

**REPORT OF THE INDEPENDENT REVIEWER**

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

**SECOND REPORT: 2008-2009**

**Robert Whalley CB**

**November 2009**

The Rt Hon Shaun Woodward MP  
Secretary of State for Northern Ireland

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

By your letter to me of 22 May 2008, you appointed me as Independent Reviewer under section 40 of the Justice and Security (Northern Ireland) Act 2007.

You set out my Terms of Reference thus:

*“The overall aim of the Independent Reviewer will be, in accordance with the Act:*

- *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 GOC NI for receiving, investigating and responding to complaints;*
- *and to report annually to the Secretary of State*

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

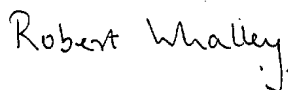
- *The Reviewer may make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act”.*

I submitted my first report to you on 31 October 2008. It is available on the NIO website at:

[www.nio.gov.uk/first\\_report\\_of\\_the\\_independent\\_reviewer\\_of\\_the\\_justice\\_security\\_\(northern\\_ireland\)\\_act\\_2007.pdf](http://www.nio.gov.uk/first_report_of_the_independent_reviewer_of_the_justice_security_(northern_ireland)_act_2007.pdf)

I now have pleasure in submitting to you my second report, which covers the period from 1 August 2008 to 31 July 2009.

**My conclusions are set out in Part 7, with recommendations in paragraph 253.**



**ROBERT WHALLEY CB**

November 2009

## **CONTENTS**

<b>Part 1: The Role of the Reviewer</b>	<b>4</b>
<b>Part 2: The Review Process</b>	<b>8</b>
<b>Part 3: The Political Background</b>	<b>12</b>
<b>Part 4: The Security Background</b>	<b>14</b>
<b>Part 5: The Operation of Police and Military Powers</b>	<b>19</b>
<b>Part 6: Military Complaints Procedures</b>	<b>33</b>
<b>Part 7: Conclusions</b>	<b>41</b>
<b>Appendix A: The Powers Under Review</b>	<b>47</b>
<b>Appendix B: Statistics</b>	<b>52</b>
<b>Appendix C: Organisations and Individuals Consulted</b>	<b>60</b>

## Part 1: The Role of the Reviewer

### *The scope of this review*

1. **This is my second report, which covers the period from 1 August 2008 to 31 July 2009. Parts 1 and 2 of this report are essentially background material. In my first report I set out the full context in some detail, which I said I would not repeat in subsequent reports.**
2. **Parts 3 and 4 discuss the political and security background over the past year against which the main part of this report is written.**
3. **Part 5 reviews police and military activity this year under the powers in question.**
4. **Part 6 examines complaints against the armed forces.**
5. **My conclusions are set out in Part 7, with recommendations in paragraph 253.**

### *What this review is about*

6. Under section 40 (Review) of the Justice and Security (Northern Ireland) Act 2007, the Secretary of State is required to appoint a “reviewer” to examine the operation of sections 21 to 40 and Schedules 3 and 4. I was appointed to this role on 22 May 2008.
7. For convenience, I summarise below the main provisions of section 40 (the review section) and sections 21 to 32 (the operative sections). As last year, more detail about the powers themselves is available in **Appendix A**.
8. This may be helpful to those unfamiliar with the background. Last year I found that the existence of the review function was not widely known. The reason may lie in its comparative novelty. But also relevant is the rather complex interplay between these powers and other powers, especially the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE”) and the Terrorism Act 2000. I shall examine this issue in more detail below.

### *Functions of the reviewer*

9. In brief, the functions of the reviewer appointed under section 40 are threefold:
  - The operation of sections 21 to 32 of the Act, whose purpose was described by the Government in 2007 in these terms:

*“This Act provides additional powers for the police and the military. These include powers of entry, search and seizure that go over and above common law and existing statutory powers available to the police, for example those granted by the Police and Criminal Evidence (Northern Ireland) Order 1989 (“PACE”). Since the armed forces have no statutory powers above those of ordinary members of the public, they require specific legislative provision in*

*order to stop, search and arrest persons, to enter premises and to seize items. A compensation scheme is provided for in respect of damage or loss caused by the exercise of powers in the Act”.*

- The procedures adopted by the General Officer Commanding Northern Ireland (“GOC”) for receiving, investigating and responding to complaints. The GOC is the head of the armed forces in Northern Ireland and the reviewer’s remit therefore extends to the procedures adopted by the GOC makes for dealing with complaints.
  - Since January 2009 the post of GOC Northern Ireland has ceased to exist and has been subsumed under that of Brigadier 38 (Irish) Brigade. I have assumed that in practical terms the relationship between the senior military commander in Northern Ireland and the reviewer should continue essentially unchanged. That has also been the position which the Brigadier has helpfully taken and in consequence the practical arrangements have continued as before.
  - The reviewer’s role is set out more fully in section 40(6) so that he:
    - shall receive and investigate any representations about these procedures
    - may investigate the operation of these procedures in relation to a particular complaint or class of complaints
    - may require GOC to review a particular case or class of cases in which the reviewer considers that any of those procedures have operated inadequately
    - may make recommendations to GOC about inadequacies in those procedures, including inadequacies in the way in which they operate in relation to a particular complaint or class of complaints.
  - Any request of the Secretary of State to include in a review specified matters which need not necessarily relate to the operation of the additional police and military powers or the procedures for investigating military complaints. There have so far been no such requests.
10. The reviewer is placed under an obligation to conduct a review under the first two headings as soon as reasonably practicable after 31 July 2008 (that is, to cover the first year’s operation of the Act) and each subsequent 31 July thereafter. He must send the Secretary of State a report of each review, and the Secretary of State must lay a copy of each report before Parliament.

