNI have now met with the Community Restorative Justice Ireland Traveller Project Coordinator and the PHA Traveller Health & Wellbeing to discuss stop and search with regards to members of the travelling community and another meeting is planned with the

director of the Irish Traveller Movement (Dublin). The PSNI have initiated analysis of the following:

- Each of the 373 Irish traveller stops within the last 12 months and examining the grounds for these stops;
- The percentage of stops took place in which areas (particular focus on Armagh, Fermanagh, Derry, Newry, Belfast and Ballymena).
- The numbers of travellers stopped in NI who had addresses in ROI (i.e. do not reside in NI).
- the numbers of stops involving vehicles (vans in particular)
- The percentage of stops that were male / female.
- The percentage of stops resulted in an items being found (grouped into category i.e. drugs / PACE weapon etc.)
- The percentage of stops of the same person and members of the same family as a separate percentage.

5.43 This direct engagement with the representatives of the Travelling Community is very welcome as is the commissioning of further research. **I recommend that the PSNI use the outcomes of that engagement with Travellers and the research to develop a strategy and a plan to include SMART (Specific, Measurable, Achievable, Relevant and Time Bound) goals for the use of JSA powers with ethnic minorities.**

## CHILDREN

5.44 In the 14<sup>th</sup> report to parliament, (see paragraphs 6.4 – 6.42) I raised a wide range of issues relating to the use of JSA powers on children and young people. During the period 1 August 2021 - 31 July 2022:

- of the 2,936 persons stopped under section 21 and/or section 24 of the JSA, 62 or 2.1% were children under the age of 18; (in the previous review period out of a total of 4,309 person stopped under sections 21 and/or sections 24, 120 or 2.8% were children under the age of 18);
- of those 62 under 18 year olds, 56 (90%) were male;
- of these 2,936 persons stopped under this same legislation, 774 (26%) were aged 18-25; (in the previous review period, 1,467 (34%) were aged 18-25);

- some 2,726 (93%) of those stopped under JSA s21 and/or s24 were male.  
(Please note that the number of persons may be lower than the number of stops, since the same person can be stopped under more than one power.)

**Figure 5.14 Number of persons stopped and searched/questioned during August 2022 to July 2023 under JSA S21 and JSA S24 by age <sup>(1)</sup>**

Figure 5.14	Persons stopped and searched/questioned									Total
	12 and under	13 to 17	18 to 25	26 to 35	36 to 45	46 to 55	56 to 65	Over 65	Not specified	
JSA Section 21	0	31	215	180	169	168	76	20	2	<b>861</b>
JSA Section 24	1	116	1,089	972	969	741	260	101	5	<b>4,254</b>

(1) **PLEASE NOTE:** As more than one legislative power can be used to stop and search/question a person, the sum of the powers used may be greater than the total number of persons stopped and searched/questioned. <sup>34</sup>  
(2) Age may be officer perceived.

5.45 Figure 5.14 sets out the numbers stopped and searched under S21 and S24 by age. With the sole exception of S21 searches on those under 12 years of age – of which there have been none in this or the last period – the numbers of children under 18 subject to JSA powers have increased. One child under 12 has been subject to a S24 search (and was not subsequently arrested) – there were no such searches in the last review period. The numbers between 13 and 17 have increased from 51 in the last review period to 116 in this, a 127% increase. Of this 116, 96 were male and 20 were female and 3 individuals between 13 and 17 years old, (3%) were arrested. Similarly, the numbers under 18 subject to S21 searches has increased from 14 in the last review period to 31 in this period, an increase of 121%. Of this 31, 22 were male and 9 were female. None of these 31 were subsequently arrested. All of those arrested under either power were male.

5.46 In Figure 5.15 the use of all stop and search powers is broken down by age. In the last review period, JSA powers were not used on children under the age of 12, but

<sup>34</sup> To accurately report the number of persons stopped and ensure a consistent approach this example explains why the figures in the narrative do not match those in the table.

- Person 1, a 17 year old, is stopped under JSA S21
- Person 2, a second 17 year old, is stopped under JSA S24
- Person 3, a third 17 year old, is stopped under JSA S21 and JSA S24.

**Three** 17 year olds have been stopped under JSA section 21 and/or section 24. It would be incorrect in this example to state that **four** 13 to 17 year olds had been stopped under JSA section 21 and/or section 24.

S24 was used once in this review period. The most frequently used power on children under 12 is the Police and Criminal Evidence (PACE) powers followed by the Misuse of Drugs Act (MDA) powers. In the age range 13 – 17 this situation is reversed, with the MDA powers being most frequently used, followed by PACE powers and the third most frequently used powers are the S24 powers. Of those under 18 who were stopped and searched/questioned 42 were subsequently arrested under PACE, 26 were arrested under MDA, 1 was arrested under the Firearms Order, and no arrests of those under 18 stopped under other powers were made. Provisional data for the period between 1 October 2022 and 31 July 2023 indicates that one individual, who was initially stopped and searched under JSA S24 was subsequently searched under the Misuse of Drugs Act and partially strip searched. Drugs were recovered from this individual, who was over 18 years old.

**Figure 5.15: Number of persons stopped and searched/questioned during August 2022 to July 2023, by age and power <sup>(1)</sup>**

	Persons stopped and searched/questioned									Total
	12 and under	13 to 17	18 to 25	26 to 35	36 to 45	46 to 55	56 to 65	Over 65	Not specified	
PACE	54	605	717	660	366	158	57	18	1	<b>2,636</b>
Misuse of Drugs Act	17	1,728	8,037	5,298	2,130	649	188	29	5	<b>18,081</b>
Firearms Order	0	19	23	22	6	3	2	0	0	<b>75</b>
TACT S43	0	0	19	19	37	39	17	7	0	<b>138</b>
TACT S43A	0	1	10	15	22	37	9	2	0	<b>96</b>
TACT 47A	0	0	0	0	0	0	0	0	0	<b>0</b>
JSA Section 21	0	31	215	180	169	168	76	20	2	<b>861</b>
JSA Section 24	1	116	1,089	972	969	741	260	101	5	<b>4,254</b>
Other	1	17	42	20	9	14	1	2	0	<b>106</b>

(1) As more than one legislative power can be used to stop and search/question a person, the sum of the powers used will be greater than the total number of persons stopped and searched/questioned.

(2) Age may be officer perceived.

5.47 Given that the overarching guiding principle in the policing of children is the ‘best interests of the child’ and that the JSA powers are to be used solely for searches for illegal munitions or wireless apparatus, this is a troubling picture indeed. In the 15th report, I commented that the Minimum Age of Criminal Responsibility (MACR) (10 years old) is one of the lowest in Europe and indeed in the world, and that a proposal to change this was under consideration by the Department of

Justice<sup>35</sup>. Unfortunately, this remains the case. Since the Assembly is now back in session, progress on this matter would improve the position of children within the criminal justice system in general and in relation to JSA powers in particular.

5.48 In the 15th report, I recommended that “In the light of the DOJ proposal to raise the MACR in Northern Ireland from the current age of 10 years to 14 years... that the PSNI conduct a review of its policies and practices in relation to JSA stops and searches of children between the ages of 10 and 14. The PSNI have responded that “The PSNI’s stop and search policy is under continuous review and with regards specifically to the Justice and Security (NI) Act 2007 and the stop searches of children.” **In its iteration of PSNI policy on JSA stop and search I recommend that;**

- **the PSNI clarify how the best interests of the child<sup>36</sup> are served in the stopping of children**
- **that this question is specifically considered in that continuous review and**
- **they make available BWV of these stops in the next review period for examination by the Independent Reviewer.**

5.49 The PSNI also report that they have made changes to its stop and search recording application (Origin) so that:

- Where children are subject to a search using the powers under section 24 of the JSA, the officer should make a record of the specific basis for the search.
- In cases where the child is the principal subject of the search, the officer should record the basis for the search, as is the case with an adult subject.

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<sup>35</sup> Of the 455 responses received 381 (84.7%) agreed that there should be some kind of increase in MACR, with various ages being proposed; 26 said they would accept an increase in MACR if exceptions were permitted for serious offences; 43 were definite that there should be no change to the current MACR of 10 years.

<sup>36</sup> Service Instruction SI10321 of 02/09/2021 paragraph 7 states that “Any decision taken to stop and search a child must be in the best interests of that child, taking into consideration that exploitation of the child may be a factor in the case.”

- In a case where the search is of a child who accompanies the principal subject of the search (i.e. is not the target of the search but happens to be present in the vehicle or at the scene) the officer should record the reason why the officer decided that it was necessary and proportionate to conduct the search of the child, in addition to the search of the adult subject(s).

These changes are very welcome and the responsiveness of the PSNI to the previous recommendation is commendable.

5.50 The PSNI also told me that in October 2022 they have made changes to their stop and search recording so that the following information is now recorded:

- Age range (under 10, 10 – 17 and over 18)
- Clothing removed (No – no clothes removed, No – outer clothes only removed, Yes – partial strip and Yes – full strip)
- Clothing removed details (this is a free text field)
- Intimate parts exposed (Yes or No)
- Searched in public view (Yes or No)
- Was an appropriate adult present (Yes or No)
- Authorising supervisor
- Reason for strip (this is a free text field)

**I recommend that the data emanating from these records be provided to the Independent Reviewer for publication in the next review period.**

5.51 In the period 1 August 2022- 31 July 2023 of the 2,505 children aged between 13-17 stopped, searched and/or questioned, 1,985 were male and 520 were female. 57 males and 11 females were arrested. The largest age category is the 18-25 year old age group, of whom 10,090 were stopped, 8,441 of whom were male, 1,639 were female and 360 males and 49 females were subsequently arrested. The consequent arrest rates are 5.5% for under 13s, 2.7% for the 13-17 age group and 4.1% for the 18-25 age group.

5.52 As I commented in the 15th report, since there appears to be no law enforcement benefit deriving from the stopping of children. **I once again recommend that, in producing their policy statement on the use of stop and search, which I**

**recommended in the 14th report at paragraph 6.67, that the PSNI specify their policy specifically in relation to the use of JSA powers on children.**

5.53 In the 15th report, I commented on the overwhelming predominance of males in the stop and search data, and the lack of community background data. I pointed out in the 15th report that anecdotal evidence would indicate that boys from a Catholic/Republican/Nationalist (CRN) background are likely to make up a majority of the children subject to these powers. I also pointed to research<sup>37</sup> that investigated the high proportions of Catholic children within the justice system and disproportionality in the numbers of ‘looked after’ children (a child who has been in the care of their local authority for more than 24 hours) within that system. I have drawn these issues to the attention of the newly appointed Northern Ireland Commissioner for Children and Young People (NICCY) and to the attention of the Northern Ireland Policing Board (NIPB).

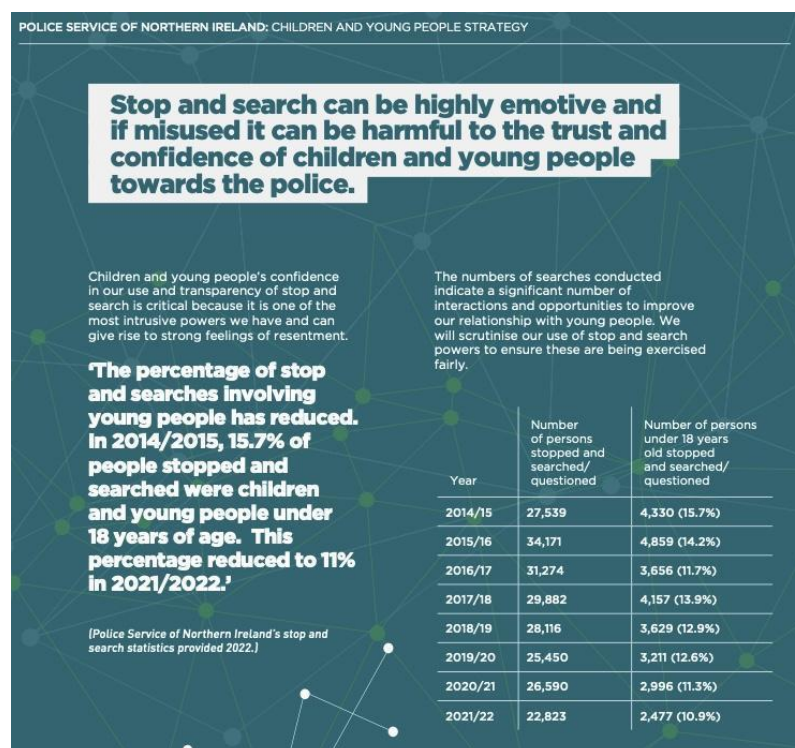
5.54 In the 14th and the 15th report, I noted various initiatives by the PSNI to address some of these issues. I am informed that as of March 2023 and through using contacts made by various neighbourhood policing teams, five groups of young people have been directly engaged with on this topic, totalling 65 young people (from Lurgan, Belfast, Lisburn and the Newtownards areas). The engagements that we have carried out to date have been very productive, generated very positive feedback and the young people present have presented great ideas, which will really help in the development of a Stop and Search information card aimed at young people. PSNI told me that they were in the process of arranging further engagements in this area, and it is hoped that these will take place in the near future. The PSNI also said that work was ongoing in making a video aimed at increasing officers’ awareness about young people’s feelings and experiences of stop and search in their corporate communications department. **I recommend that this be made available to the Independent Reviewer along with details of how it is being deployed in officer training.**

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<sup>37</sup> Siobhán McAlister, Catherine McNamee, Mary-Louise Corr and Michelle Butler OVER-REPRESENTATION IN THE YOUTH JUSTICE SYSTEM IN NORTHERN IRELAND FULL REPORT 07.03.2022 Available at [https://www.justice-ni.gov.uk/sites/default/files/publications/justice/over-rep%20in%20yjs%20main%20report\\_4.pdf](https://www.justice-ni.gov.uk/sites/default/files/publications/justice/over-rep%20in%20yjs%20main%20report_4.pdf)

5.55 The PSNI have now published their Children and Young Person’s Strategy<sup>38</sup> and the section on stop and search is reproduced in Figures 5.16 and 5.17 below.

Figure 5.16 Children and Young People Strategy PSNI - Stop and Search



5.56 In Figure 5.16, the PSNI made available data on the use of stop and search and pointed out that the share of young people has decreased to 11% since 2014/15. Whilst the share composed of children and young people has decreased further in this review period to 10%, the actual number of children and young people stopped and searched has increased from 2,477 to 2,590. This is in the context of the overall rise in the use of JSA powers in this review period.

<sup>38</sup> <https://www.psnipolice.uk/about-us/our-strategies-and-vision/children-and-young-people-strategy>



Figure 5.17 Children and Young People Strategy PSNI - Stop and Search undertakings



5.57 The strategy as a whole contains a very wide range of undertakings about the policing of children and young people. In relation to the undertakings on the stopping and searching of young people, it is not clear from the published strategy exactly how these aims and undertakings will be achieved and by what date. **I recommend that the PSNI consider elaborating the SMART goals (or equivalent) in relation to the stop and search of children and young people.**

5.58 The strategy also undertakes to explain police procedures to those children they stop and search and that they consult with children and young people's groups. It is unclear the extent to which police officers are prepared by their training and monitored in their supervision:

- **to understand and implement the overarching requirement to act in the best interests of the child;**
- **to consider gender and age as factors which inform their responses;**
- **to use de-escalation in encounters with children;**
- **nor is it clear the extent to which they are given training in and evaluated on specialist skills in communicating with children.**

I viewed body worn video of police involvement with a female child of 12, which casts very serious doubt on all of these matters. **I recommend that, in the next review period, the PSNI address these issues highlighted above with the Independent Reviewer.**

5.59 In my 14<sup>th</sup> report to parliament, I recommended that I should review a structured sample of BWV footage of JSA stops and searches of children and young people, which was to be drawn, viewed and analysed in consultation with the working group and/or the YIAG. The sample was to include stops and searches in both CRN and PUL communities, of both genders, a range of ages and include areas where stops and searches are concentrated. In the 15th report, I noted that although I have viewed BWV in Derry City and Strabane District, I have not viewed BWV of children and young people being stopped and searched. In that report I recommended that, as a priority, this be arranged for the next review period and that it include stops conducted by the Armed Response Units (ARUs). This was to be organised for a meeting of the PSNI's Service Accountability Panel SAP, which I attended and was to include body worn video of children and young people being stopped and searched, including stops conducted by the Armed Response Units. Whilst I have attended a SAP and viewed BWV of children, (I have commented on this above) only one of which was a stop under the JSA powers. **I therefore recommend that further viewing of BWV of children and young people being stopped and searched under JSA powers, including by the ARUs, be organised for the Independent Reviewer in the next review period.**

5.60 I commend the working group's plan to share the action plan on JSA stops and searches of children with the Northern Ireland Policing Board and to ensure that the work flowing from it is in harmony with the imminent PSNI Children and Young Persons' Strategy, proposed changes to the MACR and that it complies with Professional Standards Department (PSD) requirements. I look forward to seeing these changes reflected in the data on PSNI data on the use of JSA powers.

## **OUTSTANDING UNDERTAKINGS**

5.61 In the 14th report, I recommended that the PSNI implement the plan to establish regional YIAGs (Young People's Independent Advisory Group) without delay and share minutes of these groups with partners and online. I reported in the 15th report that unfortunately, the YIAG has yet to be established. I had suggested that this could be done with the advice of the JSA Stop and Search working group,

which contains many of the relevant organisations. Once again, I must report that the YIAG has not yet been set up. I am informed that: ‘the establishment of a YIAG (via the stop and search working group) can be presented to and arranged via the PSNI’s Service Accountability Panel, which is next due to sit in December 2023’ and that ‘this matter will be raised for discussion.’

Might I respectfully suggest that after three years of my tenure recommending the establishment of a YIAG, that it is time to go beyond discussing the matter? I **recommend that the PSNI produce a firm plan with timelines in relation to the establishment of a YIAG - or other mechanism to perform the same function, should a YIAG prove too difficult.**

5.62 At paragraph 6.38 of the 14th report, I referred to NICA Ní Mhurchú [2021] which points to the value of the Scottish code of practice for stop and search in relation to stopping children. I recommended that the PSNI incorporate some or all of the Scottish code into their own Code. Any amendment to the JSA requires primary legislation and parliamentary time has also been requested in order to alter the JSA authorisation period recommended in the 14<sup>th</sup> report. Amendments to the Code requires secondary legislation, that once a suitable legislative vehicle is identified, the NIO have agreed to progress this amendment<sup>39</sup>. As I noted in the 15th report, the NIO has an obligation to publicly consult on any changes to the JSA Code of Practice and they plan to carry out a public consultation once legislation allowing this and for an extension in the authorisation period

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<sup>39</sup>Legislative requirements for amendments are as follows:

- Primary legislation is required in order to make changes to the JSA itself (for example the extension of the authorisation period);
- Secondary legislation is required to make changes to the Code of Practice (CoP);
- Public consultations will be required for both changes;
- Amendments to the JSA itself will likely need to be reflected in changes to the CoP;
- NIO needs to identify a suitable legislative vehicle in order to make the Primary Legislative changes. After several bidding processes they have not been able to identify a suitable vehicle but will continue to seek one.

(mentioned at paragraph 5.61) receives Royal Assent. When completed, will allow the NIO to advance legislation to amend the Code accordingly. **Since this matter remains outstanding, I recommend that progress on this matter be reported in the next report to parliament.**

5.63 I recorded the concerns of the Children’s Law Centre (CLC) in the 15th report in relation to policing and children. Amongst these were their concerns about cancellations, delays and infrequency of meetings of existing advisory groups, the failure of the PSNI to appoint an independent advisory group, their concern that processes for making appointments of independent advisors lack transparency and those appointed do not always represent stakeholder organisations. In the 14th and 15th report, I noted that many of the groups and individuals I met during the previous review period had reported that the relationship between the PSNI and young people was very poor indeed. Although I have seen some individual examples where the police have attempted to improve relations, overall, I fear that poor relations remain in many instances. Relationships between the PSNI and the CLC, NICCY and other stakeholder organisations could be instrumental in ameliorating this situation should relationships move onto solid grounds of mutual respect and cooperation. Once again, **I recommend that the PSNI meet with the CLC, NICCY and other stakeholder organisations to evaluate the status of current relationships, identify and implement steps to improve collaboration.**

## **AUTHORISATIONS**

5.64 From paragraph 5.8 on in the 14<sup>th</sup> report, I explain how JSA powers of stop and search must currently be authorised every two weeks. I recommended in that report, after consulting with the PSNI that the frequency of these authorisations reduce to every four weeks. However, since this requires an amendment to the JSA via Primary Legislation and the NIO have not yet identified a suitable legislative vehicle, this change has not yet taken place. It will reduce by half the work of the PSNI in preparing the authorisations, allowing for greater time in their preparation.

- 5.65 The pro forma that was in use for authorisations was shown at Annex E in the 15th report. This form is completed, and supporting material is compiled by the PSNI, first at District level, then passed to PSNI headquarters and scrutinised by their senior staff and lawyers and signed by an Assistant Chief Constable. From there, they are passed to the NIO for further scrutiny by staff and lawyers who provide a covering note for the Secretary of State to whom it is passed for signature, which is required in order to authorise the powers.
- 5.66 As explained in the 15th report, each authorisation document must contain all the requisite information on the previous use of the powers by districts, the supporting fresh intelligence material as well as assessments of the impact of the powers on the community. In total, the documents must convince the Secretary of State that the powers are **necessary** and **effective** to address the threat level and that any **impact on the community due to the broad nature of the powers is justified** in terms of their effectiveness in mitigating that threat.
- 5.67 Between 1 August 2022 and 31 July 2023, there were 33 JSA authorisations and there were no lapses in JSA authorisations. There were no TACT S.47A authorisations during this period. One District - G District – was without the JSA Powers for two weeks from 06/09/2022-19/09/2022. With the exception of this one authorisation, all authorisations involved the entirety of Northern Ireland. In Application 22/2022 when G District was not covered, the authorising ACC commented that: “I am not however satisfied that there is sufficient basis or requirement for G District (Fermanagh and Omagh) at this time.” In the view of the PSNI Assistant Chief Constable (ACC) preparing the application for authorisation, the intelligence material did not justify authorising the powers in that policing district. This is in compliance with the JSA Code of Practice which, at 8.23, states that “Both the duration and the geographical extent of an authorisation must be no greater than is necessary to prevent endangerment to the public caused by use of munitions or wireless apparatus and based on an assessment of the available information.” It is also in the context of the reduced threat level reported at paragraph 4.2 above. This level of discrimination is commendable in the light of the Human Rights Advisor to the NI Policing Board’s 2022 report, which found that ... “the number and significance of the pieces of

intelligence varied from authorisation to authorisation and in relation to the four areas of Northern Ireland. However, several authorisations were very weak on the need for an authorisation covering every single of the four areas of Northern Ireland although the power is used across Northern Ireland” (p 53).

5.68 In paragraphs 5.14-5.15 of the 14<sup>th</sup> report, I too had considered the issue of the authorisation of the powers on a blanket basis across Northern Ireland. The PSNI concluded that where the documentation did not support an authorisation in a particular district, they would omit that district from the application, and in this review period, they demonstrated their willingness to do this. Since of *Gillan and Quinton v United Kingdom* (2010) required the institution of a review process the authorisations have operated on a blanket basis across Northern Ireland, therefore this level of scrutiny of authorisations reassures me that the PSNI are aware of the importance of using such broad powers as sparingly as possible. **Once again, I recommend that the PSNI continue to consider carefully whether comprehensive authorisations are routinely required and seek authorisation only for areas where the intelligence clearly and unequivocally warrants it.**

#### **SCRUTINY OF AUTHORISATIONS - 1 AUGUST 2022 - 31 JULY 2023**

5.69 In this review period, I dip-sampled a random selection of the authorisations in order to consider five issues, namely:

- **the purpose of the search powers;**
- **the focus and coverage of the intelligence material;**
- **the ‘reasonable suspicion’ test;**
- **the effectiveness of the powers; and**
- **the proportionality of the use of the powers.**

5.70 At paragraph 5.55 of the 15<sup>th</sup> report, I set out the legislative requirements for the justification of an authorisation, which must be met in the documentation put before the Secretary of State. I also refer to paragraph 8.22 of the JSA Code of Practice which sets out the role of the authorising police officer who must be satisfied that the powers are necessary to prevent such endangerment. The use of the powers is also required to deal with the perceived threat and whether the

power is the most appropriate to use in the circumstances. The senior police officer must take into account the available information on the endangerment from munitions or wireless apparatus and consider the proportionality of the use of without reasonable suspicion search powers. Authorised searches may be used only for the purpose of discovering unlawfully held munitions or wireless apparatus and officers must consider whether other search powers including those that require reasonable suspicion could be used instead. Finally, the senior police officer must consider the safety of the public and the safety of officers.

- 5.71 I reviewed the JSA authorisations by making a dip sample drawn from the 21 authorisations that occurred in this review period. I also reviewed the one authorisation that was sent back for amendment to the PSNI and which, uniquely in the history of JSA authorisations, authorised some, but not all, districts in Northern Ireland for the use of JSA stop and search powers. The application for authorisation that had to be amended was presented to the senior officer as an application for all areas, but on consideration and in an unprecedented move, he decided not to authorise one area, and the accompanying paperwork was inconsistent with this outcome.
- 5.72 Unfortunately, since all applications for renewal had varied very little over the period since they were introduced, the PSNI appear not to have thoroughly checked that all the material in the application consistently supported the case for a partial authorisation. This resulted in an application that was inconsistent and in places called for a comprehensive application and in others for a partial application.
- 5.73 Thanks to the process of scrutiny given to applications prior to their submission to the Secretary of State this inconsistency was spotted and the application was returned on a tight deadline to the PSNI for correction. Once returned it must be passed to the Secretary of State for Northern Ireland for signature. A perfect storm of events occurred. A Cabinet reshuffle led to the appointment of a new Secretary of State on 6 September 2022. When a new appointment is made the incumbent must receive his seals of office and be received by the monarch, referred to as the kissing of hands, in order to acquire the powers of office. On 8

September, Her Majesty Queen Elizabeth died, before the incumbent could be properly empowered, hence he was unable to sign the authorisation.

5.74 Fortunately, the Secretary of State for Wales stepped into the breach and the powers were authorised. The whole experience – the unusual nature of the application requiring additional time to prepare it, the tight time frame for all authorisations rendered even tighter by the requirement to resubmit, the reshuffle and the death of the monarch meant an exceptionally stressful time for those involved in the authorisation process. It is commendable that the inconsistency in the application was spotted and rectified, and that the problem-solving capacities of the civil service are exemplary. However, there is a salutary lesson in this for the PSNI in the dangers of a ‘cut and paste’ approach to authorisations, an approach on which I commented in the 15<sup>th</sup> report.

5.75 It is reassuring that this decision not to authorise all areas was made by the senior officer in the light of earlier recommendations, and it is reassuring that the NIO spotted the inconsistencies in the paperwork. However, it somewhat confirms some earlier concerns about the routinisation of the completion of the pro forma which I have commented on in previous reports.

5.76 Unfortunately, further perusal of authorisations in this review period revealed identical text sequences of completed authorisation pro formas. Significantly, the human rights advice appears to be identically worded in all the renewal applications I reviewed. Whilst it may well be the case that the human rights advice is unchanged, the lack of variance in the wording gives rise to concerns about the routinisation of the process and worry that each application is looked at with fresh eyes, however onerous it is to do this every two weeks. My recommendation to reduce the frequency by 50% to monthly. This is designed to address this, and whilst such a reduction offers the opportunity for refreshed energy and purpose in preparing applications, it is no guarantee of reinvigorated scrutiny.

5.77 Likewise, it was very disappointing to find repeated reference to Community Impact Assessments referred to as a method of assessing the community impact



of JSA stop and search. In my earlier reviews, after several enquiries to the PSNI, I established that these impact assessments relate only to planned operations and not to the use of JSA powers, so reference to them on JSA authorisations is not only irrelevant but also misleading. The authorisation process also requires the PSNI to assess the impact of the use of the powers on the community, which I have commented on in detail in the 15<sup>th</sup> report (paragraphs 5.72 – 5.82). This is important, because not only the legislation requires the PSNI to consider the proportionality of the powers, measuring the policing gains of the powers against the disruption to the community, but also the process of community engagement whereby the PSNI assess the impact on the community improves police-community relations.

5.78 Feedback from Policing Community Safety Partnerships (PCSPs) is the other method of assessing the impact on the community. The NIHRC has expressed an interest in the role of the PCSPs given their crucial contribution to policing and the unique opportunity they present to the PSNI (that is not available to other police forces in the UK) to foster community engagement. In the previous review period, I met with two PCSPs and in this review period, I met with the PCSP managers for the whole of Northern Ireland. In earlier reviews, I have commented that it cannot be inferred from a nil return from a PCSP that there is no problems with stop and search, I discussed this, and other issues related to JSA stop and search with the PCSP managers including the requirement on the PSNI to assess the impact on the community.

5.79 In the 15<sup>th</sup> report I point out that direct feedback from the PCSPs on any positive or negative community impact of the JSA powers could perform a very valuable input to the authorisation process. I recommended that PCSPs regularly seek the views of local people in relation to JSA stop and search, record this feedback formally in their minutes and communicate them to the Policing Board. I also noted that PCSPs also have the power to call public meetings to raise matters of concern including, for example, the community impact of JSA stop and search operations. This is another method of obtaining information on community impact. In the 15<sup>th</sup> report, I recognised that such public meetings could be

challenging given that public feelings may be strong, and recommended that consideration be given to providing additional training to PCSP chairs, PCSP members and to senior PSNI officers on the skills and approaches involved in handling high levels of conflict in difficult meetings.

5.80 At paragraph 6.66 of the 14th report and at 5.81 of the 15<sup>th</sup> report, I recommended that the PSNI identify a list of communities where JSA stop and search activity is particularly concentrated; conduct periodic assessments that include regular external inputs from local teachers, clergy, councillors, youth and community workers. I referred to the very useful meetings with the senior team in Derry City and Strabane (DC&S) District where the team devised and implemented collecting fresh information directly from the community on stop and search by identifying a range of key individuals in the community. These include local shopkeepers, teachers, youth leaders and by phoning these people to obtain their on-the-ground assessment, which they then feed into the authorisation process. **I recommended a similar method of obtaining feedback is adopted by all districts and the feedback obtained should feed into the JSA authorisation process.**

5.81 In several places in authorisation applications I noted that organised crime and organised crime gangs (OCGs) were cited as a reason for the necessity of the powers. Whilst there is considerable overlap between certain paramilitary sub-groups and evidence of collaboration and dual membership between them and paramilitary groups, OCGs exist and operate throughout the UK and elsewhere and are policed without measures such as the JSA. It is my strong view that the JSA must be used exclusively in circumstances that arise due to the security situation in Northern Ireland and which is specific to Northern Ireland. The existence and operations of OCGs may therefore not form a part of the case for the renewal of the JSA powers. OCGs are and ought to be policed using the ordinary criminal law and the UK Crown Prosecution Service<sup>40</sup> have issued guidance on their prosecution under, inter alia, section 45 of the Serious Crime

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<sup>40</sup> <https://www.cps.gov.uk/legal-guidance/organised-crime-group-participating-activities>

Act 2015 ('SCA') and Proceeds Of Crime Act 2002. The standalone activities of OCGs should not form part of the case for the renewal of JSA powers.

- 5.82 The requirement for a viable case for the renewal of the powers requires that the case is made that the powers are 'necessary and proportionate' to the threat posed to security. This threat is quantified in the intelligence material presented alongside the application. The test of the necessity of the powers is that, without them, the threat would not be sufficiently ameliorated. Therefore, the application must show in what way the threat is mitigated or reduced by the use of the powers. Currently, the applications for renewal list the frequency with which the powers are used and the infrequency with which they lead to arrests. No mention is made of the way the exercise of the powers - which are specifically to search for illegal munitions or wireless apparatus – result in finds of either munitions or wireless apparatus. The case for the necessity of the powers must surely contain this information, otherwise the powers cannot be shown to be fit for purpose.
- 5.83 As has been rehearsed in previous reports, the powers may well have other effects when exercised, such as disrupting illegal activity, but these effects may not form part of the case for the renewal of the powers. Nor can the case for renewal of the powers rest on them being 'helpful' to the police, wording that featured in a number of applications I reviewed, although one would hope that all the powers used by the police are helpful to them. The test is rather more stringent – that the power is 'necessary' and without it, the policing of the security situation in Northern Ireland would be seriously compromised.
- 5.84 Likewise, authorisations must make the case that JSA powers are "necessary to prevent such danger", namely that they are effective (see paragraph 5.71 of the 15<sup>th</sup> report for a discussion of this). Authorisations must describe how the use of the powers will mitigate the risks set out in other sections of the authorisation and in the 15<sup>th</sup> report. I recommended that the effect of the powers on mitigating risk be clearly set out in future applications for JSA authorisation.
- 5.85 The proportionality test rests on arguing that the disruption to members of the public and the communities (which is quantified in the assessment of impact on

the community mentioned above and extensively in previous reports) in which JSA powers are most extensively used is justified. This is by the gains in terms of improvements to security and the ability to police paramilitary organisations. Without evidence of either: disruption and impact on police community relations on the one hand and the success of the powers in taking illegal munitions and wireless apparatus out of circulation on the other – it is simply not possible to make a robust case for the proportional use of the powers.

5.86 Finally, in reviewing the intelligence material provided as substantiation of the security threat, reading the intelligence about, for example, the (presumably) illegal possession of weapons by various individuals in the community I am concerned about the balance between intelligence gathering on the one hand and law enforcement on the other. It may be the case that illegal weapons concealed at an outdoor location may well be under surveillance so that the individuals who come to pick them up can be apprehended. It is, however, difficult to understand why the illegal possession of weapons in a domestic property does not trigger police intervention to neutralise any threat that these weapons might pose. In the 15<sup>th</sup> report, I noted that this observation is shared by the Human Rights Advisor to the Northern Ireland Policing Board.

5.87 In the 15<sup>th</sup> report I recommended, at paragraph 5.60 onward, that the PSNI review the intelligence material provided in support of JSA authorisations to ensure that it focuses on the requirements of the legislation and that it is specific, recent and timely, appropriately focused and supports the use of the powers. In the 8<sup>th</sup> report, the Independent Reviewer considered ‘the proper exercise of the power:’

“the power should not be exercised wholly at random but on the basis of intelligence or other factors that might indicate **the presence of munitions or wireless apparatus**. The power should be targeted at the threat based on informed considerations (which can include the officer’s training, briefing and experience). **If the power is properly**

**exercised therefore it will be used against known DRs and others otherwise involved in munitions.<sup>41</sup>**”

- 5.88 The intelligence or other material included in authorisations must be specific, recent, timely and appropriately focused<sup>42</sup> and indicate the (likely) presence of munitions or wireless apparatus. The authorisation documentation must make the case that the target of the powers is likely to be **currently** in possession of, or en-route to obtain or transport illegal munitions or wireless apparatus. As I discussed in the 15<sup>th</sup> report (paragraph 5.63) possession of a mobile phone, even though it can be described as a ‘wireless apparatus’, is insufficient for the use of the powers.
- 5.89 Box 11 of the Authorisation Form (see Annex N) in use in this review period asks for “a detailed account of the steps that have been taken to engage those in 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.” In the explanatory notes, the authorising officer is instructed to “demonstrate that communities have been engaged as fully as possible throughout the authorisation process. When using the power, the PSNI may use existing community engagement arrangements. However, where stop and search powers affect sections of the community with whom channels of communication are difficult or non-existent, these should be identified and put in place. Independent Advisory Groups (IAGs) should be as fully engaged as possible at all stages of an authorisation.”
- 5.90 Since all of these concerns were also raised by the Human Rights Advisor to the Northern Ireland Policing Board, I am delighted to report that the PSNI have responded positively to his and my recommendations about the authorisation process both in my reports and in ongoing dialogue. As a result, during this review

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<sup>41</sup> Ramsey (Stephen) Application No2 [2020] NICA 14 [30] citing para 7.9 of Eighth Report of the Independent Reviewer

<sup>42</sup> paragraph 5.56 of 15<sup>th</sup> report

period, the PSNI formed a working group involving the NIO, the Human Rights Advisor and me to review and redesign the authorisation process so that it addresses the various concerns raised here and previously. This work has been ongoing throughout this review period and has resulted in a complete redesign of the pro forma for authorisation, ensuring that it directly addresses the legislative requirement and discourages the inclusion of extraneous material that is not focused on these requirements. I am optimistic that such a redesign can ensure the legal questions are robustly addressed, the process is streamlined and focussed on the key issues and superfluous material is excluded. The new pro forma will be adopted for use on January 5, 2024.

5.91 This means that the review of JSA authorisations in the next review period will include authorisations conducted under the old pro forma included as Annex E in the 15<sup>th</sup> report in the period 1 August 2023 – 5 January 2024 (Annex N of this report). The remainder, from 5 January 2024 to 31 July 2024 conducted under the new pro forma contained in this report at Annex P.

5.92 It has been agreed that **the working group who are developing the new pro forma will reconvene together with the IRJSA and the Human Rights Advisor to the NIPB in April 2024. They will review the operation and fitness for purpose of the new pro forma and make any necessary amendments, with due regard to any feedback from those operationalising the new format.**

5.93 It only remains for the NIO to legislate for the reduction in the frequency of authorisations to monthly as recommended in my previous reports and I can be satisfied that the JSA authorisation process is more fit for purpose than previously was the case.

#### **USE OF THE POWERS**

5.94 At paragraph 6.73 of the 14<sup>th</sup> report and from paragraph 5.57 of the 15<sup>th</sup> report, I set out previous concerns about the purposes of JSA s24 searches and the requirements of the Code of Practice. It is clear from this that “the power should not be exercised wholly at random but on the basis of intelligence or other factors that might indicate the presence of munitions or wireless apparatus.”

(paragraph 7.9 of the Code of Practice) and that “(a) the power to stop and search without reasonable suspicion under section 24/Schedule 3 does not give the police an unfettered discretion to stop a known DR at any time or place. There needs to be a basis for the use of the power and the purpose must always be to search for munitions or wireless apparatus. So where there is no basis a person cannot be stopped and searched simply because of his known DR profile;” and “(b) the purpose of the search can never be to put pressure on an individual, to remind him that the police are monitoring him, to disrupt his activities or to get intelligence. The sole statutory purpose is to search for munitions etc. If as a result of a legitimate search these collateral benefits accrue then that does not render the use of the power unlawful” (paragraph 7.10 of the Code of Practice).

5.95 In the 15<sup>th</sup> report, I recommended, “that the PSNI issue a clarification to all officers that the JSA powers may not be used purely or primarily for intelligence gathering, or for disruption of illegal activity. Officers should be advised to use the ordinary criminal law or TACT in such circumstances.” The Student Officer Development Programme (SODP) responded that they have ‘added a direct lift of the above recommendations to their training materials giving two illustrations, as follows:

- (1) “Well known DR walking down the street with an unknown person – can you stop and ask this person for these details under this JSA legislation –  
**YES**
- Well known drug dealer walking down the street with an unknown person – can you stop and ask this person for these details under this legislation
- NO, abuse of powers
  
- Well known DR walking down the street stop and question using S21 JSA - you know who this person is, you have stopped and searched them multiple times.

- You can ask their movements but cannot ask their identity as this is a breach of the codes of practice as it states that if you know the person's identity you cannot ask this. (Operational officers were arresting known DR for not giving their name, but unlawful as aware of identity of person)"

5.96 The inclusion of these examples illustrates that one aspect of the recommendations is understood, namely that the legislation is not to be used where TACT or other legislation could be used, nor can it be used to stop known nominals and ask them superfluous questions. **It does not yet reassure that the PSNI understand that the purposes of any JSA stop and search must be purely for the purposes of searching for illegal munitions and/or wireless apparatus and for no other purpose. I recommend that this legal requirement is included in SODP training and all of these issues are covered in future in-service refresher training for serving officers.**

5.97 At paragraph 5.70 Of the 15<sup>th</sup> report, I recommended that, where the use of a JSA powers in the first instance leads to the formation of reasonable suspicion, that the officer proceed under a power other than JSA on the basis of that suspicion. The PSNI's Student Officer Development Programme (SODP) have responded that,

"In teaching we would recommend if the students form suspicion they go to the most relevant legislation that allows them to progress to a solution. If they feel that a JSA Sect 24/3 is relevant, depending on the situation, then they should consider this power or if not relevant then they consider Sect 43 of TACT and so on, moving through relevant legalisation, misuse of drugs etc."

5.98 In the 14<sup>th</sup> report, and again at 5.72 in the 15<sup>th</sup> report, I recorded that I had been repeatedly told by a range of individuals and groups in the community that they considered JSA powers invasive, alienating, and counterproductive particularly in relation to young people. That the PSNI is seen to be concerned about this by regularly consulting local communities can only improve police community relations.



5.99 In this review period, I received one particular complaint about the repeated use of both S21 and S24 JSA powers over a period of years. The male had a previous conviction related to dissident republican activity dating back several years, but had a clear record since then. Intelligence indicated that he was not of current interest to the authorities; they were not currently interested in him and he declared he wished to lead a law-abiding life. Yet front line officers on the ground know him and the electronic records available to them flag him as a convicted person and is thus subject to enhanced police attention. For a number of reasons this is a matter of concern. As was discussed above, that the police know someone is not in itself a sufficient reason for a JSA stop and search. Second, various efforts sponsored by the DOJ and various community groups are being made to deflect individuals from illegal paramilitary activity. Where an individual is verifiably deflected from illegal associations and activities, subjecting them to repeated JSA stops and searches is not only a waste of police time, but it removes one of the incentives for them to lead a law-abiding life. **I recommend that the electronic records used by front line officers be updated regularly to include information on the status of individuals who are no longer of interest to the police in spite of their past records of convictions or criminal associations.**

5.100 At paragraph 6.68 of the 14th report, and again at paragraph 6.23 of the 15<sup>th</sup> report, I described complaints from individuals who described being frequently and repeatedly subject to stops and searches over a protracted period without any criminal justice outcome. Whilst some of the cases that have come to my attention have been resolved following liaison with the PSNI, I have no doubt that there are others who have not been taken up in this manner. I have been unable to determine from the stop and search data how many individuals have been repeatedly stopped and searched. This is because the stop and search database contains no unique identifier on stop and search records that would enable the number of persons stopped multiple times to be accurately measured. NISRA informs me that such analysis could be based on manual matching of basic details, which may or may not have been inputted accurately. They say that more recently person details can be securely populated in an automated way, including a unique reference number, although the quality of these data has not yet been

assessed. However, if the analysis is limited to JSA powers it may be manageable and they have undertaken to explore the provision of this data for future reports. This will enable the review to identify the number of individuals subject to repeated JSA stops and the numbers of times these have occurred.

## **DIRECT SCRUTINY OF THE USE OF JSA POWERS**

### **BODY WORN VIDEOS (BWVs)**

- 6.1 As noted in earlier reports, PSNI officers are told that: “body worn video MUST be used when conducting ANY stop and search. Any stop and search not recorded on body worn video will require a reasoned explanation as to why this is the case.” In the previous review period 1 August 2021 – 31 July 2022 the usage of BWV on JSA stops was 94%<sup>43</sup> and for the current review period, that rate has remained at 94%.
- 6.2 I made recommendations about viewing BWVs records in order to review JSA stops of those under the age of 18. In December 2023, after this review period, I viewed BWV footage of 5 stop and search encounters. Substantial concerns arose about one piece of footage viewed on that day. It did not relate to the use of JSA powers and my and others’ concerns have subsequently been addressed by the PSNI. One of the other BWV encounters was that of a female child (15 years old) within the Newtownards area. The power used during this stop and search was Section 24 of the JSA. . I recommend that the PSNI provide access to a structured sample of stop search encounters (from which BWV footage can be drawn) involving larger number of JSA stops and searches of children and young people that the new Northern Ireland Commissioner for Children and Young People and the new Independent Reviewer should participate in this review. I also suggested that the NIHRC, the Children’s Law Centre (CLC) and any other relevant agencies participate in this review. **I recommend that this review of BWV take place without delay.**
- 6.3 In the 15<sup>th</sup> report, I noted (at paragraph 6.5) that the JSA powers are also used by Armed Response Units (ARUs)<sup>44</sup> who operate throughout Northern Ireland. These units face the most challenging situations which raises issues about how they

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<sup>43</sup> Excluding vehicle-only stops and stops conducted under only JSA S21 (stop and question).

<sup>44</sup> See <https://www.psnipolice.uk/about-us/our-departments/operational-support/armed-response-unit>

operate compared to district-based officers whose BWV I have reviewed. I noted in the 15<sup>th</sup> report that District Commanders are accountable for the manner in which JSA powers are used by ARUs in their area. Once again, **I recommend that the PSNI make available a randomly selected sample of BWV of officers in the ARU for review jointly by the Human Rights Advisor and by the IRJSA in the next review period.**

6.4 Likewise, in both the 14<sup>th</sup> and the 15<sup>th</sup> report, I recommended that Dr John Topping at Queen's University, Mr John Wadham, Human Rights Advisor to the NIPB and Dr Jonny Byrne of Ulster University, review the value of BWV footage of JSA stops in police training, particularly at district level, and where appropriate deploy it for this purpose. The PSNI have responded to this recommendation by informing me that: *"The use of body worn video relating to police training can be presented to and arranged via the PSNI's Service Accountability Panel (SAP), which is next due to sit in December 2023. At the next meeting, this matter will be raised for discussion."* **I recommend that the HR Advisor and the IRJSA be invited to the next SAP meeting.**

6.5 Officers from the PSNI's Student Officer Development Programme inform me that "BWV has been introduced into the new J&S lesson- BWV footage of S&S videos of Dissident Republicans in Londonderry received from TIU. In relation to non-justice and security or terrorism matters, operational BWV is used in the RTC lesson to show a walkthrough of a scene, effects of lighting and weather on images."

6.6 In the 15<sup>th</sup> report, I also recommended that the use of BWV for performance management through dip sampling by senior officers be piloted and monitored. I am pleased to report that the PSNI have informed me that: *In February 2023, PSNI created both a dip sampling checklist for supervisors and a body worn video supervisor review guidance document. Within the body worn video supervisor review guidance document it is outlined that there is an expectation that supervisors will review 10% of all Stop and Search encounters and also that there is an expectation that supervisors will review 100% of all stop and search encounters where they reasonably believe that the person searched was under the age of 18. There is also guidance within this document that outlines what actions a supervisor*

*should take if, during the review process, they identify any behaviour (or circumstances) whereby they believe an officer (or member of staff) has acted inappropriately or in any other such manner as to likely to be considered as a breach of the articles of professional behaviour (as outlined in the PSNI Code of Ethics (2008). Additionally, the PSNI's Service Accountability Panel, which is chaired by an Assistant Chief Constable and actively makes the wider Police Service accountable for the use of policing powers at a local level, tracks the PSNI's use of stop and search and at its quarterly meetings, the number (and percentage) of stop and searches / questions that were subsequently quality assured by the officer's supervisor (broken down per individual district) are analysed.*

6.7 At paragraph 6.43 of the 14th report and again at paragraph 6.9 of the 15<sup>th</sup> report, I recorded that those stopped and searched under the JSA should be informed of the powers under which they are being stopped. They should also be given a reference number in order to obtain a record of their stop and search from a police station, in compliance with 6.12 of the JSA Code of Practice. The 13th report had reported that options were being considered to improve access but by the 15<sup>th</sup> report, no progress had been made. I therefore recommended that the PSNI proceed to implement a solution before 31 July 2022.

6.8 The PSNI now inform me that:

*In January 2023 the PSNI made changes to its stop and search recording application (Origin), which now allows for the generation of a unique stop and search reference number at the beginning of the record making process (rather than at the end of the process). This means that members of the public who are stopped and searched can be given their unique reference number more quickly and before the officer has even fully completed the record of the stop search encounter.*

6.9 I note that there are continuing problems with accessing stop and search records from police stations in this review period, with long delays, failure to provide these within the given time frame and the provision of incomplete records in response to requests. On this, the PSNI say:

*With regards to the obtaining of search records from the police station, the ideas that are being considered presently are*

- i) the posting of records (i.e. where a person can request a record at time of stop and provide a postal address for PSNI to immediately supply via double envelope post, after redactions are made).*
- ii) receipt style printers in police vehicles (to print records on the spot upon request) &*
- iii) Access to records on entering a reference number on a secure website - Note that no decision has been made regarding this matter as of yet and it is still under consideration. PSNI will raise this matter for consideration at the next Service Accountability Panel, due to sit in December 2023.*

6.10 It is not clear from this whether the issuance of reference numbers at the scene is current practice and whether these are provided verbally or in writing. I recommend that:

- **The PSNI provide at very least a handwritten record of the stop and search record number at the scene of the stop and search;**
- **Given the longstanding deliberations about the retrieval of stop and search records from police stations, the PSNI move rapidly beyond considering the options, which they have been doing for four years, select a solution and implement it without further delay.**

#### **SEIZURE AND RETURN OF PROPERTY**

6.11 In the 14th report, from paragraph 6.50 and again in the 15<sup>th</sup> report at paragraph 6.11 onward, I commented in detail on PSNI practices in relation to the seizure, retention and return of property such as mobile phones, computers, clothing and money seized during the exercise of JSA powers. Whilst it may be necessary to retain some of these items as part of a police investigation I commented that due regard must be paid to their management and that they should be returned when they are no longer required, since the deprivation of access to their property is in itself a penalty, in this instance imposed without due process.

6.12 In the 14th report, I made a detailed recommendation about amendments to the JSA Code of Practice to include provisions to cover the duties of the PSNI when seizing property. This is repeated in the 15<sup>th</sup> report at paragraph 6.12. I pointed out that good practice regarding seizure and retention of property is included in PACE NI Code B section 7 (see Annex J), yet the PACE NI Code does not cover loss or damage to seized property, nor does it deal with seizures conducted under the JSA. Whilst paragraph 7(a) 7.1 of the Code refers to “an officer who is searching any person or premises under any statutory power or with the consent of the occupier” indicating that seizures under the JSA do indeed fall under the Code. **I once again recommend that loss or damage to seized property be incorporated into the Code and its application to JSA seizures be made explicit.**

### **COMPLAINTS TO PONI**

6.13 The Office of Mrs Marie Anderson, Police Ombudsman for Northern Ireland (OPONI) reported on complaints in relation to the operation of JSA powers in this review period. In the 14<sup>th</sup> report, I first reported the Ombudsman’s concern about the very low levels of complaints from children and young people, given the difficulties in relationships between police and young people. A second factor is that some members of the public are unaware of the independence of the Ombudsman and see her as part of the PSNI and thus may be reluctant to complain to her office. Third, as the Human Rights Advisor to the NIPB points out, official complaints of any kind about stop and search are not often pursued, often on the foot of legal advice. Therefore, it is not possible to gauge levels of discontent with stop and search by the volume of complaints received by OPONI.

6.14 Between 1 August 2022 and 31 July 2023, OPONI received 3,358 complaints in total, of which 12 complaints related to JSA powers, representing 0.36% of all complaints. This compares with 3041 complaints in total, of which 14 complaints related to JSA powers, representing 0.46% of all complaints between 1 August 2021 and 31 July 2022.

6.15 Again, complaints concerned searches in 6 different Policing districts: Belfast City, Lisburn and Castlereagh, Newry Mourne & Down, Armagh Banbridge and Craigavon, Derry City & Strabane, and Antrim & Newtownabbey. (Last review

period, complaints originated in Belfast City, Newry Mourne & Down, Derry City & Strabane, Causeway Coast & Glens, Mid & East Antrim and Antrim & Newtownabbey.) There were 5 searches carried out in Belfast city and no more than 2 in each of the remaining districts. **Once again, I wish to draw these complaints to the attention of the PCSPs in the respective districts and to the attention of the NIPB.**

- 6.16 All 12 of these were complaints from members of the public. Unfortunately, it was not possible to get a full age breakdown of complaints though none of the complaints were made by a child or young person.
- 6.17 Of a total of 201 complaints following a search under all laws, 12 complaints were about JSA searches, accounting for 6.0% of the total complaints about stop and search.
- 6.18 Within the 12 complaints from members of the public, there were 32 allegations. Of these 32 allegations, 12 related to the Search, 7 to failure in duty, 6 to oppressive behaviour, 3 to Unlawful/Unnecessary Arrest/Detention, 2 to incivility and 1 each to Discriminatory Behaviour and Mishandling of Property.
- 6.19 In terms of outcomes, 11 of the 12 have now been closed, all as unsubstantiated, while one complaint remains open and under investigation by the Office.
- 6.20 At paragraph 6.67 of the 14th report and again in the 25<sup>th</sup> report, I recorded that the Policing Board in 2019 had recommended that PSNI have a clear stand-alone policy on the use of TACT and JSA stop and search and that although a stand-alone policy was developed it was never finalised. Once again I point to the review of authorisations of JSA powers by Joanne Hannigan QC where she commented on the absence of “a specific PSNI policy in respect of searches under TACT or JSA on the website” and her recommendation that this be rectified as a matter of urgency. I refer to 6.73 – 6.76 of the 14th report and the ruling in The NI Court of Appeal in *Ramsey* [2020], which cites David Seymour’s eighth report and report with dismay that the PSNI policy on the role of JSA powers remains unarticulated. **I recommend that PSNI policy is articulated and published on the PSNI website without any further delay.**

## COMMUNITY BACKGROUND MONITORING

- 6.21 At paragraph 6.93 of the 14<sup>th</sup> report again at paragraph 6.25 of the 15<sup>th</sup> report, I set out the extensive and frustrating history of community background monitoring of JSA stop and search. This dates back to Sir Keir Starmer’s recommendation in 2005 as Human Rights Advisor to the NIPB, repeated annually by his successors and reiterated by successive IRJSA reports since that date. I will not repeat that history here, save to report the exasperation experienced by successive Independent Reviewers and Human Rights Advisors at the PSNI’s failure to date to implement any form of community background monitoring, in spite of the establishment of a working group in 2020 following the 2020 Ramsey judgement. Like my predecessors, in the 14<sup>th</sup> report at that time I could detect no discernible progress on this matter. In that report at paragraphs 6.95 – 6.99, I listed the various reasons given by the PSNI for not introducing such monitoring and addressed each in turn.
- 6.22 In 15<sup>th</sup> report, I reported on an exercise carried out at my request by the Northern Ireland Statistics and Research Agency involving conducting a secondary analysis<sup>45</sup> of postcode data for JSA stop and search together with religion data from the Small Area Census data for 2011. Although there were several limitations to this exercise due to inaccuracies and incomplete data, or the absence of postcode data, it provided an estimate of the religious composition of those persons stopped and searched/questioned under JSA powers between August 2020 and July 2021, albeit with a very high rate (28%) of missing cases. The results are shown in Table 6.1 of the 15<sup>th</sup> report. The results suggest that a more robust analysis of the real data on the community background of those subject to JSA powers is likely to find a greater share of Catholics subject to JSA powers. Whilst this may cause concern, I conclude that any disproportionality, whilst it may provide a reason for vigilance, is not necessarily caused by illegal discrimination, and I cited *Ramsey* [57] which found that disproportionate shares of Catholics is “not necessarily surprising since the DRs constitute the principal threat and are most active in those communities.”

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<sup>45</sup> [https://www.psni.police.uk/sites/default/files/2022-09/religious-composition-isa-aug20-jul21\\_0.pdf](https://www.psni.police.uk/sites/default/files/2022-09/religious-composition-isa-aug20-jul21_0.pdf)



- 6.23 In the 15<sup>th</sup> report, I noted the legal advice obtained by the PSNI from independent Counsel, considering the legal basis for community background monitoring of the JSA powers at paragraphs, the PSNI desire for legislation in order to obtain legal certainty, and the Secretary of State the Right Honourable Chris Heaton Harris MP's conclusion that legislation was unnecessary.
- 6.24 By January 2022, I was informed that the Strategic Management Board (SMB) of the PSNI had agreed to commence a program of work to identify the best method of obtaining and collating community background data and that the PSNI would commence work on methodologies, policy, IT requirements and so on.
- 6.25 Following a community background monitoring (CBM) data collection paper from Assistant Chief Constable (ACC) Operational Support Department (OSD) to the Service Management Board (SMB) in January 2023 it was agreed, in the absence of legislative change, that community background monitoring data (in regard to JSA stop and search powers) would be collected.
- 6.26 The PSNI inform me that the following recommendations were agreed:
- Endorse interpretation of Legal Opinion regarding the lawful basis for collection of community background data.
  - Agree in principle to collect community background data, initially for Justice & Security Act (JSA) stop and search powers.
  - Consider the collection of community background data for JSA powers to be a pilot with a view to moving to other stop and search powers once methodology, policy and requisite architecture have been established and assessed.
  - Approve proposed collection methodology with future plans to integrate with Niche.
  - Approve the outline OSD plan as below to be brought back to future SMB with an updated implementation schedule:
  - Carry out stakeholder analysis and draft a stakeholder engagement plan to ensure appropriate consultation takes place.
  - Draft new Service Instruction, DPIA, EQIA, RRD Schedule etc. (as identified as necessary through consultation) with support of Legal Services and DPO.
  - Draft outline transformation plan to incorporate requisite ICT changes
  - Draft training and engagement plans.

6.27 The Assistant Chief Constable (ACC) Operational Support Department established a working group to progress the implementation of CBM and this convened in June 2023. Their preferred method of collection of CBM was, at that time, three staged:

1. Data matching using PSNI records (NICHE)
2. Questioning of subject
3. Officer Perception

6.28 The work plan for implementation involved the following:

- Articulation of the necessity for the collection of community background data as being of “substantial public interest”.
- Clarity regarding the definition of the term community background and identification of what community backgrounds are to be recorded.
- Drafting of proposed CBM policy/guidance
- Sect 75 screening
- EQIA process
- Stakeholder consultation and engagement
- Incorporation of CBM into Stop and Search SI for JSA
- ICS scoping and development
- Corporate Information management (DPIA etc.)
- Communications Strategy
- Training
- Identification of what other areas of business CBM may be required (e.g. Custody, File Prep, Call Management etc.) in order to provide consistent data collection and data matching.

6.29 I met with the working group, and was informed that an implementation date of April 5 2024 was agreed when JSA community background monitoring will go live. This was subsequently amended to 30 April 2024, and full details are contained in a letter from the PSNI included as Annex Q.

## **7. ROAD CLOSURES AND LAND REQUISITIONS**

- 7.1 Under Sections 29 to 32 of the JSA the Secretary of State may requisition land (s29) and close roads (s30 and 32) for “the preservation of the peace or the maintenance of order” (s29). In line with Agency Agreements agreed between the DOJ and the Secretary of State (see paragraph 238 onward of the fourth report) the requisition power in section 29 and the road closure power in section 32, can be exercised by the DOJ in respect of devolved matters.

### **ROAD CLOSURES**

- 7.2 In the reporting period – 1st August 2022 to 31<sup>st</sup> July 2023, no new road closures were initiated.

### **LAND REQUISITIONS**

- 7.3 In spite of repeated requests for information on land requisitions in this review period, I have received no response from the Department of Justice. I am therefore unable to report on land requisitions in this review period.

## **8. THE ARMY**

- 8.1 Section 40(1)(b) of the JSA requires me to review the procedures adopted by the General Officer Commanding Northern Ireland (GOC) for receiving, investigating, and responding to complaints. In the first report (1 August 2007- 31 July 2008) my predecessor Robert Whalley CB set out the role of the Army in Northern Ireland from 1 August 2007 onward, namely: *“they provide focused support in this area to the civil authorities...”* The military in Northern Ireland are under the command of the Brigade Commander based in a Regional Point of Command (RPOC) and Headquarters 38 (Irish) Brigade. This has also brought with it a change in role for the leadership of the military in Northern Ireland which now focuses on delivering residual niche support capability to support the PSNI with the delivery of Explosive Ordnance Disposal (EOD) and Search capability.
- 8.2 I have been briefed on the work of the Explosive Ordnance Disposal & Search (EOD&S) teams as they support the PSNI. Support from the Armed Forces to civil authorities of this type in the UK is officially termed Military Aid to the Civil Authorities (MACA). As with other parts of the United Kingdom, MACA in Northern Ireland has not been limited to EOD&S. In recent times, the Armed Forces have provided support to the NHS during the pandemic at the request of the devolved Health Minister. This involved hundreds of medics over four separate deployments and was broadly welcomed by the community as a whole.
- 8.3 As climate change ushers in some of the worst weather in many years, MACA support is also available to the civil authorities whereby military personnel may be called upon to assist the general public during flooding like that faced in Newry and Downpatrick, during Storm Ciarán. Following Operation RESCRIPT, the military are also a partner in training and preparing for emergencies of all types.
- 8.4 This change in role is mirrored in trends in complaints whereby those against the military have largely fallen away and have for several years focussed upon air assets, namely rotary wing (helicopter) and fixed wing (plane) activity. The army receives any helicopter complaints, even when they were not military related, and

these are handled effectively and courteously with appropriate advice to those making the complaint.

- 8.5 Military complaints are now almost totally made up of complaints about aircraft. Northern Ireland is designated Low Flying Area (LFA) 19 and is reported upon in the wider UK statistics within [The Pattern of Low Flying Across the UK](#) . Whilst designated an area for low flight training, Northern Ireland is comparatively unaffected when compared to other regions in GB. However, low flying aircraft do on occasion cause distress or concern to the public and thus give rise to complaints.
- 8.6 In line with other parts of the UK, complaints relating to military planes are no longer being handled by the military in Northern Ireland, but by the RAF low flying cell in GB.
- 8.7 In my reports, I review two aspects of Army operations:
- Explosive Ordnance Disposal (EOD activity) where the Army support the PSNI in dealing with explosive material; and
  - the operation of the Army complaints procedure.

#### **EOD ACTIVITY**

8.8 Figure 8.1 summarises the EOD activity for the period from 1 August 2022 - 31 July 2023 with the figures for the previous review period shown in brackets for comparative purposes, thus: (1 August 2020 - 31 July 2021). Figure 8.1 shows the longitudinal trend in EOD tasks since 2008. In the current review period there were 177 EOD incidents compared with 149 EOD incidents in the previous period. These were as follows:

- on 15 occasions the Army were called out to deal with an IED – typically an active device such as a pipe bomb, compared with 12 in the previous year and 23 in 2020-21, and 18 the previous year. The slight increase for this review period is noted;
- on only two occasions, however, were they called out to deal with an explosion, compared with eight in the last review period and 9 and 11

in the periods before, again, the lowest number in four years and a steady downward trajectory;

**Figure 8.1: Explosive Ordnance Disposal (EOD) Activity in support of PSNI: 1 August 2022 - 31 July 2023 [August 2021 - July 2022] (1 August 2020 - July 2021) (August 2019 - July 2020)\***

DATE	IED	EXPLOSION	HOAX	FALSE	INCENDIARY	FINDS	TOTAL	FIND X-Ray	TOTALS incl X-RAY 22-23 [21-22] (20-21) (19-20)*
Aug 22	2 [2] (4)	0 [0] (1)	1 [1] (9)	2 [2] (5)	0 [0] (0)	2 [0] (2)	7 [5] (21)	8 [7] (8)	15 [12] (29) (13)*
Sept 22	0 [2] (1)	0 [0] (1)	2 [1] (3)	0 [0] (0)	0 [0] (0)	2 [0] (0)	4 [3] (5)	11 [1] (8)	15 [4] (13) (25)*
Oct 22	3 [1] (3)	0 [0] (0)	2 [2] (1)	1 [0] (3)	0 [0] (0)	1 [0] (0)	7 [3] (7)	4 [11] (5)	11 [14] (12) (14)*
Nov 22	1 [2] (3)	1 [1] (1)	1 [2] (6)	3 [1] (2)	0 [0] (0)	4 [2] (2)	10 [8] (14)	8 [10] (6)	18 [18] (20) (16)*
Dec 22	1 [0] (1)	0 [0] (1)	1 [0] (4)	0 [1] (1)	0 [0] (0)	0 [1] (3)	2 [2] (10)	4 [8] (12)	6 [10] (22) (14)*
Jan 23	2 [1] (1)	0 [3] (1)	1 [2] (3)	0 [1] (1)	0 [0] (0)	1 [1] (3)	4 [8] (9)	5 [5] (7)	9 [13] (16) (25)*
Feb 23	2 [0] (1)	0 [0] (0)	2 [1] (2)	0 [0] (1)	0 [0] (0)	1 [1] (2)	5 [2] (6)	6 [5] (7)	11 [7] (13) (14)*
Mar 23	1 [1] (2)	1 [2] (2)	0 [4] (2)	1 [3] (3)	0 [0] (0)	2 [3] (8)	5 [13] (17)	9 [5] (7)	14 [18] (24) (24)*
Apr 23	1 [1] (1)	0 [1] (0)	1 [1] (4)	3 [1] (0)	0 [0] (0)	2 [0] (1)	7 [4] (6)	6 [10] (7)	13 [14] (13) (10)*
May 23	2 [1] (4)	0 [0] (1)	2 [1] (5)	5 [2] (1)	0 [0] (0)	0 [0] (0)	9 [4] (11)	9 [10] (11)	18 [14] (22) (26)*
Jun 23	0 [0] (2)	0 [0] (1)	3 [0] (1)	0 [1] (1)	0 [0] (0)	1 [1] (1)	4 [2] (6)	4 [9] (2)	8 [11] (8) (28)*
Jul 23	0 [1] (0)	0 [1] (0)	1 [4] (1)	1 [0] (0)	0 [0] (0)	0 [1] (1)	2 [7] (2)	3 [7] (5)	5 [14] (7) (17)*
<b>TOTAL</b>	<b>15 [12] (23) (18)*</b>	<b>2 [8] (9) (8)*</b>	<b>17 [19] (41) (25)*</b>	<b>16 [12] (18) (32)*</b>	<b>0 [0] (0) (0)*</b>	<b>16 [10] (23) (28)*</b>	<b>66 [61] (114) (184)*</b>	<b>77 [88] (85) (73)*</b>	<b>143 [149] (199) (226)*</b>

KEY: Figures for previous reporting periods are in brackets (n)

IED – A confirmed Improvised Explosive Device, e.g. a pipe bomb; Explosion – A confirmed explosion

Hoax – A suspicious object, which has been accredited to a codeword or similar warning, cleared, and declared not to be an IED

False – A suspicious object which is found by a member of the public, examined and declared to be nothing of concern

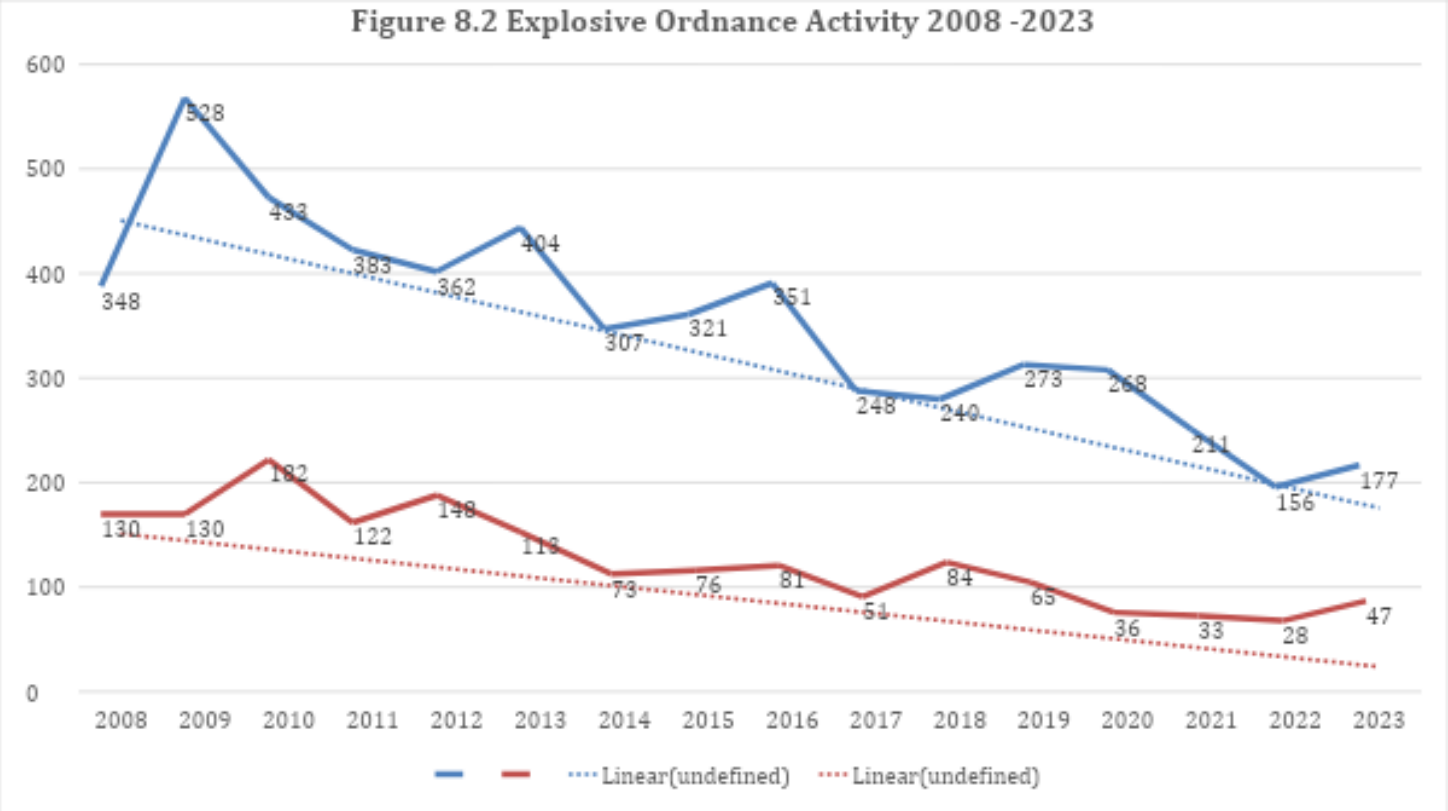
Incendiary – A device designed to create a fire rather than explosion

Finds – Objects recovered, usually during a search

Find X-Ray – An object x-rayed by EOD at the request of the PSNI and declared safe before being entered into police evidence

Figures were provided for CMD or "Common Munitions Disposal" i.e. grenades or legacy munitions washed up on the shores and are not included in this table but are discussed below.

\*Figures for 2019-2020. **Source: MOD 2021.**



Source MOD



- The Army dealt with 17 hoaxes – where an object is made to look like an IED and may be accompanied by a telephone warning confirmed by the police. This compares with 19 in the previous period, and 41 and 25 in the previous review periods. Again this is the lowest number in three years;
- There has been an increase in the number of false alarms attended by the army from 12 in the previous review period to 16 in this one. Up until this, there had been a steady decline - 18 hoaxes in 2020-21 and 32 hoaxes in 2019-20;
- As in the previous three review periods, the Army was not called out to deal with an incendiary device;
- There was an increase from the 10 occasions on which the Army had to deal with the discovery of munitions in the previous period to 16 in this review period. This increase ends the decline noted in my previous report from 23 such occasions in 2020-21 and 28 in 2019-20;
- There was a decline of 11 instances in this review period where the Army were called to x-ray an apparatus or package and declare it safe or otherwise. In the previous review period, the Army were called 88 times, whereas this declined to 77 in this period. Previously, these figures were 85 and 73 times in 2019-20. Although decreased, this is still higher than the 2019-20 figure.

8.9 This total of 143 EOD incidents where the Army were called out is the lowest in the last four years. Last review, the total was 149, 199 in the previous period and a marked reduction from the 226 occasions in 2019-20. This decline in demand is explained by:

- a fall in the numbers of explosions (two compared with 8 previously)
- fewer hoax call-outs (17 compared with 19 in the previous period) and
- a reduction in the number of occasions when the Army X-ray facilities were called upon (77 compared with 88 occasions previously).

Not shown in the table were 34 Conventional Munition Disposal incidents in the review period 22-23. These are grenades or legacy munitions washed up on the shores.

8.10 For four reporting periods in a row, on no occasion was the Army called out to deal with an incendiary device.

8.11 There were increases in:

- the occasions when the Army were called out to deal with an IED (15 compared with 12 previously)
- an increase in the number of false alarms called by members of the public (16 compared with 12 previously).
- An increase was in the number of 'finds' or objects recovered during a search (16 compared with 10 previously).

### **PROCESSING AND HANDLING OF COMPLAINTS**

8.12 There were four cases with a single complaint contained in the Military Complaints File for the period 1 August 2022 - 31 July 2023 and one case with six pieces of correspondence detailing a range of complaints in each. One further file contained four separate complaints about UK Military Typhoons on Friday 4 November. This gives ten complainants, and compares with six complaints in the previous period and eight in the prior review term.

8.13 One complaint referred to interference to amateur radio which was referred on to Ofcom as the regulator. Three complaints were about low flying helicopters. Of these, two were found not to be military aircraft and referred to the Civil Aviation Authority. One was not followed up by the complainant with information needed to verify the identity of the aircraft in question.

8.14 Of the four queries about UK Military Typhoons, three were asking to verify that they were military aircraft and were responded to in the affirmative. One was a question about any flights the following day due to young horses being in the area.

8.15 As in the previous review periods, many of the files could not properly be characterised as complaints, but rather as questions or requests for verification. Several of them could have more properly been directed to the CAA.

- 8.16 As in previous reports by me and my predecessors, I note that low flying military aircraft is a feature of life in Northern Ireland. In some instances, it attracts queries from aircraft enthusiasts and in others concerns about noise or disturbance on the ground. Northern Ireland is a low flying area and such interest, noise and disturbance will continue whilst this remains the case. My role in examining the files is to examine the thoroughness with which the complaints were dealt with and the courtesy with which complainants were treated.
- 8.17 The documentation I examined in all of these cases was thorough and complete. Those contacting the Army were treated with respect and courtesy. Their concerns were taken seriously and the responses were, for the most part, timely and appropriate. The response times varied from responses on the same day to 14 days, a considerable reduction from the previous period where the average response time was thirteen days and a return to the quicker response of the previous review period.
- 8.18 In one case, the complaint was made and responded to by telephone. In such instances, I recommend that a specific note of the date and time of each incoming and outgoing call be made and held within the record.
- 8.19 The small number of cases where complaints and allegations are repeated and unsubstantiated, where the correspondence is protracted and without prospect of a conclusive outcome are particularly difficult to manage. Where such correspondence indicates that a complainant may either be in a vulnerable condition or, may pose a danger or risk to others, **I recommend that should one not already be in place, that a policy and protocols for referral on to appropriate agencies be developed. This should include both mental health services and the PSNI, since agencies who engage with members of the public may frequently encounter both mental health problems and breaches of the law in those with whom they engage.**
- 8.20 I am satisfied that the complaints I reviewed were handled in a competent and timely manner.

## **PART 2 – NON-JURY TRIALS (NJT)**

### **Background**

- 9.1 Although the centrality of the right to jury trial in most democracies is well established, in certain circumstances that right can be set aside where there is a risk to the administration of justice. During the Troubles in Northern Ireland, such risks were all too apparent in the form of fatal attacks on judges, intimidation - and worse - of witnesses to the point where jury trials were dispensed with for politically motivated scheduled offences which were heard in so-called Diplock courts before a single judge.
- 9.2 In a move towards the normal rule of law, in 2007 the JSA introduced the current system whereby criteria are applied to each case prior to arraignment by the Director of Public Prosecutions who may then issue a certificate whereby the trial can proceed without a jury. The full guidance used in determining that a trial should be tried without a jury is included at Annex G. The JSA was designed to be an interim measure to take account of the continuing heightened security risks in Northern Ireland after the Good Friday Belfast Agreement.
- 9.3 Provisions for non-jury trials under the JSA expire every two years and are renewable subject to the approval of both Houses of Parliament. There are no limits on the number of times NJT provisions may be extended. Although they were designed to be a temporary measure, they have been extended by successive orders since 2007.
- 9.4 The provisions for non-jury trials were due to expire in July 2023. They may only be extended by two years until July 2025 subject to the approval of both Houses of Parliament. At each renewal, the Northern Ireland Office (NIO) launches a public consultation on whether to renew these legislative provisions. At each renewal, the Northern Ireland Office (NIO) launches a public consultation on whether to renew these legislative provisions. The consultation ran from 3 November 2022 to 30 January 2023<sup>46</sup> when the threat level sat at SUBSTANTIAL. It was raised to SEVERE in March 2023.

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<sup>46</sup>[https://assets.publishing.service.gov.uk/media/6446a53d529eda00123b0379/HMG\\_response\\_to\\_NJT\\_Consultation\\_2023\\_1\\_1.pdf](https://assets.publishing.service.gov.uk/media/6446a53d529eda00123b0379/HMG_response_to_NJT_Consultation_2023_1_1.pdf)

9.5 In addition to my response to the public consultation, responses were received from:

- The Alliance Party of Northern Ireland
- The Bar of Northern Ireland
- The Director of Public Prosecutions for Northern Ireland
- Jonathan Hall KC (Independent Reviewer of Terrorism Legislation)
- The Law Society of Northern Ireland
- MI5
- The Northern Ireland Human Rights Commission
- The Office of the Attorney General for Northern Ireland
- The Office of the Lady Chief Justice of Northern Ireland
- The Police Service of Northern Ireland (PSNI)
- Professor Clive Walker (Centre of Criminal Justice Studies, University of Leeds)
- Sinn Féin
- The Superintendents Association of Northern Ireland (SANI)
- The Ulster Unionist Party.

9.6 When the renewal of the powers was considered in Grand Committee on Monday 5 June, 203, Lord McCrea of Magherafelt and Cookstown of the Democratic Unionist Party asked Lord Caine:

“...only a small number of responses were made to the extension of the order; only a very small number of representations were made. Does he have any reason why the number was so small? Does he believe that the community in general is willing to accept that this is a reality that has to be carried on in Northern Ireland at this specific time?”

Lord Caine responded:

“The noble Lord, Lord McCrea of Magherafelt and Cookstown, asked about the low level of responses. He might be surprised to hear that the response rate of 15 was an improvement on 2021 by the huge number of two, so we may be going in the right direction. In addition to those responses, the Northern Ireland Office also wrote to 38 other relevant organisations. The relatively small number of responses is probably a reflection of the fact that for most people in Northern Ireland, sadly and regrettably, these non-jury

trial provisions are non-contentious and the need for them is widely accepted across the community.<sup>47</sup>”

9.7 Of the responses to the consultation, nine supported or accepted the extension of NJT provisions under the JSA, two objected to the extension, and four neither clearly supported nor objected.

9.8 The full text of my response to the consultation is at **Annex R**. The key points in my response to the consultation was as follows:

- The working group on non-jury trials produced two reports. The first of these was at the request of my predecessor David Seymour CB, who asked for their views on how to drive down the numbers of NJTs in Northern Ireland. The second was at my request and considers the indicators that might be used to determine whether the security situation warranted the demise of the JSA provisions for NJTs.
- On the first question of how to drive down the numbers of NJTs, I am not convinced that the numbers can be driven down further. Chief of these reasons is that the Public Prosecution Service already operates a rigorous review of all applications and is averse to refusing a non-jury trial certificate where the statutory criteria are met and there is a real (as opposed to a fanciful) risk of jury tampering or bias is very low since the Director has discretion to issue a certificate in those circumstances under Section 1 of the JSA in line with Lord Kerr in *Hutchings*.
- Jonathan Hall KC points out that Lord Kerr in *Hutchings* was not referring to *any* risk to the administration of justice, but rather to the type of risk described in *Jordan* as a “real risk”, not a “remote or fanciful possibility”, “a real (as opposed to the remote or fanciful) possibility of jury bias”... I support Jonathan Hall’s view

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<sup>47</sup>[https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity\(NorthernIreland\)Act2007\(ExtensionOfDurationOfNon-JuryTrialProvisions\)Order2023](https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity(NorthernIreland)Act2007(ExtensionOfDurationOfNon-JuryTrialProvisions)Order2023)

that some immediate amendment to the PPS guidance to: a. distinguish between a real risk and a remote or fanciful risk; and b. explain that the purpose of considering the risk to the administration of justice is to identify the risk to the fairness of the proceedings<sup>48</sup>.

- The second working group report considered the indicators that might be used to determine whether the NJT provisions under the JSA should be renewed. I recommended that the Secretary of State consider using a regular (six-monthly) intelligence-based assessment of risk alongside the indicators set out in Figure 9.1.

FIGURE 9.1 INDICATORS FOR NON JURY TRIAL PROVISIONS RENEWAL			
INDICATOR	Year		
	20-21	21-22	22-23
deaths due to the security situation		1	0
paramilitary-style shootings and assaults	18	12	19 <sup>49</sup>
security-related incidents			
numbers via NIHE of homeless due to intimidation		149	194 <sup>50</sup>
numbers of offences of intimidation or threats to harm witness per year			
persons detained in Northern Ireland under Section 41 of the Terrorism Act 2000	16	13	
NJT cases as a percentage of all Crown Court cases	9 NJT trials	13 NJT trials	
certificates issued and refused for NJTs by the Director of Public Prosecutions	16 certificates issued	22 certificates issued	
percentage of NJT cases in which each condition met			
average percentage of cases in which each condition met			

<sup>48</sup> These amendments were made in January 2023.

<sup>49</sup> <https://www.bbc.co.uk/news/uk-northern-ireland-67443033>

<sup>50</sup> <https://www.communities-ni.gov.uk/topics/housing-statistics>

- I set out why I favour a **revised CJA regime modified according to the results of a** review of the operations of the CJA in England and Wales to establish the range of methods in use to manage risk to juries and any difficulties in jury trials faced in cases of organised crime or gang-related cases. Such a review could point to any need for modifications to the CJA NJT provision in order to render it fit for purpose in Northern Ireland whilst ensuring that NJT provision was consistent throughout the UK; or it may demonstrate the adequacy of CJA provision for jury trial even in cases of organised crime and gang-related prosecutions.

9.9 The matter of whether provisions for trials without a jury in Northern Ireland could be extended for a further two years until 31 July 2025 was put before the Grand Committee. On Monday 5 June 2023 Lord Caine, the Parliamentary Under-Secretary of State, Northern Ireland Office pointed out that the Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2023 was the eighth extension of these powers since they came into operation in 2007. He assured the Committee of the continued necessity of these provisions for a further two years and set out the results of the consultation and the recommendations of the working group for the use of indicators.

9.10 Lord Caine also pointed out that:

“... this Government remains committed to bringing an end to these provisions when it is safe and compatible with the interests of justice to do so. We firmly believe, however, that now is not the time to take this step.”<sup>51</sup>

9.11 Baroness Ritchie of Downpatrick remarked that:

“Some 29 years after the ceasefires and 25 years since the Good Friday agreement, it is worrying that there is still a need for an extension of such a power. Although I am not personally opposed to this legislation, I feel that non-jury trials should be an exception rather than the rule.”

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<sup>51</sup> [https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity\(NorthernIreland\)Act2007\(ExtensionOfDurationOfNon-JuryTrialProvisions\)Order2023](https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity(NorthernIreland)Act2007(ExtensionOfDurationOfNon-JuryTrialProvisions)Order2023)



9.12 Lord McCrea remarked that:

“Not one of us from Northern Ireland would desire to have this legislation on the statute book at all; we would love to see its end.” Baroness Suttie said: “I add my voice to those saying that this eighth extension of these provisions is deeply to be regretted.”

9.13 Lord Murphy of Torfaen said:

“it is still a grave and terrible thing to take away the right of a citizen of the United Kingdom to have a trial by jury, which goes back many centuries. Of course, I understand why this occurred.<sup>52</sup>”

Lord Murphy went on to say:

“I hope the Minister will go back and reflect on what the Committee has said about reviewing the situation with non-jury trials over the next two years. I know there is a working party. I hope it actually operates and that the next time, if we are spared, we come to renew this legislation, we might not have to do so, but at the moment, we do.”

9.14 Lord Caine responded:

“I share the frustration of noble Lords in having to bring this order back for an eighth time since 2007, when the Justice and Security (Northern Ireland) Act was passed by the Government of which the noble Lord, Lord Murphy of Torfaen, was a distinguished member. We all share the aspiration that this will be the last time that we have to do it, but the reality of the situation in Northern Ireland as we find it today is that there remains a significant risk of intimidation of jurors and witnesses, and therefore I am afraid there is no alternative at present... Of course, I will reflect on the operation of the non-jury trial provisions. Like them, I hope that in two years’ time, it will no longer be necessary to bring forward the provisions, but, alas, I think we are all far too well aware of the current security situation, much improved though it is—we are a long way from the old Diplock system... In my opening speech, I gave the figures for the reduction in the number of non-jury trials since the mid-1980s. It is a considerable change, but we still have a distance to go. We all hope that that distance can be travelled—and

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<sup>52</sup> [https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity\(NorthernIreland\)Act2007\(ExtensionOfDurationOfNon-JuryTrialProvisions\)Order2023](https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity(NorthernIreland)Act2007(ExtensionOfDurationOfNon-JuryTrialProvisions)Order2023)

relatively quickly—but unfortunately, we are not there yet, which is why these provisions are very necessary in Northern Ireland...”<sup>53</sup>

The motion was then agreed.

9.15 The Draft Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-jury Trial Provisions) Order 2023 is set out in the 38<sup>th</sup> report of the Secondary Legislation Scrutiny Committee<sup>54</sup>. This was laid before parliament on 15<sup>th</sup> of June 2023 coming into force on 16<sup>th</sup> of June thus renewing the provisions for non-jury trials under the JSA from the end of July 2023.

9.16 Since these powers are renewed on a biannual basis, **I repeat the recommendations of the 15<sup>th</sup> report, namely that:**

- **appropriate arrangements for the DPP to have sight of the full security assessments, should he wish to do so<sup>55</sup>, so that he has full and focussed information on which to base his judgments; and**
- **on the occasion of the next renewal, in addition to the results of the public consultation, I advocate that the indicators set out in Figure 9.1 above are reviewed as part of the decision-making process;**
- **that, on the occasion of the next consideration of renewals, a date for the final expiry of the powers be considered and notice provided to the agencies to facilitate their preparation for such an expiry.**

9.17 **I recommend that, on the expiry of the powers and the public consultation on their renewal, that a broader range of human rights and advocacy organisations submit their views to that consultation. Not all the organisations who have met with me to**

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<sup>53</sup> [https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity\(NorthernIreland\)Act2007\(ExtensionOfDurationOfNon-JuryTrialProvisions\)Order2023](https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity(NorthernIreland)Act2007(ExtensionOfDurationOfNon-JuryTrialProvisions)Order2023)

<sup>54</sup> [https://committees.parliament.uk/publications/39905/documents/194510/default/\\_page\\_27](https://committees.parliament.uk/publications/39905/documents/194510/default/_page_27)

<sup>55</sup> I note that the PPS believe that since this level of threat assessment would not be available publicly that it is preferable in the interests of transparency that the Director is able to rely upon relevant assessments that are in the public domain. Nonetheless, A fuller assessment should, in my view, be available should he wish to consult it, given that the PPS already views the intelligence material relating to each case, which is not in the public domain, in determining whether or not to issue a certificate.

oppose non-jury processes made submissions in 2023 and this risks creating a false sense of the range of opinion on the matter.

9.18 In the 15<sup>th</sup> report, I recommended that consideration be given to ultimately replacing the JSA provisions with a CJA regime modified in Northern Ireland, to take account of local conditions, where modifications are identified and made on the basis of a UK wide review of CJA provisions in the light of organised crime, which is ubiquitous throughout the UK. Such a modified CJA regime could ease the transition towards the termination of the JSA 2007 provisions.

9.19 Currently there are 34 active non-jury cases in the Crown Court. Of these, 18 are awaiting trial, 3 are currently at trial, 8 await sentencing, 1 is not yet arraigned, 1 is listed for review and in 3 cases a bench warrant has been issued. **In the 15<sup>th</sup> report, I recommended that the PPS include a range of information on NJTs on their website including information about the legislation pertaining to non-jury trials and how it is used. In the interests of transparency, I repeat this recommendation and urge the PPS to include information on the numbers of NJTs (and their proportion of all trials) in their annual reporting.**

9.20 Jonathan Hall notes, however that the current PPS's Staff Instruction which provides guidance on non-jury trial certification, included as Annex G to the 14<sup>th</sup> report:

- does not distinguish between a real risk and a remote or fanciful risk.
- does not explain that the focus of considering the risk to the administration of justice is the risk to the fairness of the proceedings.

I echo his recommendation **that the PPS Staff Instruction be amended to properly reflect the approach of the Supreme Court's view, and welcome the PPS declared intention to do so.**<sup>56</sup>

## REVIEW OF NJT CASES - TERMS OF REFERENCE

9.21 This review of NJTs is, in the words of David Seymour CB "...limited to a high level engagement with the key stakeholders in this process, to better understand the overall effectiveness of the procedures currently in place to issue a NJT certificate."

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<sup>56</sup> This was completed in January 2024.

This involves examination of “a small, retrospective sample of information which has led to a NJT certificate being issued” so that the necessity for the system may be assessed. The review also examines cases where a NJT certificate is granted to see if alternative juror protection measures are routinely considered as part of the determination. It also provides an oversight of other relevant indicators such as any noticeable trends in the type of defendants or offences, which routinely receive NJT certificates; the views of external parties such as academics or human rights organisations on the use of NJTs and; whether any improvements could be made to existing processes (summary of 14.2 of tenth report).

### **PROCESS OF DETERMINATION**

9.22 The process of determining whether a NJT certificate is to be granted is set out in detail in Arthurs [2010] NIQB 75 and at paragraphs 19.1-19.5 of the tenth report and again at paragraph 9.64 of the 15<sup>th</sup> report. In brief, it is as follows:

- PSNI compile a case file including summary of case, details of offence and circumstances of the accused and whether any of the 4 conditions are met
- File is sent to PPS
- PPS writes to PSNI asking whether conditions are met
- Intelligence material is reviewed
- Application for NJT certificate compiled by Prosecutor and sent to PPS
- File sent to DPP who makes the decision.

### **CONDITIONS**

9.23 Under the JSA 2007, each case must meet one or more of four conditions in order for a NJT to be established (see Annex G for more detail):

- **Condition 1** – the defendant is, or is an associate of, a person who is a member of a proscribed organisation, or has at any time been a member of an organisation that was, at that time, a proscribed organisation.
- **Condition 2** – the offence or any of the offences was committed on behalf of the proscribed organisation, or a proscribed organisation was otherwise involved with, or assisted in, the carrying out of the offence or any of the offences.
- **Condition 3** – an attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and the attempt was made on behalf of a

proscribed organisation or a proscribed organisation was otherwise involved with, or assisted in, the attempt.

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

9.24 Should one or more of four conditions be met, the Director applies the second test: whether there is a risk to the administration of justice. Where a case meets these two tests a Certificate to be issued. Figure 9.2 shows the conditions met for cases considered in this review period. The full guidance, including the four conditions to be met in order to determine whether a NJT certificate should be issued, is included at Annex G.

<b>Reference</b>	<b>Decision</b>	<b>Date</b>	<b>Conditions</b>
1039241	Granted	15/08/2022	1 & 2
1017390	Refused	15/08/2022	
982897	Granted	15/08/2022	1 & 2
998620	Granted	06/09/2022	1 & 2
965534	Granted	15/09/2022	1, 2 & 4
1040732	Granted	13/10/2022	1 & 2
1100205	Granted	29/11/2022	1 & 2
1077323	Granted	30/11/2022	1, 2 & 4
993352	Granted	01/02/2023	1 & 2
1096909	Granted	07/02/2023	1 & 2
989112	Granted	08/02/2023	1,2 & 4
1101138	Granted	10/02/2022	1 & 2
1039370 1041422 104498 1043266 1041195	Refused	16/02/2023	
1097642	Granted	18/05/2023	1
1062163	Granted	24/04/2023	1 & 2
1096478	Granted	05/05/2023	1 & 3
1112559	Granted	10/05/2023	1,2 & 4
1111656	Granted	21/8.23	1
1038564	<b>Refused</b>	01/06/2023	
1114367	Granted	29/06/2023	1

1096775	Granted	22/06/2023	2 & 3
1091597	Granted	20/07/2023	1, 2 & 4
1057828	Refused	27/06/2023	
1112000	Granted	20/07/2023	1 & 2

9.25 In this review period, 25 files were considered by the DPP of which one involved 5 individual defendants. In 20 of these cases, the DPP issued certificates allowing a NJT to proceed and in 4 cases, including that of the joint case he refused to issue certificates.

- There has been a decrease from 21 in the last review period to 20 in this period in the number of certificates issued;
- In all but three of the cases where a certificate was issued, more than one condition was met;
- Condition 3 (where an attempt has been made on behalf of a proscribed organisation to prejudice the investigation or prosecution) was met in two cases. Condition 3 represents the most direct and compelling case for a NJT;
- Condition 4, the offence/s committed were connected to religious or political hostility, was used in 5 cases compared with 3 cases in the last review period;
- As in the last review period, Condition 1, that the defendant is believed to have paramilitary links continues to be the most frequently met condition.
- Yet again this year, Condition 2, where there is a paramilitary link, is the second most frequently relied on condition.

### **ANALYSIS OF CASES**

9.26 I reviewed applications for NJT certificates in the period 1 August 2022 to 31 July 2023 and out of the 24 files, I selected 10 for a detailed review. I examined all four cases where a certificate had been refused including the joint case involving five individuals. I then randomly selected a further six cases for review.

9.27 In each case considered whether in each case a robust determination had been made as to whether and how they met the conditions. I reviewed the police intelligence files supporting each case and whether the use of alternative juror protection measures were being routinely considered. In relation to jury protection measures, I note that in one case a senior prosecutor notes that "it is considered that jury measures, in

particular sequestration or screening give rise to a risk of *an incurable compromise of the jury's objectivity* in the above case.” This comment was repeated in other cases. Lord Kerr remarked in *R. v Mackle*<sup>57</sup> on the costs of providing protective measures for juries – costs that have increased since then in a climate of diminishing police resources – and the impact of such measures on jury perceptions of the accused. This raises the question of whether, in any circumstances, could jury measures be used, given the costs of protective measures and the risks they could pose to jury impartiality. I am unaware of any case where such measures have been used and note the objections to anonymity being sufficiently protective given the size of Northern Ireland. If it is the case that protective measures can never be used for any or all of these reasons, deliberations on their use in each case are redundant. **I recommend that the PPS clarify their position on this issue, given that the obstacles to the use of protective measures are unlikely to change.**

- 9.28 In reviewing each case, I then looked for sufficient evidence in the file to suggest that there was jeopardy to a fair trial.
- 9.29 In the case of one refusal, there was reassuring evidence of a rigorous internal process of decision-making within the PPS where the DPP ultimately refused a certificate where even though condition 1 was met, the charge was not related to a security issue.
- 9.30 In another case where a certificate was granted, I had some concerns about the age of the intelligence material supporting condition 1, and a second concern that the paramilitary organisation to which the defendant was allegedly affiliated some years previously was not currently considered to be active. It was also unclear whether the offence was criminal or paramilitary in nature.
- 9.31 The PPS have carefully considered instances where the police have reason to believe that there has been intimidation of a witness. **I recommend that in such circumstances the PPS consider whether the evidence of intimidation is sufficient to warrant relying on Section 44 of the Criminal Justice Act 2003 (CJA).**

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<sup>57</sup> *R. v Mackle (Benedict)* [2007] NICA 37, [2008] N.I. 183

9.32 In other cases, there is consistent evidence that the PPS carefully considers the details of each case, how each condition is met and whether there is a risk to the administration of justice. It is clear that even where a defendant is a member of a proscribed organisation, or where the membership is unrelated to the alleged crime, the PPS may not issue a certificate if they deem there is no such risk. In other instances, a certificate was issued when the risk was that a proscribed organisation would attempt to pervert the course of justice on behalf of a benefactor. Similarly, I was impressed with the differentiation between paramilitarism and organised crime in determinations about the issuing of certificates.

9.33 In this review period, I am satisfied that the procedures and scrutiny with which each case was considered is commensurate with the kind of deliberation and care warranted by the gravity of the decision to deny the right to jury trial.

#### **NJT TRENDS OVER TIME**

9.34 Figures 9.3 and 9.4 show the numbers of NJT certificates issued by year since the passing of the JSA and the pattern of the conditions met in each year. In Table 9.3, the number of certificates issued in this review period has decreased slightly with a corresponding increase in the number refused.

<b>Figure 9.3: Certificates issued and refused for NJT by the DPP (2007-2022)</b>		
<b>YEAR</b>	<b>CERTIFICATES ISSUED</b>	<b>CERTIFICATES REFUSED</b>
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
2022	21	3
2023	20	4/8
<b>Source:</b> Northern Ireland Director of Public Prosecution's Office *Provisions under the 2007 Act were brought into effect on 1 August 2007 ** Figures are provisional, to 31 July 2023.		



9.35 Lord Caine reported to the Grand Committee<sup>58</sup> that “in 2021 only 0.6% of all Crown Court cases were conducted without a jury; that is, eight out of 1,358”. Yet, whilst this is correct, it is also clear in Figure 9.3 that double that number of certificates were issued. Delay in the courts system means that there is, as in other types of cases, a backlog of non-jury trial cases. In June 2023, Criminal Justice Inspection Northern Ireland’ Chief Inspector “called for a ‘fundamental reset’ within the Police Service of Northern Ireland (Police Service) and the Public Prosecution Service for Northern Ireland (PPS) to improve the quality of prosecution files and speed of case progression.”<sup>59</sup> Of the 20 cases where certificates were issued in this review period, the PPS informed me that in seven cases there were pleas or findings of guilty; in one case there was an acquittal after trial; three cases have dates fixed for trial and nine others have not yet reached trial stage.

9.36 In Figure 9.4, it is apparent that conditions 1 and 2 are still the most frequently used with conditions 3 and 4 used much less frequently. This pattern is consistent over time.

**Figure 9.4 Conditions met in NJT cases 2007-2023**

Year	Number of Cases in which Condition Met				Certificates Issued
	Condition 1	Condition 2	Condition 3	Condition 4	
<b>2007</b>	12	6	3	4	<b>12</b>
<b>2008</b>	24	16	3	4	<b>25</b>
<b>2009</b>	11	7	0	2	<b>11</b>
<b>2010</b>	13	9	2	3	<b>14</b>
<b>2011</b>	27	23	4	8	<b>28</b>
<b>2012</b>	21	16	1	10	<b>25</b>
<b>2013</b>	22	16	3	21	<b>23</b>
<b>2014</b>	18	12	0	16	<b>18</b>

<sup>58</sup> [https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity\(NorthernIreland\)Act2007\(ExtensionOfDurationOfNon-JuryTrialProvisions\)Order2023](https://hansard.parliament.uk/lords/2023-06-05/debates/CF5F85FD-BF9E-48AF-B48C-9D691ABEC77B/JusticeAndSecurity(NorthernIreland)Act2007(ExtensionOfDurationOfNon-JuryTrialProvisions)Order2023)

<sup>59</sup> <https://www.cjini.org/TheInspections/Inspection-Reports/2023/Apr-June/File-Quality,-Disclosure-and-Case-Progression-and>

Figure 9.4 Conditions met in NJT cases 2007-2023					
Year	Number of Cases in which Condition Met				Certificates Issued
	Condition 1	Condition 2	Condition 3	Condition 4	
2015	14	13	0	7	15
2016	10	11	0	7	11
2017	9	6	0	8	9
2018	16	12	0	14	17
2019	10	9	0	8	13
2020	10	7	2	4	11
2021	15	10	1	12	16
2022	11	10	0	3	21
2023**	19	16	2	5	20
<b>Total</b>	262	199	21	130	<b>(total grounds)</b>
<b>%age</b>	43%	33%	3%	21%	<b>% of all conditions used</b>

Source: Northern Ireland Director of Public Prosecution's Office

### PSNI RESPONSE TIMES

9.37 The Community Safety Department of the PSNI advised that in the previous review period, the average response time by the PSNI to requests for further information by the PPS in relation to NJT cases was 78.8 days or 11 weeks. Unfortunately, I have been unable to establish the response times for the last two review periods. This is concerning given that the marked increase in the last known response time from the previous rate. Again, **I recommended that the PSNI establish the current response time, examine the reasons for any increased delay in response times, and take steps where possible to recover the slippage.**

9.38 In the last report, I expressed concern about the long delay in bringing some cases to trial. I note that Criminal Justice Inspection Northern Ireland (CJINI) commented on the limited impact of efforts made to reduce this delay.

### **PART 3 – CONCLUSIONS**

10.1 As I concluded in the 15<sup>th</sup> report, the right to a fair trial is a fundamental principle in law that can only be dispensed with in the direst of circumstances. During the worst years of the Troubles, such trials were conducted under the Diplock system. Since the Good Friday Belfast Agreement, there have been significant improvements to the security situation warranting a reconsideration of the extraordinary measures designed for more dangerous times. Whilst some risks remain, some related to organised crime, which is prevalent throughout the UK, careful consideration must be given to a return to the status quo ante where jury trial was the norm and the provisions of the CJA were sufficient for the cases where there was interference to the processes of justice. Northern Ireland has operated a system of non-jury trials now for fifty years so the prospect of change is daunting, since those in the legal system have, for the most part, never operated without these extraordinary provisions. Yet the normalisation of such departures from the principles of fair trial is dangerous and dilutes the democratic values on which the system is based. Whilst the current system is operated impeccably by the PPS, it is to be hoped that they can relinquish the JSA provisions in the near future and revert to the system pertaining in the rest of the UK.

10.2 Likewise, the stop and search under the JSA are intrusive and more extensive than other police powers, hence the requirement for this review. According to some legal opinions, other 'reasonable suspicion' powers are sufficient and JSA stop and search powers should be retired. The security threat in Northern Ireland is not at a level comparable to that in the rest of the UK and violent paramilitarism has not ended, justifying the continuation of JSA powers. Once paramilitarism is ended and there are some improvements to security, JSA stop and search powers should be immediately retired. I look forward to that time.

10.3 My recommendations are listed in the executive summary at Section 2 of this report.

## **ANNEX A Acronyms**

AAD	Action Against Drugs
AEP	Attenuating Energy Projectiles
ANP	Arm na Poblachta
BWV	Body Worn Video
CAJ	Committee for the Administration of Justice
CIA	Community Impact Assessment
CIRA	Continuity IRA
CiT	Communities in Transition
CJINI	Criminal Justice Inspection Northern Ireland
CJPOA	Criminal Justice and Public Order Act 1994
CLC	Children's Law Centre
CMP	Closed Material Procedure
CRN	Catholic National Republican
CRN	Community Resolution Notice
DOJ	Department of Justice
DPIA	Data Protection Impact Assessment
DPP	Director of Public Prosecutions
DR	Dissident Republican
DUP	Democratic Unionist Party
DV	Developed Vetting
EA	Education Authority
ECHR	European Convention of Human Rights
EOD	Explosive Ordnance Disposal
EPPOC	Executive programme for tackling paramilitary activity and organised crime
EU	European Union
EWCA	England and Wales Court of Appeal
FETO	Fair Employment and Treatment (Northern Ireland) Order
FCIA	Full Community Impact Assessment
FOI	Freedom of Information
GDPR	General Data Protection Regulation
HMICFRS	Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services
HMP	Her Majesty's Prison

IAG Independent Advisory Group  
ICO Information Commissioner's Office  
IDPP Director of Public Prosecutions in the Republic of Ireland  
IED Improvised Explosive Device  
IOPC Independent Office for Police Conduct  
IRA Irish Republican Army  
IRC Independent Reporting Commission  
IRTL Independent Reviewer of Terrorism Legislation  
JSA Justice and Security (Northern Ireland) Act 2007  
KC King's Counsel  
LCC Loyalist Community Council  
MACR Minimum Age of Criminal Responsibility  
MDA Misuse of Drugs Act 1971  
MOD Ministry of Defence  
NCA National Crime Agency  
NIA Northern Ireland Act  
NICA NI Court of Appeal  
NICCY NI Commissioner for Children and Young People  
NICS NI Court Service  
NIHRC Northern Ireland Human Rights Commission  
NIO Northern Ireland Office  
NIPB Northern Ireland Policing Board  
NIQB NI Queen's Bench  
NIRA New Irish Republican Army  
NIRT Northern Ireland Related Terrorism  
NJT Non-Jury Trial  
NISRA NI Statistics and Research Agency  
OASA Offences Against the State Act, Republic of Ireland  
ONH Óglaigh na hÉireann  
PACE NI Police and Criminal Evidence (Northern Ireland) Order 1989  
PCTF Paramilitary Crime Task Force  
POFA Protection of Freedoms Act 2012  
PONI Police Ombudsman for Northern Ireland  
PPS Public Prosecution Service

PPDG Police Powers Development Group  
PSA Paramilitary Style Attack  
PSNI Police Service of Northern Ireland  
PPS Public Prosecution Service  
PUL Protestant Unionist Loyalist  
SCC Special Criminal Court, Republic of Ireland  
TACT Terrorism Act 2000  
TSG Tactical Support Group  
UKSC United Kingdom Supreme Court  
VDRs Violent dissident republicans  
YIAG Young People's Independent Advisory Group  
VBIED Vehicle Borne Improvised Explosive Device

## **ANNEX B - Organisations and individuals consulted**

### **The following organisations and individuals were met**

#### **Government**

Madeleine Alessandri, Permanent Secretary, Northern Ireland Office

James Crawford, Political and Security Director, Northern Ireland Office

Officials from the Political Affairs and Security and Protection Group

Adele Brown, Director of the Northern Ireland Executive's Cross-Departmental Tackling Paramilitarism, Criminality and Organised Crime Programme

Irish OASA Review Group

#### **Policing/Security**

Simon Byrne, and Jon Boutcher Chief Constables, Police Service of Northern Ireland and members of the senior management team.

Officers from C3 Intelligence Branch, Operational Support Department and Statistics Branch, PSNI

Staff of 38 (Irish) Brigade and NI Garrison

Director V and staff, MI5

John Wadham, Human Rights Advisor, Northern Ireland Policing Board

Adrian McNamee, Director of Performance, Northern Ireland Policing Board

Performance Committee, Northern Ireland Policing Board

Police Ombudsman's Office

Police Community Safety Partnership Managers

#### **Legal**

Stephen Herron, Director of Public Prosecutions, Public Prosecution Service for Northern Ireland

Michael Agnew, Deputy Director, The Public Prosecution Service for Northern Ireland

Tom Murphy, Principal Private Secretary to the Director of Public Prosecutions for Northern Ireland

Attorney General, Brenda King DCB

#### **Independents**

Jonathan Hall KC, Independent Reviewer of Terrorism Legislation

## **Political**

Gerry Kelly, Sinn Féin

Sinn Féin parliamentary group, Stormont.

Mike Nesbitt, Ulster Unionist Party

Doug Beattie, Ulster Unionist Party

Naomi Long, Alliance Party

## **Statutory Bodies**

Independent Reporting Commission

## **Youth Sector**

Children's Law Centre

Northern Ireland Commission for Children and Young People

## **Community and Voluntary Sector**

International Committee of the Red Cross

Northern Ireland Quaker Community

Daniel Holder, Committee on the Administration of Justice Northern Ireland

Darren Richardson, Sperrin Cultural Awareness Association

Traveller Project, Craigavon Travellers Support Committee

Natasha McDonagh, Connections Service Key Worker, Start 360, Ballymena

Leanne Abernethy, Restorative Practitioner, AIMS Project, Ballymoney

Kenny Blair, AIMS Project, Ballymoney

Conal McFeely, Development Executive, Rath Mór Centre, Creggan

Sean Feenan, The Reference Group

## **Academics**

Dr John Topping, The Queen's University of Belfast

Dr Jessie Blackburn, Durham University

Professor Donncha O'Connell, University of Galway

## **Group Meetings**

Non-Jury Trials Working Group, Northern Ireland Office

Authorisation Review Working Group, NIO and PSNI



## ANNEX C SUMMARY OF POWERS

### Annex C:

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

##### Part 1

This summary sets out the powers in the Justice and Security (Northern Ireland) Act 2007 (2007 Act) which are used by the PSNI and which are covered in the Code of Practice. For a full description of the powers reference should be made to the relevant section of the 2007 Act. More details on how the powers should be exercised are set out at the relevant sections of the Code.

Section	Power	Overview	Records
21	21(1) A constable may stop a person for so long as is necessary to question him to ascertain his identity and movements.	<p>This power allows a police officer to stop and question a member of the public to establish their identity and movements.</p> <p>People stopped and questioned may be asked for their name, date of birth, and address. They may also be asked for identification. They may be asked to give details of their recent movements.</p> <p>A person commits an offence and may be prosecuted if they fail to stop when required to do so, if they refuse to answer a question addressed to them under this section or if they fail to answer to the best of his ability a question put to him.</p>	<p>A record of each stop and question must be made.</p> <p>The record will include details of the person's name, when they were stopped and questioned, and the officer number of the police officer who conducted the stop and question.</p> <p>Officers should inform those who have been stopped and questioned how they can obtain a copy of the record if required.</p>
23	23(1) A constable may enter any premises if he considers it necessary in the course of operations for the preservation of peace and the maintenance of order.	<p>This power allows a police officer to enter premises to keep the peace or maintain order.</p> <p>If the premises is a building (a structure with four walls and a roof), the police officer generally requires prior authorisation, either oral (from a Superintendent or above) or written (from an Inspector or above).</p> <p>However in circumstances where it is not reasonably practicable to obtain an authorisation (for example, where there is an urgent need to enter a building to preserve peace or maintain order) officers can enter a building without prior authorisation.</p>	<p>A record of each entry into a building must be made. Records are not required for any premises other than buildings.</p> <p>Records must be provided as soon as reasonably practicable to the owner or occupier of the building.</p> <p>Otherwise the officer should inform the owner or occupier how to obtain a copy of the record.</p> <p>The record will include the address of the building (if known), its location, the date and time of entry, the purpose of entry, the police number of each officer entering and the rank of the authorising officer (if any).</p>

Section	Power	Overview	Records
24/Schedule 3	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>This power allows officers to enter and search any premises for munitions or wireless apparatus.</p> <p>For an officer to enter a dwelling, two conditions must be met: (i) he must reasonably suspect that munitions or wireless apparatus are in the dwelling (ii) he must have authorisation from an officer at least the rank of Inspector.</p> <p>Officers may be accompanied by other persons during the course of a search.</p> <p>During the course of a search, officers may make requirements of anyone the premises or anyone who enters the premises to remain on the premises. For example, movement within the premises may be restricted, or entry in the premises not permitted. A person commits an offence and may be prosecuted if they fail to submit to a requirement or wilfully obstruct or seek to frustrate a search of premises.</p> <p>A requirement may last up to four hours, unless extended for a further four hours if an officer at least the rank of Superintendent considers it necessary.</p>	<p>A written record for each search of premises must be made, unless it is not reasonably practicable to do so. A copy of this record will be given to the person who appears to the officer to be the occupier of the premises.</p> <p>The record will include the address of the premises searched, the date and time of the search, any damage caused during the course of the search and anything seized during the search. The record will also include the name of any person on the premises who appears to the officer to be the occupier of the premises. The record will provide the officer's police number.</p>
24/Schedule 3	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>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	Paragraph 4A(1): A senior officer may give an authorisation under this paragraph in relation to a specified area or place.	<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>

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

			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.	<p>A written record of each stop and search must be made, preferably at the time.</p> <p>The officer should provide the written record to the person searched or, if this is wholly impracticable, provide the person with a unique reference number stating how the full record of the search can be accessed. The person may request a copy of the record within 12 months of the search.</p> <p>The record is to set out all the information listed at paragraph 10.4 of the Code, including the person's name, the date, time and place of the search, the purpose, grounds and outcome of the search and the officer's warrant or other identification number and the police station to which the officer is attached.</p>

Section	Power	Overview	Records
43(4B)(a)	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>In exercising the power to stop a person a constable reasonably suspects to be a terrorist, he may stop a vehicle in order to do so (section 116(2) of TACT 2000). The power in section 43(4B)(a) allows the constable to search that vehicle in addition to the suspected person. The constable may seize and retain anything which he discovers in the course of such a search, and reasonably suspects may constitute evidence that the person is a terrorist.</p> <p>Nothing in subsection (4B) confers a power to search any person but the power to search in that subsection is in addition to the power in subsection (1) to search a person whom the constable reasonably suspects to be a terrorist.</p> <p>In other words this power does not allow a constable to search any person who is in the vehicle other than the person(s) whom the constable reasonably suspects to be a terrorist.</p> <p>Where the search takes place in public, there is no power for a constable to require the person to remove any clothing other than their headgear, outer coat, jacket and gloves. The person or vehicle may be</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>

		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.	
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Section	Power	Overview	Records
43A	A constable may, if he reasonably suspects that a vehicle is being used for the purposes of terrorism, stop and search (a) vehicle, (b) the driver of the vehicle, (c) a passenger in the vehicle, (d) anything in or on the vehicle or carried by the driver or a passenger to discover whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism.	<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	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>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</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</p>

		<p>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>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>
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**Corporate Policy**

**SERVICE INSTRUCTION**

<b>SI Identification Number</b>	SI0321
<b>Policy Ownership</b>	Operational Support Department
<b>Issue Date</b>	02/09/2021
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**SI0321**

**Stop and Search**

This Service Instruction outlines Police Service of Northern Ireland specific stop and search guidance, in support of that provided in Authorised Professional Practice stop and the relevant codes of practice.

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## 1. Introduction

The Police Service of Northern Ireland (PSNI) has adopted [Authorised Professional Practice \(APP\) stop and search](#), which provides the systematic procedures and appropriate detection techniques. The PSNI stop and search policy is governed by '[Service Policy 1316 Police Search](#)'

Personnel involved in stop and search should, where applicable:

- Substitute England and Wales specific legislation (contained in APP) with the relevant Northern Ireland (NI) version; and
- Take cognisance of the following PSNI specific guidance.
- Take note that ports officer's examinations and searches under Schedule 7 to the Terrorism Act 2000 are not governed by this instruction (Please refer to [Examining Officers and Review Officers under Schedule 7 to the Terrorism Act 2000](#) for guidance in relation to Schedule 7 to the Terrorism Act 2000).

## 2. Aims

The aim of this instruction is to ensure that officers keep people safe whilst complying with the law, by exercising their powers to stop and search members of the public fairly, responsibly, without unlawful discrimination and with respect and dignity, whilst showing - We Care, We Listen, We Act.

## 3. Fair and Effective Stop and Search

Stop and search is a police power which, when used fairly and effectively can play an important role in the prevention and detection of crime. Officers should note that the primary purpose of stop and search powers is to enable us to allay or confirm suspicions about individuals without exercising powers of arrest. Using stop and search powers fairly makes them more effective.

Whilst carrying out stop and search, police officers will act in accordance with the:

- [Police and Criminal Evidence \(Northern Ireland\) Order 1989](#)

- [Justice and Security \(Northern Ireland\) Act 2007](#) and [Codes of Practise](#)
- [Terrorism Act 2000](#) and [Codes of Practice](#);
- [Misuse of Drugs Act 1971](#); and
- [PSNI Code of Ethics](#).

The College of Policing has developed a definition of [fair and effective](#) stop and search in collaboration with police practitioners, force senior officers and the National Police Chiefs' Council (NPCC) lead for stop and search.

- A stop and search is most likely to be fair and effective when:
- The search is justified, lawful and stands up to public scrutiny;
  - The officer has genuine and objectively reasonable suspicion that s/he will find a prohibited article or item for use in crime;

- The person understands why they have been searched and feels they have been treated with respect; and
- The search was necessary and was the most proportionate method the police officer could use to establish whether the person has such an item.

- Four core elements underpin this definition:
- The decision to stop and search a person must be fair;
  - The search must be legal in basis and in application;
  - Interaction with the public during the encounter must be professional; and
  - Police use of stop and search powers must be transparent and accountable.

**4. Powers of Search**

**Powers requiring Reasonable Grounds for Suspicion**

Most stop and search powers e.g. Misuse of Drugs Act/PACE 3-5 require an officer to have reasonable grounds for suspicion.

This is defined in [PACE Code A](#) which should be consulted for further information.

Officers must understand this definition and know how to apply it in practice, as this will decide whether a stop and search is lawful.

A summary of the main stop and search powers can be found at [Annex A](#) of the PACE Code of Practice.

All officers conducting stop and search must work through the process of PD GOWISE. The information must be provided to the subject before a stop and search takes place, and must be recorded on Body Worn Video:

- Power used;
- Detained for purpose of search;
- Grounds;
- Object of the search;
- Warrant card if not in uniform;
- Identification;
- Station attached to; and
- Entitlement to a copy of the record.

**Powers which do not require reasonable grounds for suspicion**

There are occasions when officers carry out stop and search using legislation which does not require reasonable grounds for suspicion. These are likely to be counter terrorism powers under the Justice and Security (Northern Ireland) Act 2007 and the Terrorism Act 2000. Links to the relevant Codes of Practice are available above.

Whilst reasonable grounds are not required when carrying out certain searches under the Justice and Security (NI) Act 2007, appropriate authorisations from senior police must be in place.

In addition to this authorisation there must also be a lawful basis to carry out the search. This basis must be recorded by the searching officer or officer completing the form PACE 1/TA. The Origin application allows for the selection of briefing, incident, subject's behaviour and subject's location as the basis of the search. In addition to selecting the basis from the drop down list, officers must also record a short narrative regarding the basis selected. This should be a short rationale as to why that person has been stopped. Officers should be aware that to not fully

record this basis, could lead to a breach of the search subject/s right to privacy under Article 8 ECHR.

In cases where the search is of a child who accompanies the principal subject of the search (i.e. is not the target of the search but happens to be present in the vehicle or at the scene), the officer must record the reason why they decided that it was necessary and proportionate to conduct the search of the child, in addition to the search of the adult subject(s).

## 5. Recording

### Body Worn Video

All stop and search encounters must be recorded on body worn video when such a device is worn by the searching officer. Any reason for not recording will be captured on the PACE1/TA and in the officers Police issue notebook.

The use of body worn video cameras help to reassure the public that their interactions with the PSNI are recorded. The technology offers greater transparency for those in front of the camera as well as those behind it. Body worn video allows us to gather evidence and demonstrate our professionalism during stop and search.

### PACE 1/TA

On all occasions where a stop and search of a person or vehicle is carried out, a form PACE 1/TA will be completed electronically via the Origin application, which is available on the officers' mobile data device.

The officer completing the form must record the date along with the stop and search reference number on the search information card. This must be offered to the person searched and will be used as follows:

- Where any person or persons' vehicle is stopped and searched.  
(NB: If the person is in the vehicle and both are searched, and if the object and the grounds for the search are the same, then only one record is required).
- Where unattended vehicles are searched (a record should be left on the windscreen for example).

Where a technical issue prevents an officer from recording a stop and search onto a mobile data device, then the details must be recorded in the officers police issue notebook for transfer when the technical issue has been resolved. In such circumstances the person searched must still be issued with a search information

card with sufficient information to enable details of the stop and search to be retrieved if required at a later date.

The outcome of a stop and search must always be recorded on the PACE1/TA.

## 6. Supervision and Monitoring

The monitoring of the use of stop and search powers by individual officers will ensure they are being applied appropriately, lawfully and fairly.

Supervisors are required to conduct dip sampling of all stop and search carried out by officers under their supervision.

Particular attention to the grounds of the search will assess whether the search was fair and effective. Supervisors should take timely and appropriate action to deal with any improper use of powers, such as performance or misconduct procedures.

When monitoring the use of stop and search, supervisors should be mindful of the proportionality in respect of community background and ethnic minority groupings, to ensure that powers are used fairly and appropriately at all times.

In relation to use of stop and search powers under the Justice and Security

(Northern Ireland) Act 2007 and the Terrorism Act 2000, in areas where use of said powers is high, supervisors should ensure that particular attention is given to the lawfulness and appropriateness of any search activity. When carrying out dip sampling in relation to searches using powers under the Justice and Security Act, supervisors should ensure that the basis of the search is recorded.

The outcome of all dip sampling of search records must be recorded electronically for audit purposes.

## 7. Children and Young People

Officers have the power to stop and search persons of any age. Those under the age of 18 should be considered vulnerable due to age and their safety and welfare should be paramount during any encounter.

Where officers consider it necessary to conduct a stop and search on a child or young person, the grounds for the search must be clearly communicated in simple and easy to understand language, the use of technical or legal language should be avoided unless required by law.

Any decision taken to stop and search a child must be in the best interests of that child, taking into consideration that exploitation of the child may be a factor in the case.

In the circumstances whereby an individual refuses to provide their date of birth to a searching officer, and it appears to the officer that the individual may be under 18, the officer should treat the individual as an under 18 and treat as vulnerable due to their age, and prioritise that individual's safety and welfare during the stop and search.

Officers should be aware that not all children of the same age will have the same level of understanding and should allow time for the child or young person to ask questions before a search begins, whilst the search is ongoing and upon conclusion of the search. Every effort should be made to ensure that the rights of the child are upheld during any stop and search encounter. Officers must take care not to discriminate unlawfully against any children or young people on the grounds of religious belief or political opinion, racial group, age, sexual orientation, gender or disability.

Information cards should be provided to the child/children subject to the search. This will facilitate any request for a copy of the PACE 1/TA search record. It may be appropriate to read or explain the content of the information card to the child, particularly if it is known that the child or young person has a learning or literacy difficulty. If it appears obvious to the searching officer, but not disclosed by the child or young person, that they have a learning or literacy difficulty, then the officer should treat that child or young person as if they have a learning or literacy difficulty. Consideration can be taken by the searching officer to contact an appropriate adult if required.

Further information on considerations when dealing with children can be found at [UNICEF](#).

## 8. Gender of searching officer

Searches and other procedures may only be carried out by, or in the presence of, persons of the same sex as the person subject to the search or procedure.

A police officer who has been granted a Gender Recognition Certificate will be able to stop and search an individual of the



same gender without any reference being made to the fact that their gender identity differs from the sex they were assigned at birth.

## 9. Transgender

Sensitivity must be shown when conducting searches of transgender individuals to minimise any embarrassment, avoid discrimination and promote equality. If any doubts exist as to the gender of the individual subject to the search, they should be asked which gender they wish to be treated and for any other information the searching officer deems relevant to carry out the search professionally and appropriately for those circumstances. Guidance on the searching of transgender individuals can be found in [Code of Practice C – Annex L](#).

## 10. Accountability

Stop and search is scrutinised internally by District and Departmental supervision checks, assurance reviews and quarterly governance meetings chaired at ACC level.

Externally, stop and search is scrutinised by the Northern Ireland Policing Board,

Independent Reviewer of the Justice and Security (NI) Act 2007 and Independent Reviewer of the Terrorism Act 2000. The Police Ombudsman for Northern Ireland may investigate complaints made by members of public in relation to stop and search.

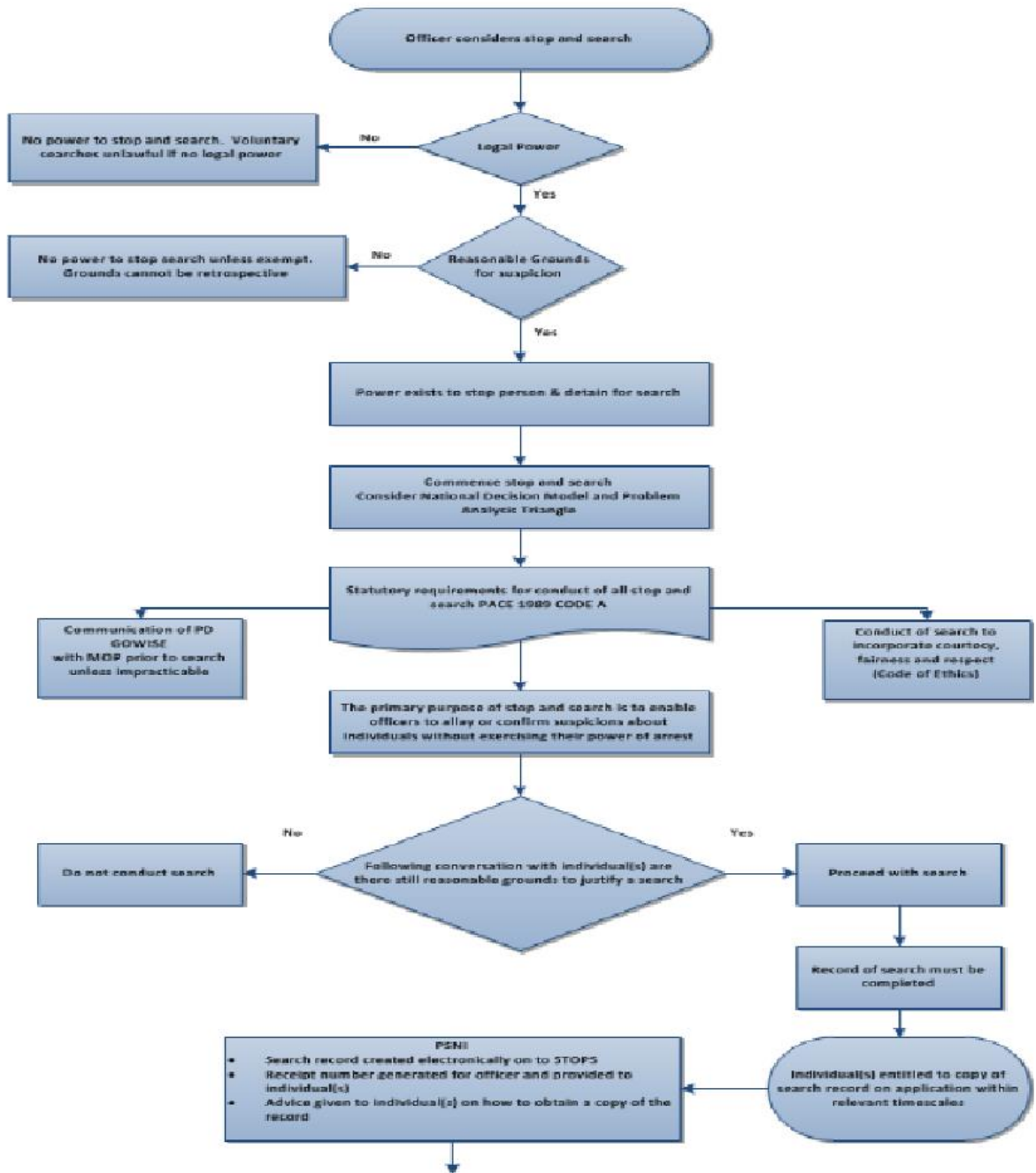
## 11. Human Rights

Officers should be mindful that the following articles of the [Human Rights Act 1998](#) could be engaged during stop and search:

- Article 3 – Prohibition of torture and inhumane treatment.
- Article 5 – Right to liberty
- Article 8 – Right to respect for private life
- Article 14 – Prohibition on discrimination

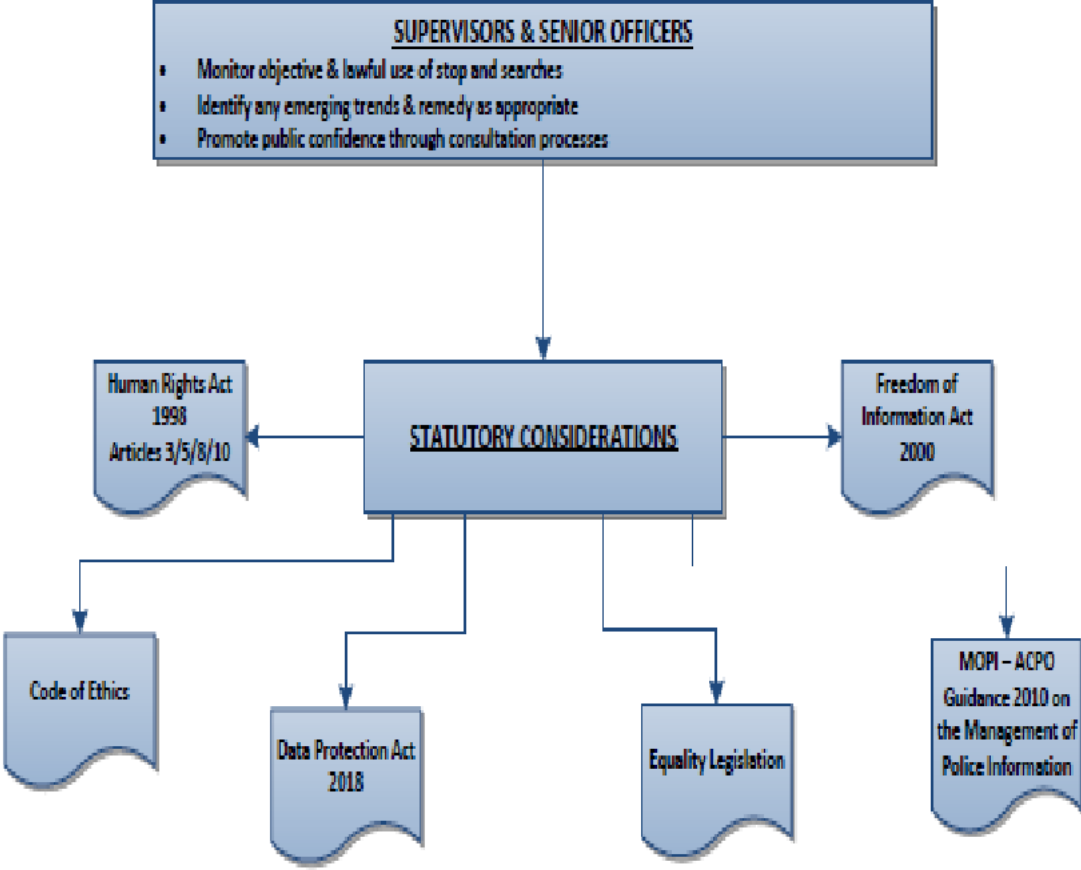
Police Officers must ensure that use of any stop and search power is proportionate, justified and in accordance with the relevant Code of Practice. Officers must be mindful that their conduct during stop and search can impact on the persons perception of the Police Service.

**Appendix A Flowchart Process**





**SERVICE INSTRUCTION**



Confidential

Reference Number: SAJSA3/2022
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**District/Area Evidence to Support 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: Area Commander– (Insert name, rank, position)**

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2) **Length of Request:**  
Please note that the duration of a request should be "no longer than is necessary".

Requests must not be for a full 14 day period unless this is necessary. (Please see Explanatory Notes for more details).

Start date:	Number of days: 14
End date:	End time (if not 23.59):

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

Entire Area <input checked="" type="checkbox"/>
Specific Area/District <input type="checkbox"/>
Map Attached <input type="checkbox"/>

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

Requesting Officers should only request 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 request for authorisation **necessary** to prevent such danger (Please see Explanatory Notes for more detail).

- |   |
|---|
| Para 4A, Schedule 3 is required: <ul style="list-style-type: none"> <li>• To prevent endangerment to persons by the use of munitions or wireless apparatus</li> <li>• To prevent and detect further terrorist/criminal incidents</li> <li>• To protect the lives of the wider community</li> <li>• To protect the life of Police personnel</li> </ul> |
|---|

5) **Requesting Officer:**  
Requesting Officers must be Area Coordinator or Designated Deputy.

Signature
Print Name/Rank
Date Signed

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

- 1) **Requesting Officer Rationale** (Please see Explanatory Notes for more details)  

This is lengthy and detailed and includes intelligence material.
  
- 2) **Requesting Officer Contact and Telephone Number:**  

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- 3) **Assessment of the threat:**  
Requesting Officers should provide a detailed account of the intelligence and incidents 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).
  
- 4) **Previous use of Powers:**  
Area Coordinators should demonstrate that they are satisfied that previous use of the powers has been both necessary and proportionate (Include statistics if this helps to support the rationale).

<p><u>SPECIFIC INTELLIGENCE DISSEMINATED</u></p>    <p><u>RELEVANT INCIDENTS</u></p>    <p>All Districts have been asked to examine their use of the powers and to articulate if they feel they need to retain these powers, all have confirmed that they do.</p> <p>The rationale for this application is based on the prevailing threat, the current intelligence picture and recent activity, incidents and attacks in South Area. I believe that the authorisation of these powers is both necessary and proportionate to counter the prevailing threat across xxx Area and :-</p> <p>To prevent endangerment to persons by the use of munitions or wireless apparatus To prevent and detect further terrorist/criminal incidents To protect the lives of the wider community To protect the life of Police personnel</p>
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I continue to monitor our use of these powers across the Area to ensure that they are used proportionately and I have given careful consideration to this application for a further extension.

- 5) **Community engagement and accountability:**  
Area Coordinators 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 Area Coordinator should carry out a retrospective review of the use of the powers (Please see Explanatory Notes for details).

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

**JSA 3**

<b>Point 2</b>	<b><u>Length of request</u></b>  Start time is the time and date required by the Requesting Officer. The <b>maximum</b> period for a request is <b>14 days</b> , and requests 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. Requests should be for no longer than necessary. Justification should be provided for the length of a request, setting out why the intelligence supports amount of time requested. If a request is one which is similar to another immediately preceding it, information should be provided as to why a new request is justified and why the period of the initial request was not sufficient. Where different areas or places are specified within one request, 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.  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>
<b>Point 4</b>	<b><u>Reason for exercising Para 4A, Schedule 3 powers</u></b>  The test for requesting JSA powers is that the person requesting 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 request necessary to prevent such an act and that the area(s) or place(s) specified in the request are no greater than is necessary and the duration of the request is no longer than is necessary to prevent such an act.

**JSA 4**

<b>Point 1</b>	If a request 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 request, and that it remains relevant, and why.
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**Confidential**

	<p>Whilst it is possible to issue a successive authorisation for the same geographic areas, this will only be lawful if it is done on the basis of a fresh assessment of the intelligence, and if the authorising officer is satisfied that the authorisation is justified.</p>
<p><u>Point 3</u></p>	<p><u>Assessment of the threat</u></p> <p>The Requesting Officer should provide a detailed account of the intelligence and incidents which have 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 Irish Republican Terrorism are provided by MI5 via C3. 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 MI5 assessments, Requesting Officers should ensure that these references are to current material.</p> <p>A high state of alert may seem enough in itself to justify a request for powers; however it is important to set out in the detail the relation between the threat assessment and the decision to request.</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><u>Point 5</u></p>	<p><u>Community Engagement</u></p> <p>The Requesting Officer 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>

*Trials on indictment without a jury*

**1 Issue of certificate**

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

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

## **2 Certificates: supplementary**

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



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

### 3 Preliminary inquiry

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

### 4 Court for trial

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



- (a) a person is committed for trial on indictment otherwise than to the Crown Court sitting at the relevant venue, and
- (b) a certificate under section 1 is subsequently issued in relation to the trial,

the person is to be treated as having been committed for trial to the Crown Court sitting at the relevant venue.

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

the person is to be treated as having been committed for trial to the Crown Court sitting at the place specified in the direction.

## 5 Mode of trial on indictment

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

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

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

## **6 Rules of court**

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

## **7 Limitation on challenge of issue of certificate**

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

## **8 Supplementary**

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

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

## **9 Duration of non-jury trial provisions**

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

## Section 44-46 of the CJA 2003

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

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



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

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

#### **45 Procedure for applications under sections 43 and 44**

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

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

#### **46 Discharge of jury because of jury tampering**

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

## Introduction

1. The decision that a trial should be conducted without a jury is taken by the Director under the provisions of section 1 of the Justice and Security (Northern Ireland) Act 2007. The 2007 Act replaced the former arrangements whereby certain offences were “scheduled” and trials on indictment proceeded without a jury unless the Attorney-General “de-scheduled” them (on the basis that the offences were not connected to the emergency situation within Northern Ireland). Section 1 requires an examination of circumstances potentially pertaining to the accused, the offence and / or the motivation for the offence. Whereas in the past the presumption was that a trial would be a non-jury trial unless the Attorney General certified otherwise, the presumption now is that a trial will be by jury unless the Director takes the positive step of issuing a certificate for a trial to proceed without a jury.

2. Section 1 of the 2007 Act provides for the Director to issue a certificate that any trial on indictment is to be conducted without a jury if he suspects that one or more of four statutory conditions are met and he is satisfied that, in view of this, there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.

3. The decision to issue a certificate can be challenged by way of judicial review. By virtue of section 7 of the 2007 Act the scope of any such challenge is limited to grounds of dishonesty, bad faith, or other exceptional circumstances (including in particular exceptional circumstances relating to lack of jurisdiction or error of law). See also the case of *Arthurs* [2010] NIQB 75.

4. The decision to issue a certificate is an extremely important one and prosecutors must ensure that applications to the Director contain all relevant details and are accurate. This document is intended to provide some practical guidance in this regard. Whilst there are a number of themes and issues that tend to recur in these applications they often give rise to their own specific issues and it is important that the information and evidence relevant to each particular application is carefully considered and analysed and that recommendations are based upon the merits of the individual case. I set out below what experience indicates are some of the main considerations that most frequently arise.

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

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

prosecutors should also be cognisant of the definition of “associate” provided for by section 1(9) of the 2007 Act:

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

–

- (a) A is the spouse or a former spouse of B
- (b) A is the civil partner or a former civil partner of B
- (c) A and B (whether of different sexes or the same sex) live as partners, or have lived as partners, in an enduring family relationship,
- (d) A is a friend of B, or
- (e) A is a relative of B.

6. Whilst the term “associate” might normally be considered to include a broad range of persons including, for example, acquaintances, the definition in section 1(9) requires that the two individuals are in fact “friends” or have one of the other specific relationships referred to therein.

7. If possible, the information provided by police should also identify the particular proscribed organisation involved, rather than simply refer, for example, to “dissident republicans”.

8. It is important also that the application is clear as to whether a defendant is a current or past member of a proscribed organisation. In the case of historical membership it will be important to ascertain, to the extent possible, when such membership ceased. Cases of historical membership can give rise to difficult issues in respect of whether a proscribed organisation is likely to seek to interfere with the administration of justice in respect of a past member. There have been cases in which condition 1 (ii) has been met but no risk to the administration of justice has been assessed as arising therefrom. This may be the case, for example, where the suspect is a former member of PIRA but has not subsequently associated himself with any organisation that is actively conducting a terrorist campaign. If these cases relate to overtly terrorist offences, it is often the position that Condition 4 is met; and that, whilst no risk to the administration of justice arises from a possibility of jury intimidation, it does arise from the possibility of a fearful or partial jury (see below).

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

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

**Condition 3 - an attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and the attempt was made on**



**behalf of a proscribed organisation or a proscribed organisation was otherwise involved with, or assisted in, the attempt.**

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

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

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

a. In principle there is a need to narrowly and strictly construe Section 1 of the 2007 Act in light of the strong presumption in favour of jury trial.

b. Nevertheless, it is important to remain faithful to the wording of the statute and its context notwithstanding the need to narrowly construe Section 1 of the Act and the statutory conditions are expressed in clear and unambiguous terms.

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

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

i. It is couched in wide terms;

ii. It is not confined to the circumstances of Conditions 1, 2 and 3. The wording moves beyond the confines of the accused person being within a paramilitary organisation. It clearly envisages looking at the circumstances leading up to the offence being considered;

iii. The significance of the wording that the offence “was committed to any extent (whether directly or indirectly)” cannot be underestimated. This clearly widens the bracket of connective circumstances that can be embraced between the offence itself and the religious or political hostility;

iv. Political hostility can apply to “supposed” political opinion, again widening the reach of the section: para 38.

e. The phrase “political hostility” is in use daily in Northern Ireland and is easily understood. The most obvious examples of the situation arising out of Condition 4 may be incidents with a sectarian background but the wording of the statute is manifestly wide enough to embrace the scenario of the British Army engaging with suspected members of the IRA.

f. The wording of Condition 4 is such that Parliament clearly intended to include a broad reach of circumstances whilst at the same time recognizing that any legislation removing jury trial needs to be tightly construed.

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

13. It is often possible for the Director to be satisfied that Condition 4 is met in light of the nature of the offences, the evidence in the case and the information provided 96 by police in relation to conditions 1 and 2. In terrorist cases it is usually more appropriate to rely upon the connection to political, rather than religious, hostility.

### **Risks to the Administration of Justice**

14. There are three main risks to the administration of justice that regularly arise as a result of one or more of the Conditions being met. They are:

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

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

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

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

18. The risk of jury bias can also arise in cases involving military shootings of suspected terrorists. In the Hutchings case referred to above, the Court found no reason to dispute the Director’s conclusion that, where the context is of a soldier

shooting an innocent bystander against the background of an IRA attack a short time before, this circumstance carries in its wake the risk of a partisan juror or jurors in at least parts of this province with all the attendant dangers of impairment of the administration of justice if that trial were to be conducted with a jury.

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

### **Jury Measures**

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

#### *Risk of jury intimidation*

21. The transfer of the trial may be helpful if the proscribed organisation only has a very limited geographical reach. However, it is often the case that one is dealing with proscribed organisations with an ability to operate throughout the province and the ability to transfer the trial may be of little assistance in mitigating this risk.

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

23. Screening the jury prevents them from being seen by the public but does not prevent them from being seen by the defendant who could make a record of their appearance and pass that to his associates. Police have highlighted the further risk that jurors may be recognised by others called for jury service but not sworn on to the particular jury and there is a risk that these others could either deliberately or inadvertently pass on details of the jurors which would enable them to be targeted.

24. Sequestering the jury is a very draconian measure and police have often pointed out the potential for this to impact upon the jurors' lives and thereby impair their judgment, either in favour of or, more likely, against the defendant. In addition, police have advised that the parochial nature of Northern Ireland would create a unique difficulty in the provision of anonymity and security of a jury.

*Risk of a perverse verdict*

25. In general terms it is difficult to see how any risk of a perverse verdict arising from a fearful or hostile jury could be mitigated by any of the available jury measures. Transferring the trial would not address any issues of partiality unless, perhaps, the partiality arises from feelings confined to a local community. This possibility was noted by Stephens J in the context of inquests in Jordan [2014] NIQB 11 when he pointed out that the community divisions in our society are such that the exact nature of the danger of a perverse verdict is influenced by the geographic location of an inquest.

26. A transfer of the trial may also be unlikely to address any issue of fear, as the jury would most likely not consider themselves (or their families) to be safe from a proscribed organisation even if the offence happened in another part of the province. Screening may provide some re-assurance but this is imperfect for the reasons referred to above (they can be seen by the defendant and others called for jury service but not sworn). There is also a risk that the highly unusual measure of screening the jury would in fact exacerbate any disposition to be fearful or partial because it would be such an unusual measure and suggest that the defendant and / or his associates are dangerous people who would seek to intimidate the juror or his / her family. The same can be said, perhaps with even greater force, in relation to the sequestration of the jury.

27. In relation to this latter point prosecutors should note two judgments delivered in the context of the power to order non-jury trial under section 44 of the Criminal Justice Act 2003. The first is R v Mackle and others [2007] NICA 37. When considering whether to order a non-jury trial in a case of jury tampering a court is enjoined to consider what steps might reasonably be taken to prevent jury tampering before deciding whether the likelihood of it occurring is so great that the order should be made. The Court of Appeal held that a consideration of what was reasonable extends to an examination of the impact any proposed step would have upon the jury's fair and dispassionate disposal of the case. The Court held that the steps proposed in that case (round the clock protection of the jury or their being sequestered throughout its duration) would lead to an incurable compromise of the jury's objectivity which could not be dispelled by an admonition from the trial judge.

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

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

*Part 7 of the Criminal Justice Act 2003*

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

EXPLANATORY MEMORANDUM TO  
THE JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007  
(CODE OF PRACTICE) ORDER 2013

2013 No. 1128

1. This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The purpose of this Order is to make provision for a Code of Practice made in accordance with section 34(1)(a) and (2) of the Justice and Security Act 2007 (the 2007 Act) for the exercise of the powers contained within sections 21 to 28 and 30 of that Act.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This is the first exercise of the power to issue codes of practice under section 34 of the Justice and Security (Northern Ireland) Act 2007. It is being carried out under the urgent procedure outlined in section 36(2) because the Secretary of State believes that, in response to the decision of the Court of Appeal in the judicial review decisions in the case of Canning, Fox and McNulty, it is necessary to have a code of practice in place as a matter of urgency. The code of practice applies to the exercise by the Police Service of Northern Ireland of powers under section 21, section 23, section 24/Schedule 3 and section 26 of the 2007 Act and to the exercise of certain powers under the 2007 Act by the armed forces.

**4. Legislative Context**

4.1 The 2007 Act provides a range of powers to the PSNI, including stop and question, search for munitions and wireless apparatus and entry of premises. It also gives the police the power to seize items found during searches of people, premises and vehicles. As amended, it reflects the changes to the powers of stop and search for munitions and wireless apparatus in the 2007 Act which were brought into effect by the Protection of Freedoms Act 2012. Schedule 6 to the 2012 Act amended Schedule 3 to the 2007 Act, introducing an authorisation procedure for the exercise by the police of stop and search powers in relation to munitions and wireless transmitters. These powers do not require reasonable suspicion in relation to each individual who is searched, although they do require the authorising officer to have a reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. Schedule 6 also introduced, by way of amendments to Schedule 3 to the 2007 Act, a power to stop and search, whether in public or private, if a constable reasonably suspects that an individual has munitions unlawfully with him or her or wireless apparatus with him or her. Whilst a number of the powers in the 2007 Act are primarily for use by the PSNI, the armed forces also have powers under the 2007 Act which they can use in support of the police.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Northern Ireland.

## **6. European Convention on Human Rights**

The Minister of State (Mike Penning) has made the following statement regarding Human Rights:

“In my view The Justice and Security (Northern Ireland) Act 2007 (Code of Practice) Order 2013 is compatible with the Convention rights.”

## **7. Policy background**

### *What is being done and why*

7.1 The Code of Practice has been developed to provide guidance to the PSNI on the use of these powers, particularly to ensure that the powers are used with regard to proportionality and necessity principles. The Court of Appeal in Northern Ireland on 9 May 2013 ruled in the case of Canning, Fox and McNulty that a Code of Practice was required for the stop and question, and stop and search powers in the 2007 Act to ensure that necessary safeguards were in place. While the judgment relates to the use of the powers under the 2007 Act before amendment by the 2012 Act, it is judged necessary to introduce the Code of Practice without delay. The Northern Ireland Office is therefore making this Order under the urgency procedures in section 36(2) of the 2007 Act so that the Code can come into force without having first been approved in draft. It is anticipated that a resolution approving this Order will be debated within the next 40 days, computed as required in accordance with section 7(1) of the Statutory Instruments Act 1946.

## **8. Consultation outcome**

8.1 A public consultation on the draft Code was carried out for a period of 12 weeks from 13 December 2012 until 6 March 2013. A number of responses were received and considered and some modifications were made which are reflected in the Code of Practice in accordance with section 34(3) of the 2007 Act.

## **9. Guidance**

9.1 The Code of Practice sets out the basic principles for the use of powers by police officers under sections 21, 23, 24 / Schedule 3 and 26 of the Justice and Security Act 2007. Annex C deals with the exercise of powers at sections 21-28 and 30 of the Act by the armed forces.

9.2 The Code governs the way in which the powers are authorised and used. It includes guidance on:

- I. The scope of the powers
- II. The requirements for making an authorisation for the powers
- III. Briefing and tasking of officers

- IV. Avoiding discrimination
- V. Conduct of officers exercising the powers
- VI. Recording and monitoring the use of the powers

## **10. Impact**

- 10.1 The Order has no impact on business, charities or voluntary bodies.
- 10.2 The Order has a limited impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

- 12.1 The Code of Practice provides guidance for the monitoring and supervision of the use of the powers.

## **13. Contact**

Francesca Higgins at the Northern Ireland Office Tel: 028 9052 7954 or 020 7210 0209, or email: [Francesca.higgins@nio.x.gsi.gov.uk](mailto:Francesca.higgins@nio.x.gsi.gov.uk) can answer any queries regarding the instrument.



**POLICE AND CRIMINAL EVIDENCE ACT 1984 (PACE)**

**EXCERPT OF CODE B**

**REVISED**

**Code of practice for searches of premises by police officers and the seizure of property found by police officers on persons or premises**

**7 Seizure and retention of property**

**(a) Seizure**

7.1 Subject to paragraph 7.2, an officer who is searching any person or premises under any statutory power or with the consent of the occupier may seize anything:

(a) covered by a warrant;

(b) the officer has reasonable grounds for believing is evidence of an offence or has been obtained in consequence of the commission of an offence but only if seizure is necessary to prevent the items being concealed, lost, disposed of, altered, damaged, destroyed or tampered with;

(c) covered by the powers in the Criminal Justice and Police Act 2001, Part 2 allowing an officer to seize property from persons or premises and retain it for sifting or examination elsewhere.

See Note 7B

7.2 No item may be seized which an officer has reasonable grounds for believing to be subject to legal privilege, as defined in PACE, section 10, other than under the Criminal Justice and Police Act 2001, Part 2.

7.3 Officers must be aware of the provisions in the Criminal Justice and Police Act 2001, section 59, allowing for applications to a judicial authority for the return of property seized and the subsequent duty to secure in section 60. (See paragraph 7.12(iii).)

7.4 An officer may decide it is not appropriate to seize property because of an explanation from the person holding it but may nevertheless have reasonable grounds for believing it was obtained in consequence of an offence by some person. In these circumstances, the officer should identify the property to the holder, inform the holder of their suspicions and explain the holder may be liable to civil or criminal proceedings if they dispose of, alter or destroy the property.

7.5 An officer may arrange to photograph, image or copy, any document or other article they have the power to seize in accordance with paragraph 7.1. This is subject to specific restrictions on the examination, imaging or copying of certain property seized under the Criminal Justice and Police Act 2001, Part 2. An officer must have regard to their statutory obligation to retain an original document or other article only when a photograph or copy is not sufficient.

7.6 If an officer considers information stored in any electronic form and accessible from the premises could be used in evidence, they may require the information to be produced in a form:

- which can be taken away and in which it is visible and legible, or
- from which it can readily be produced in a visible and legible form.

**(b) Criminal Justice and Police Act 2001: Specific procedures for seize and sift powers**

7.7 The Criminal Justice and Police Act 2001, Part 2 gives officers limited powers to seize property from premises or persons so they can sift or examine it elsewhere. Officers must be careful they only exercise these powers when it is essential and they do not remove any more material than necessary. The removal of large volumes of material, much of which may not ultimately be retainable, may have serious implications for the owners, particularly when they are involved in business or activities such as journalism or the provision of medical services. Officers must carefully consider if removing copies or images of relevant material or data would be a satisfactory alternative to removing originals. When originals are taken, officers must be prepared to facilitate the provision of copies or images for the owners when reasonably practicable. (See Note 7C.)

7.8 Property seized under the Criminal Justice and Police Act 2001, sections 50 or 51 must be kept securely and separately from any material seized under other powers. An examination under section 53 to determine which elements may be retained must be carried out at the earliest practicable time, having due regard to the desirability of allowing the person from whom the property was seized, or a person with an interest in the property, an opportunity of being present or represented at the examination.

7.8 A All reasonable steps should be taken to accommodate an interested person's request to be present, provided the request is reasonable and subject to the need to prevent harm to, interference with, or unreasonable delay to the investigatory process. If an examination proceeds in the absence of an interested person who asked to attend or their representative, the officer who exercised the relevant seizure power must give that person a written notice of why the examination was carried out in those circumstances. If it is necessary for security reasons or to maintain confidentiality officers may exclude interested persons from decryption or other processes which facilitate the examination but do not form part of it. (See Note 7D.)

7.9 It is the responsibility of the officer in charge of the investigation to make sure property is returned in accordance with sections 53 to 55. Material which there is no power to retain must be:

- separated from the rest of the seized property, and
- returned as soon as reasonably practicable after examination of all the seized property.

7.9 A Delay is only warranted if very clear and compelling reasons exist, for example:

- the unavailability of the person to whom the material is to be returned, or
- the need to agree a convenient time to return a large volume of material

7.9 B Legally privileged, excluded or special procedure material which cannot be retained must be returned:

- as soon as reasonably practicable, and

- without waiting for the whole examination.

7.9 C As set out in section 58, material must be returned to the person from whom it was seized, except when it is clear some other person has a better right to it. (See Note 7E.)

7.10 When an officer involved in the investigation has reasonable grounds to believe a person with a relevant interest in property seized under section 50 or 51 intends to make an application under section 59 for the return of any legally privileged, special procedure or excluded material, the officer in charge of the investigation should be informed as soon as practicable and the material seized should be kept secure in accordance with section 61. (See Note 7C.)

7.11 The officer in charge of the investigation is responsible for making sure property is properly secured. Securing involves making sure the property is not examined, copied, imaged or put to any other use except at the request, or with the consent, of the applicant or in accordance with the directions of the appropriate judicial authority. Any request, consent or directions must be recorded in writing and signed by both the initiator and the officer in charge of the investigation. (See Notes 7F and 7G.)

7.12 When an officer exercises a power of seizure conferred by sections 50 or 51 they shall provide the occupier of the premises or the person from whom the property is being seized with a written notice:

(i) specifying what has been seized under the powers conferred by that section;

(ii) specifying the grounds for those powers;

(iii) setting out the effect of sections 59 to 61 covering the grounds for a person with a relevant interest in seized property to apply to a judicial authority for its return and the duty of officers to secure property in certain circumstances when an application is made, and

(iv) specifying the name and address of the person to whom:

- notice of an application to the appropriate judicial authority in respect of any of the seized property must be given;
- an application may be made to allow attendance at the initial examination of the property.

7.13 If the occupier is not present but there is someone in charge of the premises, the notice shall be given to them. If no suitable person is available, so the notice will easily be found it should either be:

- left in a prominent place on the premises, or
- attached to the exterior of the premises.

### **(c) Retention**

7.14 Subject to paragraph 7.15, anything seized in accordance with the above provisions may be retained only for as long as is necessary. It may be retained, among other purposes:

- (i) for use as evidence at a trial for an offence;
- (ii) to facilitate the use in any investigation or proceedings of anything to which it is inextricably linked (see Note 7H);
- (iii) for forensic examination or other investigation in connection with an offence;
- (iv) in order to establish its lawful owner when there are reasonable grounds for believing it has been stolen or obtained by the commission of an offence.

7.15 Property shall not be retained under paragraph 7.14(i), (ii) or (iii) if a copy or image would be sufficient.

### **(d) Rights of owners etc**

7.16 If property is retained, the person who had custody or control of it immediately before seizure must, on request, be provided with a list or description of the property within a reasonable time.

7.17 That person or their representative must be allowed supervised access to the property to examine it or have it photographed or copied, or must be provided with a photograph or copy, in either case within a reasonable time of any request and at their own expense, unless the officer in charge of an investigation has reasonable grounds for believing this would:

- (i) prejudice the investigation of any offence or criminal proceedings; or
- (ii) lead to the commission of an offence by providing access to unlawful material such as pornography;

A record of the grounds shall be made when access is denied.

### **Notes for guidance**

7A Any person claiming property seized by the police may apply to a magistrates' court under the Police (Property) Act 1897 for its possession and should, if appropriate, be advised of this procedure.

7B The powers of seizure conferred by PACE, sections 18(2) and 19(3) extend to the seizure of the whole premises when it is physically possible to seize and retain the premises in their totality and practical considerations make seizure desirable. For example, police may remove premises such as tents, vehicles or caravans to a police station for the purpose of preserving evidence.

7C Officers should consider reaching agreement with owners and/or other interested parties on the procedures for examining a specific set of property, rather than awaiting the judicial authority's determination. Agreement can sometimes give a quicker and more satisfactory route for all concerned and minimise costs and legal complexities.

7D What constitutes a relevant interest in specific material may depend on the nature of that material and the circumstances in which it is seized. Anyone with a reasonable claim to ownership of the material and anyone entrusted with its safe keeping by the owner should be considered.

7E Requirements to secure and return property apply equally to all copies, images or other material created because of seizure of the original property.

7F The mechanics of securing property vary according to the circumstances; “bagging up”, i.e. placing material in sealed bags or containers and strict subsequent control of access is the appropriate procedure in many cases.

7G When material is seized under the powers of seizure conferred by PACE, the duty to retain it under the Code of Practice issued under the Criminal Procedure and Investigations Act 1996 is subject to the provisions on retention of seized material in PACE, section 22.

7H Paragraph 7.14 (ii) applies if inextricably linked material is seized under the Criminal Justice and Police Act 2001, sections 50 or 51. Inextricably linked material is material it is not reasonably practicable to separate from other linked material without prejudicing the use of that other material in any investigation or proceedings. For example, it may not be possible to separate items of data held on computer disk without damaging their evidential integrity. Inextricably linked material must not be examined, imaged, copied or used for any purpose other than for proving the source and/or integrity of the linked material.



**Police Service**  
of Northern Ireland



Modelling 2011 Census Small Area Religious Composition  
onto Justice and Security Act Stop & Search postcode data  
from August 2020 to July 2021

PSNI Statistics Branch 18 March 2022

## Introduction

PSNI do not currently collect or process community background data in relation to the monitoring of stop and searches carried out under specific powers in Northern Ireland. PSNI is under a legal obligation to collect community background data to assist with monitoring the use of these powers and has been subject to a number of oversight recommendations advising them to put in place a methodology to do so.

This modelling exercise has been carried out at the request of the Independent Reviewer of the Justice and Security Act in Northern Ireland as an interim measure while PSNI identify the most appropriate methodology (or combination of methodologies) to collect, obtain and process 'community background' data for Stop and Searches.

## Methodology

This data modelling involved mapping PSNI Stop and Search data against results from the 2011 Census for the administrative geographies known as Census Small Areas<sup>1</sup>.

The Justice and Security Act (JSA) Stop and Search data<sup>2</sup> used for this analysis consisted of two variables 1) home postcode and 2) policing district, extracted from records of JSA Section 24 and JSA Section 21 Stops which occurred in the 12 month period 1 August 2020 to 31 July 2021. There were 4,309<sup>3</sup> such stops in that time period, however only 72% of these records contained a valid Northern Ireland postcode.

The Census variable used was 'Religion or Religion brought up in' (hereafter referred to as religion).

Each postcode (where available) was assigned three individual values of between 0 and 1 for 'Catholic', 'Protestant' and 'Other/None' respectively, based on the Census results for the Small Area associated with that postcode. These scores provide estimates for the probability of an individual living in that postcode area having a particular religion. For example a postcode which falls into an area with a composition of 45% Catholic, 50% Protestant and 5% other would be assigned values of 0.45, 0.50 and 0.05 respectively.

These estimates are then aggregated to give overall estimates for the religion of all persons stopped within Northern Ireland for each policing district.

Because the postcode data is extracted prior to any data matching taking place the final statistical dataset is anonymous. At no stage are any estimates applied to, or held against, any personal data of individuals who had been stopped and searched/questioned under JSA powers.

## Weaknesses of the analysis

Census Data – The census data used in this analysis was taken from the 2011 census. Over time the demographics of an area can change and we have no way of knowing the extent of some of these

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<sup>1</sup> Small Areas were introduced in Northern Ireland after the 2011 Census and were generally created by amalgamating 2001 Census Output Areas.

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2007/6/contents>.

<sup>3</sup> These are not 4,309 unique individuals as some persons may have been stopped on more than one occasion

changes until the 2021 Census results are released. The equivalent religious composition data from the 2021 Census is not due to be available until summer 2023.

Postcode coverage – Of the 4,309 Stops records, only 3,120 (72%) contain a valid Northern Ireland postcode which means that at the Northern Ireland Level we were unable to assign the religion variables to 28% of records. This coverage varies between policing district and ranges from 54% to 83% across districts (see table 1 for coverage rates by District)

Postcode Accuracy – Home postcodes are recorded by either linking to addresses on PSNI systems or through provision of a postcode by an individual who has been stopped. For those postcodes in the extracted data which were deemed to be valid Northern Ireland postcodes, no further quality assurance was carried out.

Table 1: Postcode coverage by District

District stopped in	Postcode coverage
Belfast City	77%
Lisburn & Castlereagh	73%
Ards & North Down	61%
Newry, Mourne & Down	61%
Armagh City, Banbridge & Craigavon	77%
Mid Ulster	71%
Fermanagh & Omagh	54%
Derry City & Strabane	83%
Causeway Coast & Glens	69%
Mid & East Antrim	71%
Antrim & Newtownabbey	54%
Northern Ireland	72%

#### Results at Northern Ireland Level

The estimated religious composition of those persons stopped and searched/questioned under JSA powers between August 2020 and July 2021 across Northern Ireland was as follows<sup>4</sup>:

- 45% Catholic
- 24% Protestant
- 4% Other/None
- 28% Missing<sup>5</sup>

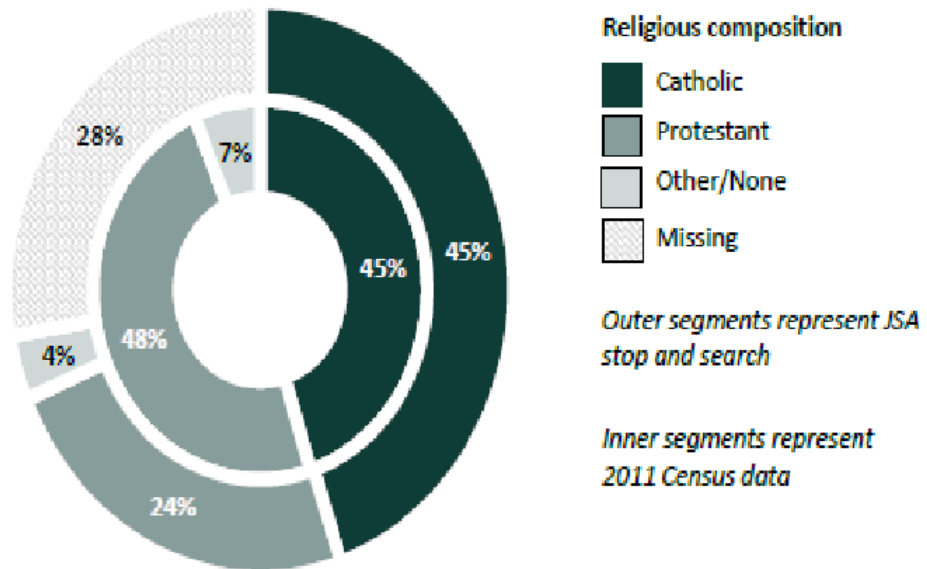
The religious composition of the Northern Ireland population taken from the 2011 Census was 45% Catholic, 48% Protestant and 7% Other/No religion. Figure 1 displays this comparison graphically.

<sup>4</sup> Percentage figures may not sum to 100 due to rounding

<sup>5</sup> Represents those missing and invalid postcodes



Figure 1: Comparing the estimated religious composition of persons stopped and searched/questioned under JSA with that of the Northern Ireland population



## Results by District

Table 2: Comparing the estimated religious composition of persons stopped and searched/questioned under JSA with that of the population, broken down by the District in which the stop took place.

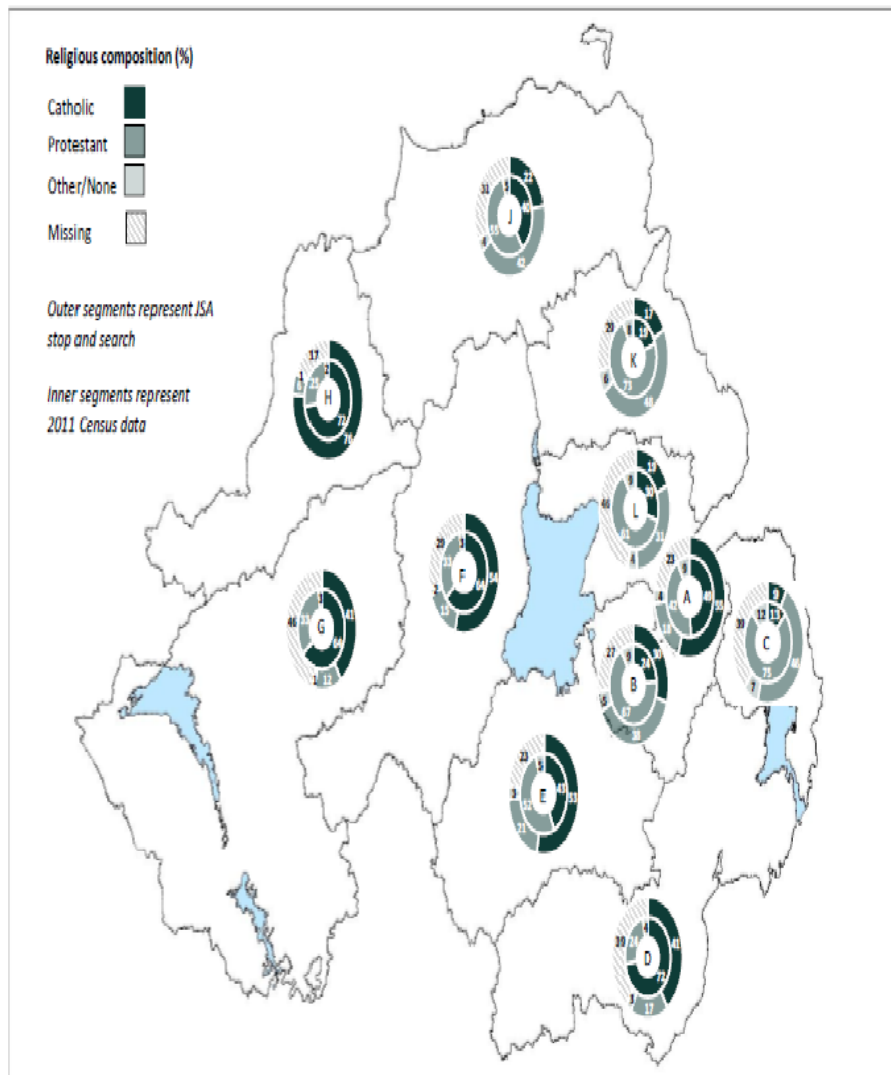
District stopped in	Estimated religious composition of those stopped/searched <sup>1</sup>				Religious composition of the population of that District <sup>2</sup>		
	Catholic	Protestant	Other/None	Missing	Catholic	Protestant	Other/None
Belfast City (A)	55%	18%	4%	23%	49%	42%	9%
Lisburn & Castlereagh (B)	30%	38%	5%	27%	24%	67%	9%
Ards & North Down (C)	9%	46%	7%	39%	13%	75%	12%
Newry, Mourne & Down (D)	41%	17%	3%	39%	72%	24%	4%
Armagh, Banbridge & Craigavon (E)	53%	21%	3%	23%	43%	52%	5%
Mid Ulster (F)	54%	15%	2%	29%	64%	33%	3%
Fermanagh & Omagh (G)	41%	12%	1%	46%	64%	33%	3%
Derry City & Strabane (H)	76%	6%	1%	17%	72%	25%	2%
Causeway Coast & Glens (I)	22%	42%	4%	31%	40%	55%	5%
Mid & East Antrim (K)	17%	48%	6%	29%	19%	73%	8%
Antrim & Newtownabbey (L)	19%	31%	4%	46%	30%	61%	9%
<b>Northern Ireland</b>	<b>45%</b>	<b>24%</b>	<b>4%</b>	<b>28%</b>	<b>45%</b>	<b>48%</b>	<b>7%</b>

<sup>1</sup> JSA section 24 & 21 Stops between August 2020 and July 2021

<sup>2</sup> 2011 Census results

Figure 2 displays these comparisons graphically.

Figure 2: Comparing the estimated religious composition of persons stopped and searched/questioned under JSA with that of the population, broken down by the District in which the stop took place<sup>1</sup>



<sup>1</sup> Refer to Table 2 for District Names



Northern  
Ireland  
Office

## Non-Jury Trials Working Group

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

December 2021

## Identification of practical measures that could be taken to reduce the number of non-jury trials taking place under the Justice and Security (NI) Act 2007

### BACKGROUND

#### *Context*

1. The Justice and Security (Northern Ireland) Act 2007 (the 2007 Act) provides for a non-jury trial (NJT) mechanism in relation to a trial on indictment in exceptional cases where there is a risk from paramilitary or community-based pressure on a jury. The decision to proceed with an NJT is made by the Director of Public Prosecutions (DPP), following a request from the Police Service of Northern Ireland (PSNI), or the Public Prosecution Service (PPS).
2. NJT provisions expire after a period of two years, but may be extended for a further period of two years by secondary legislation, approved in both Houses of Parliament. There is no limit to the number of times that the NJT provisions may be extended in this way. The provisions were last extended in July 2021 and will expire on 31 July 2023.
3. The Government remains fully committed to bringing these temporary provisions to an end, when it is safe to do so and compatible with the interests of justice. In order to work towards this, the Northern Ireland Office has established a working group as recommended by the previous Independent Reviewer of the Justice and Security Act (IRJSA), David Seymour, in the Twelfth<sup>1</sup> and Thirteenth<sup>2</sup> Reports.

#### *Meetings*

4. The working group has met four times since the introductory meeting on 27 July 2021.
5. The Terms of Reference (Annex A) were agreed at the first meeting. These outline two key aims for the working group:
  1. Identify practical measures and legal measures that could be taken to reduce the number of non-jury trials taking place.
  2. Identify the indicators that members would look to in order to be satisfied that the non-jury trial provisions were no longer necessary.
6. Aim one above has been the focus of the working group discussions to date and this report, from the perspective of the Northern Ireland Office (NIO) summarises the group's findings.
7. In order to establish a baseline understanding amongst members, the group has been briefed on:

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<sup>1</sup> The Twelfth Report of the IRJSA can be accessed here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/957086/12th\\_Report\\_18-19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957086/12th_Report_18-19.pdf)

<sup>2</sup> The Thirteenth Report of the IRJSA can be accessed here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/979145/Thirteenth\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/979145/Thirteenth_Report.pdf)

- a. Northern Ireland security situation (PSNI);
- b. harms which the NI Executive's Tackling Paramilitarism Programme is seeking to address (NI Executive Programme for Tackling Paramilitarism, Criminality & Organised Crime);
- c. process of issuing a non-jury trial certificate under the 2007 Act (Public Prosecution Service); and
- d. non-jury trial process under the Criminal Justice Act 2003 (Crown Prosecution Service).

## DETAIL

8. In addition to practical measures, requirement one under the Terms of Reference also mentions the identification of legal measures. The working group has discussed the overall intention to move away from a requirement for Northern Ireland-specific provisions for NJTs. Suggestions for amendments which could be made to the 2007 Act have been noted. However, none have yet been considered in detail given that this would continue to keep a Northern Ireland-specific regime in place. Political appetite and Parliamentary approval for amendments that maintain such a distinction are unlikely given that the Government's repeatedly stated aim is to allow the provisions to expire when the time is right. An option, which has been mentioned in the working group and may be more politically palatable, would be to explore whether specific, temporary amendments for Northern Ireland could be made to the Criminal Justice Act 2003 (the 2003 Act). Whilst continuing to distinguish Northern Ireland, it would be a marked step towards aligning with England and Wales whilst seeking to manage risks associated with the persistence of paramilitarism.

### *Existing jury arrangements/measures*

9. During working group discussions, members have been made aware of the jury arrangements and measures that already exist. In addition to provisions for NJTs, sections 10-13 of the 2007 Act<sup>3</sup> contain measures aimed at protecting juries in Northern Ireland. It has been noted that it would be prudent for these provisions to remain in place even if the 2007 Act provisions for NJTs were to be elapsed. They include:
  1. Restriction on disclosure of juror information (it is an offence for those engaged in the criminal justice system to disclose juror information);
  2. Balloting of jurors by number rather than by name;
  3. Routine criminal records checks may be carried out to prevent disqualified persons from serving as jurors; and
  4. Provision for a judge to privately hear the cause for any challenge from the defendant against a juror.
10. The working group has also been made aware of precautions that are, or can be, deployed in Northern Ireland in relation to jurors to protect the integrity of the trial. These include:

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<sup>3</sup> Sections 10-13 of the Justice and Security (Northern Ireland) Act 2007 can be found here: <https://www.legislation.gov.uk/ukpga/2007/6/crossheading/juries>

1. Jury keepers who act as the conduit between the jury and the judge; any concerns (for example about jury tampering) can be escalated to the judge in this way;
2. Ensuring there are entry/exit/access points for jurors which are not used by members of the public/defendants; and
3. Consent forms are kept separately rather than as part of a list so that jurors do not see each other's signatures.

***Practical measures already considered by the DPP prior to the issuing of a NJT certificate***

11. In the Tenth Report<sup>4</sup>, the previous IRJSA recommended that it should be noted on the NJT certificate that prior consideration had been given to jury protection measures. This recommendation was accepted by the Public Prosecution Service (PPS). Before issuing a NJT certificate, consideration is given to:
  1. screening/sequestering the jury; and
  2. moving the trial to another location.
12. Whilst screening/sequestering and moving the trial are considered, they are rarely deemed to be feasible options in Northern Ireland. Changing the trial to another location would usually have little impact on the risks in question, given the small geographical area, the tight-knit nature of the community in Northern Ireland and the broad reach of paramilitary influence. Sequestering a jury of 12 people for the duration of a trial would have a significant impact on their own freedoms during that time and would incur significant cost. In relation to screening, during the COVID-19 pandemic, perspex screens were placed in front of juries. Even this relatively minor change raised concerns about the impact on a fair trial due to jurors' lines of sight being affected.
13. A key issue with the above options is that the likelihood that deploying them would cause jurors to question why the measure(s) had been deemed necessary. Consequently, the risk of a fearful, and therefore potentially biased, jury would arise. Given how prominent the presence of paramilitary groups is likely to be in the mindset of the general public in Northern Ireland, jurors would be quick to make those connections.
14. Similar concerns in relation to possible protective measures leading to an incurable compromise of the jury's objectivity are noted in case law on the use of the NJT provisions under the 2003 Act in England and included in the Crown Prosecution Service (CPS) guidance. For example in *J, S, M v R* [2010] EWCA Crim 1755, it is argued that "*protective measures would be unreasonable because they would subvert the jury's ability objectively and dispassionately to dispose of the case*".

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<sup>4</sup> The Tenth Report of the IRJSA can be accessed here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/957084/10th\\_Report\\_1617.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957084/10th_Report_1617.PDF)



15. The CPS guidance also states that relevant consideration of protective measures can include their cost and feasibility, as well as the likely impact on the jurors' lives and consideration of whether even the most extensive measures would be sufficient to prevent the improper exercise of pressure were it to be attempted.

#### *Other possible jury protection measures*

16. A question was raised in the working group as to whether police protection could be put in place for jurors involved in trials where there could be a risk of threat or intimidation. However, there is a view that, as is the case with witness protection, jurors in such cases (and possibly their families) would need protection for the duration of the trial as well as afterwards. Significant cost implications would arise, as would the concerns noted in paragraphs 13-14 in relation to impact on the lives of jurors and possible compromise of their objectivity.
17. The working group has queried whether, particularly as a result of any changes brought about by the COVID-19 pandemic, consideration could be given to jurors carrying out their functions remotely. In addition to the comments in paragraphs 13-14 in relation to concerns about impact on a fair trial, we also note that a significant investment in technology would be required. If remote juries were introduced solely to deal with cases which would currently be deemed NJTs under the 2007 Act, the risk of compromise of juror objectivity still arises as does the question of fairness to defendants in these cases. Therefore, a move towards the use of remote juries for such cases should be in line with any broader plans for introducing remote juries in Northern Ireland. Advice from the Northern Ireland Department of Justice (DoJ) is that the option of remote juries is not currently under consideration.

#### *Other suggestions/matters which could contribute to reducing the number of NJTs under the 2007 Act*

18. The working group has agreed that it would be useful to consider cases where the DPP has refused a NJT certificate in order to determine whether those trials proceeded with a jury and if so, whether any additional measures were introduced as a result. The NIO and the PPS are considering whether lessons can be learned from those cases and will report back to the working group.
19. Similar to the inclusion on the NJT certificate of a note to confirm that jury protection measures have been examined (paragraph 11), a further suggestion is to include a note to confirm that use of the NJT provisions under the 2003 Act had been considered. Formal consideration of this at an early stage could help to determine whether any cases for which use of the 2007 Act is being considered, could be dealt with under the 2003 Act. In practice this would mean an early determination on whether any of the information being presented to the DPP to justify a NJT would meet the evidential threshold required by the 2003 Act. However, an application under the 2003 Act requires admissible evidence and the standard of proof is to the criminal standard. It would be rare for this standard of proof to be available at the pre-arraignment stage but any certificate for a NJT under the 2007 Act must be issued pre-arraignment.



20. While considering the 2003 Act as an alternative to be used pre-arraignment may not reduce the number of NJT certificates, thinking of the 2003 Act as a safety net may. In some cases, the DPP may choose not to grant a certificate under the 2007 Act because he can be confident that if necessary, the 2003 Act can be used to grant an NJT.
21. In accordance with the statutory criteria, certificates for a NJT may be granted by the DPP for legacy cases as well as present-day prosecutions. The UK Government published a Command Paper in July 2021 setting out a proposed way forward for addressing the legacy of Northern Ireland's past. Whilst next steps continue to be considered, we note that the Command Paper proposed a Statute of Limitations to remove the prospect of criminal prosecutions. This would not be a prohibition on investigations but any reduction in the number of legacy cases being taken through the criminal justice system would also likely see a small but further reduction in the number of NJTs under the 2007 Act.
22. During discussions of the working group, it has been suggested that the use of civil orders (e.g. Terrorism Prevention and Investigation Measures, Serious Crime Prevention Orders, Unexplained Wealth Orders) as alternatives to prosecution could be considered. The point has been made that certain cases are not able to be prosecuted, for example due to the sensitive nature of the intelligence used in the investigation. It was suggested that if the 2007 Act provisions were no longer available, then the number of cases that could not be prosecuted might increase. Members of the working group unanimously agreed that prosecution is always the preference but where that is not possible these civil orders provide a range of other measures to be considered and this should be of some reassurance to those making the decision when the time comes, to move away from Northern Ireland-specific provisions for NJTs. Whilst an important point for policy advisors, this has been determined to be outside the Terms of Reference of the working group.

### *Juror Bias*

23. In addition to the risk of juror intimidation, there is also the potential for juror bias in certain cases 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 NJT provisions in the 2007 Act 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.
24. When considering practical measures that could be taken to reduce the number of non-jury trials taking place under the 2007 Act, the working group examined the risk of juror bias.
25. The group discussed the fact that there is a lack of evidence to prove that jury bias is likely to be a significant problem. This is because of section 8 of the Contempt of

Court Act 1981<sup>5</sup> which makes it an offence to 'obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings'.

26. Before a NJT certificate can be granted, the DPP must suspect that one (or more) of the four statutory conditions is met and be satisfied that there is a risk that the administration of justice might be impaired if a jury trial were to be held. It was suggested that in order to gather data on juror bias, condition four<sup>6</sup> could be considered as a proxy for bias wherein certificates granted based on condition 4 could be counted as cases where bias was part of the reason a certificate was granted. However, this would be inaccurate given that condition four relates to the nature of the offence rather than the nature of the jury and an automatic linkage between religious or political hostility and jury bias should not automatically be made.
27. As the method described in paragraph 26 above would not yield accurate results, the PPS have agreed to undertake a manual trawl of the last full year's cases to determine how many certificates were granted when juror bias was a consideration.
28. We note that processes are in place to ensure jury selection is as fair as possible. For example, the Juries (Northern Ireland) Order 1996<sup>7</sup> outlines how a jury is selected; it lists persons disqualified, ineligible and exempt from jury service; and it explains how a juror may be challenged if the prosecution or defence believe they should not serve on the panel.
29. The working group heard about the pre-briefing that judges give to a jury before each trial wherein they stress the importance of making decisions based solely upon the available evidence. Each juror is required to swear or affirm that they will "faithfully try the defendant and give a true verdict according to the evidence". Anecdotally, members of the group asserted that jurors take this instruction very seriously.
30. Differing views were expressed within the group on the issue of juror bias. Some members were of the opinion that the history and societal divide in Northern Ireland is deeply ingrained in members of the public, therefore a strong assumption of likely bias can be made in certain cases. Others stated that the public in Northern Ireland had largely moved on and that this assumption may not be a safe one to continue to make. When the group examines the indicators that would be used to determine when Northern Ireland-specific provisions for NJTs may no longer be necessary, it will likely assist in furthering understanding of the continued likelihood of juror bias in the cases in question.

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<sup>5</sup> Section 8 of the Contempt of Court Act 1981 can be accessed here:

<https://www.legislation.gov.uk/ukpga/1981/49/section/8>

<sup>6</sup> 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.

<sup>7</sup> The Juries (Northern Ireland) Order 1996 can be accessed here:

<https://www.legislation.gov.uk/nisi/1996/1141/contents>

## CONCLUSION

31. The establishment of the working group is the first time that this issue has been regularly discussed by those engaged with it since the 2007 Act provisions were introduced. This represents progress in itself and we expect that it will result in a rich selection of informed responses following the next public consultation on the matter. This will be of great assistance to Ministerial decision-making.
32. The group discussions have revealed the real challenge in further reducing the already small number of NJTs under the 2007 Act. This is particularly the case given that there is unlikely to be appetite for amending those provisions rather than moving to rely solely on the 2003 Act for NJTs in Northern Ireland. However, we remain mindful of Northern Ireland's unique circumstances and note that the difference in the threshold for a NJT under the 2007 Act and the 2003 Act has been described as a 'gulf.' Moving to rely solely on the 2003 Act in Northern Ireland is therefore a question of when the associated risk would be deemed to be acceptable. As it has been pointed out, a similar risk was taken in 2007 to move to the current NJTs system. The decision to take such a step is outside of the remit of the working group; rather it is for Ministers. Again, the information exchange within the group will be vitally important in advising on this, particularly as the discussion turns to the examination of relevant indicators.
33. In relation to reducing the number of NJTs under the 2007 Act, changes in the number of terrorist, paramilitary and legacy cases being tried would have an impact. In terms of practical measures that could be introduced, it is clear that no one change is likely to have a significant impact. Any move towards the introduction of remote juries in Northern Ireland may also contribute, however we understand that such a move is unlikely in the short-medium term.
34. It is clear that those engaged in certifying NJTs will continue to ensure challenge is inherent within that process and that options for proceeding with a jury continue to be considered in every case. We understand that there is an awareness amongst practitioners of the option of relying on the 2003 Act. It may be that there is a means of formally recording consideration of its use, particularly as a 'safety net' as set out in paragraph 20, prior to the issuing of a certificate under the 2007 Act.
35. Finally, further consideration could be given to specific, temporary amendments for Northern Ireland being made to the 2003 Act as described in paragraph 8. These amendments could perhaps allow cases in Northern Ireland to be considered at a slightly lower standard of proof than in England and Wales. Whilst it would take some time (likely years) to make such a legislative change and noting that it would continue to distinguish Northern Ireland, it would be a marked step towards aligning with England and Wales whilst seeking to manage risks associated with the persistence of paramilitarism.



Northern  
Ireland  
Office

## Non-Jury Trials Working Group

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

November 2022



**Report on NJT Working Group Requirement Two: *identify the indicators that members would look to in order to be satisfied that the non-jury trial provisions were no longer necessary***

**BACKGROUND**

*Purpose*

1. This paper was written to provide the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 (IRJSA) with an overview of the discussions that shaped the working group recommendation being made for Requirement Two of the Terms of Reference (ToRs). The working group would appreciate the IRJSA's views on this recommendation.
2. Recommendation: **all the metrics/indicators listed in points A-D below should be used in combination to build a contextual picture that the Secretary of State can use to help inform their decision on whether the NJT provisions in the 2007 Act should be extended.**

*Context*

3. The Justice and Security (Northern Ireland) Act 2007 (the 2007 Act) provides for a non-jury trial (NJT) mechanism in relation to a trial on indictment in exceptional cases where there is a risk from paramilitary or community-based pressure on a jury. The decision to proceed with an NJT is made by the Director of Public Prosecutions (DPP), following a request from the Police Service of Northern Ireland (PSNI), or the Public Prosecution Service (PPS).
4. NJT provisions expire after a period of two years, but may be extended for a further period of two years by secondary legislation, approved in both Houses of Parliament. There is no limit to the number of times that the NJT provisions may be extended in this way. The provisions were last extended in July 2021 and will expire on 31 July 2023.
5. The Government remains fully committed to allowing these temporary provisions to expire, when it is safe to do so and compatible with the interests of justice. In order to work towards this, the Northern Ireland Office has established a working group as recommended by the previous IRJSA, David Seymour, in the Twelfth<sup>1</sup> and Thirteenth<sup>2</sup> Reports.
6. The NIO created the group and provides a secretariat function for all meetings. When inviting membership to the group, the NIO used the IRJSA's recommendation ("*such a group could include representatives from the PPS, PSNI, the Court Service, the Bar, the Law Society and independent organisations with an interest in these matters*") as a template. To ensure a diversity of ideas, we wanted to ensure experts from as broad a range of organisations and backgrounds were included in the group. The full group membership is listed in Annex A.
7. It is important to note that the expiration of these provisions will not leave Northern Ireland without any option for non-jury trials. The Criminal Justice Act 2003, which

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<sup>1</sup> The Twelfth Report of the IRJSA can be accessed here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/957086/12th\\_Report\\_1819.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957086/12th_Report_1819.pdf)

<sup>2</sup> The Thirteenth Report of the IRJSA can be accessed here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/979145/Thirteenth\\_Report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/979145/Thirteenth_Report.pdf)

applies across England & Wales and Northern Ireland, provides (in very limited circumstances) for trials to be heard without a jury. However, the threshold for the use of these provisions is set much higher than the current system in Northern Ireland. The expiration of these 2007 Act provisions would be a further step towards security normalisation in Northern Ireland.

8. The decision on whether to extend the non-jury trial provisions under the 2007 Act for a further period is multi-dimensional and sits with the Secretary of State for Northern Ireland. The group agreed that, although not measurable and therefore not suitable as an indicator, the values inherent in the justice system should be borne in mind when considering the future of non-jury trials. These include
  - o the value of raising the quality in the delivery of justice processes which the jury is considered to impart in the adversarial common law system;
  - o jury participation, which is affirmative of equality, community legitimacy and the enhancement of civic education;
  - o normalisation and the continued move from special security measures as part of the stronger attainment of a peaceful settlement.
9. The UK Government continues to be committed to bringing an end to these provisions when it is safe to do so and compatible with the interests of justice.

#### **Meetings**

10. The ToRs at Annex A were agreed at the first meeting of the working group. They set out two key Requirements for the working group:
  - o Identify practical measures and legal measures that could be taken to reduce the number of non-jury trials taking place.
  - o Identify the indicators that members would look to in order to be satisfied that the non-jury trial provisions were no longer necessary.
11. On 16 December 2021 the working group met the IRJSA to discuss their findings around Requirement One.
12. Requirement Two has been the focus of the working group discussions since then and this report summarises the group's findings.
13. In order to establish a baseline understanding of potential indicators amongst members, the group has been briefed on:
  - a. How the Programme for Tackling Paramilitarism, Criminality & Organised
  - b. Crime measures progress (benefits realisation).
  - c. The different types of evidence of intimidation seen by Victim Support NI.

#### **DETAIL**

##### **Summary**

14. The working group has discussed the indicators that members would look to in order to be satisfied that the non-jury trial provisions were no longer necessary.
15. The group has come to the conclusion that no indicator will be perfect. However, a combination of imperfect indicators, alongside responses from public consultation could inform the Secretary of State's decision-making process when the time to renew the NJT provisions comes around.

#### **POTENTIAL INDICATORS**

- A. Assessed threat against jurors in Northern Ireland**
- The NIO will commission MI5 for a regular (six-monthly) intelligence-based assessment of the threat against jurors in Northern Ireland. This threat assessment will be based upon sensitive material but the assessed threat-level (low, moderate, substantial, severe, critical) will be openly available. We have requested the first threat assessment and expect to receive it soon.
  - The working group raised concerns about the fact that the underlying intelligence will not be visible to everyone. However, the Secretary of State could request a briefing on the intelligence that shapes the threat-level in order to better inform his decision-making regarding the renewal of the NJT provisions.
- B. Level of Paramilitary/Terrorist Activity**
- The following metrics can be used to demonstrate 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
  - Charts and analysis are set out in Annex B. The full data sets are available in Annex C.
- C. Level of Intimidation**
- The following metrics can be used to demonstrate 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
  - Charts and analysis are set out in Annex B. The full data sets are available in Annex C.
- D. Level of Use of Terrorism Legislation**
- The following metrics can be used to demonstrate 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
  - Charts and analysis are set out in Annex B. The full data sets are available in Annex C.
- E. Level of Use of NJTs**
- The following metrics can be used to demonstrate the usage of the NJT provisions in the 2007 Act.
    - NJT cases as a percentage of all Crown Court cases

- Certificates issued and refused for NJTs by the Director of Public Prosecutions
  - Percentage of cases in which each condition met
  - Average percentage of cases in which each condition met
- Charts and analysis are set out in Annex B. The full data sets are available in Annex C.

## ISSUES IDENTIFIED

### *Proxy Data*

16. The preventative nature of the current NJT provisions under the 2007 Act means that we do not hold data on jury tampering because the provisions ensure it does not generally happen. As a result, any potential indicators must rely on proxy data. This data will help us build a general picture of the security situation in Northern Ireland and the potential threat of jury tampering.
17. The working group accepted that proxy data must be used but with the caveat that we must be cognisant that this data is not directly related to the threat to jurors.

### *Data Accuracy & Reliability*

18. The data from 2020-2022 onwards must be treated with caution as the impact of the COVID-19 pandemic is likely to skew the figures. In addition we note that some of the data is compiled for operational reasons. While this does not negate the use of the data it does mean that it must be appropriately caveated and weighed. In particular the group noted that the number of people accepted by the NI Housing Executive as homeless due to intimidation risks potentially under and over estimating the scale of intimidation.
19. The Victim Support NI presentation highlighted informal and anecdotal evidence of various types of witness and victim intimidation that occurs. The presentation concluded by stressing that there are many cases in which victims will not come forward to report a crime or to report intimidation due to fear of the consequences. Data must be caveated to ensure that low reporting rates for intimidation do not skew interpretation of statistics.

### *Rejected Indicators*

20. The working group discussed each of the indicators presented in points A-D. However, the below was also discussed but was deemed unsuitable:
  - Files received by PPS with a complaint of intimidation - this metric covers offences of intimidation, attempted intimidation and conspiracy to intimidate witnesses, jurors and other persons - because it can apply to all 'other persons' the group found it was too broad to be of value as an indicator.

## CONCLUSION

21. Analysis of the metrics outlined above paints a complex picture (see Annex B for full analysis). Many of the trendlines are of low to moderate statistical significance. When some trendlines are split and indexed to 2007, we can see trends flattening - does this indicate a slowing of progress or are the numbers now too low to expect any additional significant decrease?
22. As discussed earlier in this paper, we are using proxy data and we have conceded that the nature of intimidation means some of our data will not be 100% accurate.



23. We have been focused on identifying indicators but we must also decide how the indicators should be used in the decision making process.
24. The working group discussed two options for how the indicators should be used:
  - a. Agree set levels that each metric should reach before they indicate that we should be satisfied that the non-jury trial provisions are no longer necessary; or
  - b. Take a more holistic approach wherein the indicators are considered together to build a contextual picture of the environment in which the Secretary of State is making their decision.
25. As a result of the nature of the data and the difficulties in identifying anomalous years up front, using the metrics to build a holistic contextual picture may be more beneficial than setting targets for each metric to reach before we are satisfied that the NJT provisions under the 2007 Act can be allowed to expire.
26. Therefore our recommendation is that all the metrics/indicators listed above should be used in combination to build a contextual picture that the Secretary of State can use to help inform their decision on whether the NJT provisions in the 2007 Act should be extended.

#### *Next Steps*

27. In practice, this recommendation means that views will continue to be collected from the public and interested stakeholders via public consultation when the provisions are approaching expiry. The Secretary of State will be provided with the consultation responses as per usual but at the same time he will also receive a summary of all the indicators listed in this paper to help inform his decision.
28. After the Independent Reviewer has read this paper, she will be invited to discuss this recommendation with the group.

Reference Number:

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

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

**1) Name of Applicant:**

**2) Length of Authorisation:**

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

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

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

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

Entire Area of Northern Ireland <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).

**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 _____	Authorising Officer _____
Time Signed/Authorised from _____	Of Oral Authorisation _____

Reference Number: \_\_\_\_\_

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

**1) Authorising Officers Rationale**

**2) Authorising Officer Contact and Telephone Number:**

**3) PSNI Human Rights Legal Advice**

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

**4) Assessment of the threat:**

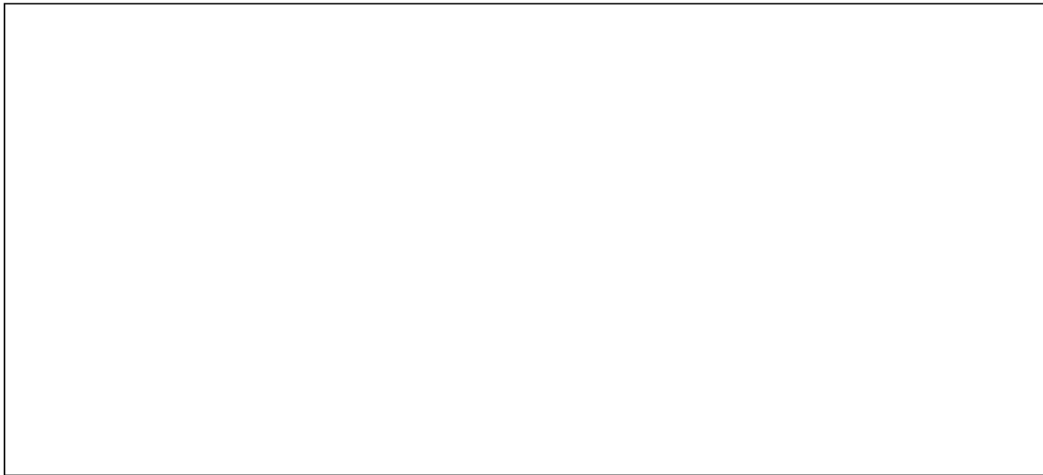
Authorising Officers should provide a detailed account of the intelligence which has given rise to reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. This should include classified material where it exists (Please see Explanatory Notes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

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

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

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

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



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

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

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



**8) Description of and reasons for duration of authorisation:**

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

The duration of an authorisation should be "no greater than necessary"

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

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

**10) Practical Implementation of powers:**

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

**11) Community engagement:**

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

--

**12) Policing Board engagement:**

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

--	--

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

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

Cancellation / Amendment	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>
-----------------------	--



Reference Number:

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

1) **Name of Applicant:**

Area Co-Ordinator Belfast Area Co-Ordinator North Area Co-Ordinator South Area Co-Ordinator Derry City & Strabane
--

2) **Length of Authorisation:**

Please note that the duration of an authorisation should be "no longer than is necessary". (Please see Explanatory notes for detail)

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

3) **Location where powers to apply (please specify – Appendix B refers)**

Entire Area of Northern Ireland <input type="checkbox"/>	Map Attached <input type="checkbox"/>
Specific Districts <input type="checkbox"/>	Map Attached <input type="checkbox"/>
Districts      A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H <input type="checkbox"/> J <input type="checkbox"/> K <input type="checkbox"/> L <input type="checkbox"/>	

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

Para 4A(1) or Schedule 3 to the 2007 Act specifically provides that a senior officer may give an authorisation under this paragraph in relation to a specified area or place if the officer:-

(Please confirm that you):	
(A) Reasonably suspects that the safety of any person might be endangered by the use of munitions or wireless apparatus	<i>Tick to Confirm</i> <input type="checkbox"/>
(B) And THAT YOU reasonably consider that-	
<ul style="list-style-type: none"> <li>• the authorisation is necessary to prevent such danger,</li> </ul>	<i>Tick to Confirm</i> <input type="checkbox"/>
<ul style="list-style-type: none"> <li>• the specified area or place is no greater than is necessary to prevent such danger, and</li> </ul>	<i>Tick to Confirm</i> <input type="checkbox"/>
<ul style="list-style-type: none"> <li>• the duration of the authorisation is no longer that is necessary to prevent such danger</li> </ul>	<i>Tick to Confirm</i> <input type="checkbox"/>

5) **Authorising Officer:**

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

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



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

**1) Authorising Officers Rationale**

Points to consider:

Grounds to reasonably suspect that the safety of any person might be endangered by use of munitions or wireless apparatus. The authorisation is necessary to prevent such danger **and other stop and search powers are insufficient to achieve this aim.** The geographical scope and duration of authorisation is no greater than necessary to prevent such danger.

**2) Authorising Officer Name and Contact Number:**

**3) PSNI Human Rights Legal Advice**

The Authorising Officer has sought advice from the PSNI Human Rights Legal Adviser **to ensure** the authorisation complies with the legislation and Code of Practice. A copy of the advice is set out below

**Legislative Basis**

**Necessity Considerations**

**Proportionality Considerations**

Lloyd McKeag

- 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 and that it is necessary to give the provision of a stop and search power that does not require reasonable suspicion to police officers. This should include classified material where it exists (Please see Explanatory Notes for more details).

<p><b><u>OVERVIEW</u></b></p> <p>Dissident Republican, Loyalist Paramilitary groupings and criminal gangs have ready access to munitions in their various forms. They also have access to, and use wireless apparatus in incidents that result, or may result, in death or serious injury being suffered by members of the public or law enforcement.</p> <p><b><u>CURRENT THREAT UPDATE</u></b></p> <p><b>Munitions / Movement</b></p> <p><b>Threats</b></p> <p><b><u>REPUBLICANISM</u></b></p> <p><b>For example :</b></p> <ul style="list-style-type: none"><li>• INLA Belfast</li><li>• INLA Londonderry</li><li>• ONH</li><li>• AAD</li></ul> <p><b><u>LOYALISM</u></b></p> <p><b><u>OTHER CRIMINALITY</u></b></p>
---

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

Paragraph 4A Schedule 3 provides the PSNI with a legal power to enable the search of people in public areas where the threat to safety is highest.

"In the period for which the authorisation is sought:

I have examined the available information on the endangerment from munitions or wireless apparatus. I am satisfied that the powers are necessary to prevent such endangerment. [ ]

I am satisfied that the use of these powers is required to help deal with the perceived threat, that the paragraph 4A(1) power is the most appropriate power to use in the circumstances and the use of "without reasonable suspicion" search powers is proportional to the threat. [ ]

I have taken into account the safety of the public and the safety of officers and I am satisfied that the authorisation of the stop and search power is "necessary to prevent such danger". [ ]

I have considered the suitability of other search powers including those that require reasonable suspicion. [ ]

(Please initial) \_\_\_\_\_

(6) **Description of and reasons for geographical extent and duration 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 for the duration of the requested authorisation. A map is provided at Appendix B (Please see Explanatory Notes for more details).

The geographical extent and duration of an authorisation should be "no greater than necessary"

**7) 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).

<p>All officers using the powers are briefed regarding the appropriate use of these powers:</p> <p>Are officers aware that where there is intelligence about munitions or wireless apparatus that relates to a named individual or location, the appropriate stop and search powers should be used ? [ yes / no ]</p> <p>Are officers aware that where there is intelligence about munitions or wireless apparatus being held or moved but no intelligence about the location or the person suspected then the use of without suspicion powers would be justified ? [ yes / no ]</p> <p>Have all officers using the powers been fully briefed and understand that searches (if authorised) may only be exercised for the purpose of discovering unlawfully held munitions or wireless apparatus ? [ yes / no ]</p> <p style="text-align: right;">(Please initial) _____</p>
---

**(8) Community engagement and accountability:**

The Authorising Officer should provide an example of 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).

<p>Local communities have been engaged and Community Impact Assessments have been conducted locally and these are continually reviewed</p> <p><b>An example of recent engagement and feedback is:</b></p> <ul style="list-style-type: none"><li>• <b>District/Area</b></li><li>• <b>Engagement Method</b></li><li>• <b>PCSP feedback</b></li></ul>
--

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

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

Cancellation / Amendment	
--------------------------	--

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

**A summary of use of these Powers during the most recent authorisation is attached at Appendix C for information.**



**Police Service**  
of Northern Ireland

Professor Marie Breen-Smyth

Operational Support Department  
Police Headquarters  
65 Knock Road  
Belfast BT5 6LE  
Email: melanie.jones@psni.police.uk  
Tel: 028 9070 0803

Delivered in person.

Date: 26th April 2024

Dear Marie,

You will be aware that earlier this month the Chief Constable submitted his accountability report to the Northern Ireland Policing Board. This gives notice, under the Confidence in Policing section, of the PSNI's implementation of a three month pilot. This pilot will monitor the community background of persons searched by virtue of powers conferred under the Justice and Security (Northern Ireland) Act 2007 as well as the Terrorism Act 2000.

This work is vitally important to promote organisational learning and continual improvement, increase accountability and transparency and build legitimacy and trust, especially around the use of police powers such as stop and search.

For the purposes of this pilot (planned to commence April 30<sup>th</sup> 2024), it has been agreed that community background information will be gathered from persons who are stopped and searched under the following powers:

- JSA24 (Authorisation)
- Justice & Security (NI) Act 2007 (s21)
- JSA24 (Reasonable Suspicion)
- Terrorism Act 2000 (s43)
- Terrorism Act 2000 (s43A)
- Terrorism Act 2000 (s47A) (Authorisation)



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## Police Service of Northern Ireland

Terrorism Act 2000 Sch5

TPIM Act Sch5

Note - Whilst the community background monitoring pilot will initially only be applied to the powers listed above, it is intended that it will be applied to additional stop and search powers in time, once our final architecture has been established.

The method by which PSNI will begin to gather this information will be by means of the police officer conducting the stop and search procedure, asking the following question:

*"To help us monitor the necessity and proportionality of this use of stop and search powers, I will now ask you a question. You are not required to answer this question. What is your community background, is it:"*

*Catholic / Nationalist / Republican [Select],*

*Protestant / Unionist / Loyalist [Select],*

*Other [Select. This will require the officer to input a meaningful free text entry],*

*Declined to say / Refused [Select box]."*

Note - The "Other" category above, if selected by the officer, will open a mandatory free text field which will then be completed by the recording officer. The responses recorded within the free text fields during the pilot period will allow for the collection and testing of data to identify any other community backgrounds which should be included within our final community background monitoring architecture. It is worth noting that there is no provision for officer perception in gathering this data and the data sought is that of a self-perceived nature only. If the subject declines to answer then the officer must only reflect this via the "Declined to say / refused" field. Additionally, there is no power to obligate an individual to provide such information and no power to detain them for such purposes.

 [psni.police.uk](https://psni.police.uk)

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## Police Service of Northern Ireland

In the absence of any legislative enabling framework and no widely recognised definition of community background, the development of an organisational approach has been challenging. There is no doubt that our initial approach will require review and adjustment as we learn from the pilot and develop a detailed understanding.

The pilot has been developed through the Service Accountability Panel (SAP), supported by the external reference group members and with oversight from the NIPB Human Rights advisor and the Independent Reviewer of the exercised powers under the Justice and Security (Northern Ireland) Act 2007.

Yours Sincerely

**Melanie Jones**

**T/Assistant Chief Constable Melanie Jones**

**Operations Support Department**

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we act**

## Independent Reviewer Justice & Security (NI) Act 2007

Professor M B E Breen-Smyth

---

Dear Colleagues,

I had intended to send you the entirety of that section of my report to parliament on the non-jury trial provision within the Justice and Security (Northern Ireland) Act 2007 (JSA), but unfortunately it is not yet complete.

Instead, I offer you the following summary and can certainly send you the longer document when it is complete in the next day or so. However, conscious of your deadline of today, here is the summary of my current thinking.

1. I am the Independent Reviewer of the JSA and I am currently preparing my report to parliament on the review of the operation of certain sections of the JSA including those pertaining to non-jury trials (NJT) in Northern Ireland.
2. In my report I review the work of the working group on non-jury trials, which produced two reports. The first of these was at the request of my predecessor David Seymour CB, who asked for their views on how to drive down the numbers of NJTs in Northern Ireland. The second was at my request and considers the indicators that might be used to determine whether or not the security situation warranted the demise of the JSA provisions for NJTs.
3. On the first question of how to drive down the numbers of NJTs, I am grateful to the working group for their deliberations. However, for a number of reasons, I am not convinced that the numbers can be driven down further. Chief of these reasons is that, in my opinion, the Public Prosecution Service already operates a rigorous review of all applications and more importantly the Public Prosecution Service is averse to refusing a non-jury trial certificate where, even though the statutory criteria were met, the risk of jury tampering or bias is very low the Director is legally obliged to issue a certificate in those circumstances, under the discretion available to him under Section 1 of the JSA. Certainly, Lord Kerr in *Hutchings* would support him in maintain this position.
4. However, I am persuaded by the argument of my colleague, Jonathan Hall KC, who points out that Lord Kerr in *Hutchings* was not referring to *any* risk to the administration of justice, but rather to the type of risk to the administration of justice to which Lord Kerr referred at paragraphs 26-7 and paragraph 40 which was described in *Jordan* as a "real risk", not a "remote or fanciful possibility", "a real (as opposed to the remote or fanciful) possibility of jury bias".
5. Consequently, I support Jonathan Hall's view that **some immediate amendment to the PPS guidance to: a. distinguish between a real risk and a remote or fanciful risk; and b. explain that the purpose of considering the risk to the administration of justice is identify the risk to the fairness of the proceedings. This may not however, have any effect on the numbers of NJTs.**

6. The second working group report was produced at my request and considers the indicators that might be used to determine whether or not the security situation warranted the demise of the JSA provisions for NJTs. The table below summarises the indicators considered by the group, what each measures, the trend visible from scrutiny of that indicator and my evaluation of any trend and the usefulness of each indicator. A fuller discussion of these together with a summary of each indicator tracked over a period of time is available in the second working group report.

**Table 1.1:**

	INDICATOR	MEASURES?	COMMENT	5-YEAR TREND	RECOMMENDATION
1	regular (six-monthly) intelligence-based assessment	threat against jurors in Northern Ireland	assessed threat-level (low, moderate, substantial, severe, critical) openly available		Strong indicator, result not yet available: USE
2	Deaths due to the security situation	fatalities	proxy for overall level of violence	Stable	USE
3	Paramilitary-style shootings and assaults	paramilitary violence	proxy for paramilitarism	Downward/stable	USE
4	Security-related incidents	shootings, bombings incendiaries	proxy for overall security situation	Downward	USE
5	Number homeless due to intimidation via NIHE	intimidation levels	Proxy for paramilitarism and fear	Stable	USE
6	Number of offences of intimidation or threats to harm witness per year	Court witness intimidation	Indicator of level of interference with court proceedings	Little variation but n=500+	USE
7	Numbers thinking paramilitary Groups have controlling influence in area (NILT)	Opinion of sample	'soft' indicator – opinion rather than evidence based, sample rather than census-based	Stable or downward trend	DO NOT USE
8	Numbers thinking paramilitary groups create fear and intimidation in area (NILT)	Opinion of sample	'soft' indicator – opinion rather than evidence based, sample rather than census-based	Stable or downward trend	DO NOT USE
9	Numbers convicted under terrorism legislation	Convictions	Note delay – can be several years - between offence and conviction	Stable/ or slight upward	USE WITH CAUTION*

Table 1.1:					
	INDICATOR	MEASURES?	COMMENT	5-YEAR TREND	RECOMMENDATION
10	Persons detained in Northern Ireland under Section 41 of the Terrorism Act 2000	PSNI activity	Current law enforcement activity	Downward	USE
11	Usage of various Stop and Search/Question Powers in NI	PSNI activity	Current law enforcement activity	Downward	USE WITH SOME CAUTION*
12	NJT cases as a percentage of all Crown Court cases	Prevalence of NJTs	Current PPS usage of powers	Downward	USE
13	Certificates issued and refused for NJTs by the Director of Public Prosecutions	Critical scrutiny of NJT applications	Current PPS usage of powers	Downward (issued) Stable (refused)	USE
14	Percentage of cases in which each condition met	Strength of case for NJT	Condition 1 is most frequently met		USE
15	Average percentage of cases in which each condition met	Frequency of reliance on specific condition	Condition 3 least frequently met		USE
16	PPS complaints of intimidation files	offences of intimidation, attempted intimidation conspiracy to intimidate witnesses, jurors and other persons	can apply to all 'other persons' so agree that it too broad as an indicator	n/a	DO NOT USE
<p>NIHE – Northern Ireland Housing Executive; NILT – Northern Ireland Life and Times Survey<sup>1</sup>  *there may be a substantial delay between the time when the offence was committed and the date of conviction  **may also reflect factors such as staffing levels and other pressures within PSNI</p>					

I commend some of these indicators to the Secretary of State when considering the question of the renewal of the NJT provisions in the JSA. Cognately, they provide a more granular picture of the factors in the security situation relevant to the need for NJTs.

<sup>1</sup> Available at <https://www.ark.ac.uk/ARK/nilt>



7. A number of other options were considered by the working group in relation to options available in relation to NJT provision in Northern Ireland. These were: **a modified JSA regime; the discontinuance of the JSA provisions and adoption of the CJA provisions in their stead; and a (potentially) modified CJA regime.**
8. I do not favour making **modifications to the NJT provisions in the JSA**, since the JSA itself was designed to be temporary legislation. Breathing new life into it is not likely to be palatable to parliament, and, in the long run, a waste of effort.
9. Nor do I favour the immediate **discontinuance of the JSA provisions and adoption of the CJA provisions** in their stead. This option would cause consternation in the system, which we can acknowledge, would be temporary, and may happen eventually in any case. However, this option is not entirely justified in my view by the persistence of paramilitarism, albeit at a slightly reduced level, in Northern Ireland.
10. A **(potentially) modified CJA regime offers the best option in my view, based on the following approach.** I recommend a review of the operations of the CJA in England and Wales be considered, which would examine a. the prevalence of jeopardy to jurors; and b. the operation of the non-jury and jury options in cases of, for example gang crime or organised crime where juries may be at risk of intimidation.
11. Such a review may serve two functions. First, it may elucidate the methods of management of risk to juries that may be of service in Northern Ireland, and it may also shed light on difficulties in jury trials faced in cases of organised crime or gang-related cases.
12. The outcome of such a review may either: suggest the need for modifications to the CJA NJT provision which would make its operation in Northern Ireland more feasible whilst ensuring that NJT provision was consistent throughout the UK; or it may demonstrate the adequacy of CJA provision for jury trial even in cases of organised crime and gang-related prosecutions.
13. **I will be recommending in my report that the JSA provisions are renewed for a further two years, during which time a review of the operation of the CJA in those terms is conducted in England and Wales and the outcome actioned accordingly. By the end of two years, I will recommend that the goal is to plan for an implement the transition of the Northern Ireland legal system to sole reliance on the CJA for any NJT provision.**
14. **In the interim, I commend the use of the indicators above as support for this plan for transition, given that they point to an improved security situation, albeit one that gives continuing cause for concern about fair trial rights.**

I trust this is helpful to the consultation.

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