### ***Preceding legislation***

11. I shall not repeat here the account I gave last year of the legislation which preceded this Act. It is relevant now only in so far as it relates to powers under other legislation, which I shall refer to in context below.
12. The powers which had their origins in preceding legislation and are carried over into the Justice and Security Act are not subject to annual renewal, so the concept of an Independent Reviewer producing an annual report to assist annual Parliamentary deliberations, as was the practice in the past, may not be thought to have the same significance. I have been conscious this year however, as I have talked to people in

Northern Ireland about these powers, that in the absence of annual Parliamentary scrutiny an annual report from an Independent Reviewer offers an opportunity not only to examine the detail but also to look at these issues strategically. This is reinforced by the invitation in my terms of reference to offer views on whether any of the powers should be repealed.

***Powers: Sections 21 to 32 of the 2007 Act***

13. I list below the powers under review. I have set them out more fully in Appendix A, with a brief description of what each is intended to do. I have also given in Appendix A the reference to any earlier legislation from which each power is drawn. This is simply for context and continuity.

14. The powers under review are:

- ***Section 21: Stop and question***
- ***Section 22: Arrest***
- ***Section 23: Entry***
- ***Section 24: Search for munitions and transmitters***
- ***Section 25: Search for unlawfully detained persons***
- ***Section 26: Premises: vehicles, &c.***
- ***Section 27: Examination of documents***
- ***Section 28: Examination of documents: procedure***
- ***Section 29: Taking possession of land, &c.***
- ***Section 30: Road closure: immediate***
- ***Section 31: Sections 29 and 30: supplementary***
- ***Section 32: Road closure by order***

***Supplementary powers***

15. My terms of reference require me to review the operation of those sections of the 2007 Act which I have set out above. But there are also supplementary powers which are relevant to the main powers. They are not formally part of my remit but I shall refer to them when necessary. These supplementary powers are:

- ***Section 33: Exercise of powers***
- ***Section 34: Code of practice***
- ***Section 35: Code: effect***
- ***Section 36: Code: procedure for order***
- ***Section 37: Records*** (which places a duty on the Chief Constable of the Police Service of Northern Ireland to make arrangements for the keeping of records where police exercise powers under sections 21 to 26).
- ***Section 38: Compensation***
- ***Schedule 3: Munitions and Transmitters: Search and Seizure*** (which is given effect by section 24).
- ***Schedule 4: Compensation*** (which is given effect by section 38, but which relates to any exercise of powers under sections 21 to 32).
- ***Section 41: Duration*** (which provides power for the Secretary of State to repeal sections 21 to 40 of the Act so that powers may be taken out of force as they

*become unnecessary). It is for the potential exercise of this power that my terms of reference invite me to make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act.*

- **Section 42: Interpretation** (which defines some of the terms used in sections 21 to 38 and Schedules 3 and 4).

### ***Investigation of military complaints***

16. I have set out above, in my description of the functions of the reviewer, how the investigative powers in relation to military complaints are constructed. In my report last year I described how I envisaged using these powers. I have followed the procedures which I outlined then, and I shall discuss them in further in Part 6 of this report.

## **Part 2: The Review Process**

### *Current reviews of legislation against terrorism*

17. I described in my first report how a review process to accompany legislation on terrorism has been followed since shortly after such legislation was passed in respect of Northern Ireland in 1973 and in Great Britain following the Birmingham pub bombings in 1974. For convenience, I shall summarise the current position.
18. Since 2001 the main legislation on terrorism in the United Kingdom has been formally reviewed by The Rt Hon Lord Carlile of Berriew QC. In his most recent report in June 2009, Lord Carlile explained his current role. In addition to his main duties, he now also reviews the arrangements for national security in Northern Ireland in the context of the assumption by the Security Service of the lead responsibility for intelligence work in Northern Ireland.
19. Lord Carlile's remit relates to the Terrorism Act 2000 and Part 1 of the Terrorism Act 2006. Since these powers cover the United Kingdom as a whole, they apply in Northern Ireland in the same way as they do in Great Britain. They exist to deal with terrorism from whatever source and in whatever manifestation, and they apply in Northern Ireland both to international terrorism as well as to terrorism associated with Northern Ireland itself.
20. Part VII of the Terrorism Act 2000 applied solely in Northern Ireland. With its repeal, powers in relation to the police and the armed forces have effectively been continued in the Justice and Security Act, which applies in Northern Ireland alone. These are the powers which fall to me to review.
21. They apply to a broad range of threats to stability in Northern Ireland as a whole, as the Secretary of State made clear when moving the Second Reading of the Bill in December 2006.

### *The review process in the Justice and Security Act and its linkage with the Terrorism Act*

22. Police powers in Northern Ireland can be found in at least three places – the Terrorism Act 2000, the Justice and Security Act 2007 and the PACE Order. Each of these three powers has a different oversight mechanism. There is thus the need, if Parliament and the public are to be fully informed, for some linkage between the three.
23. Lord Carlile and I are clear that this is desirable, and are working closely together to ensure that our two review processes are aligned in their approach and objectives. This has included holding joint meetings in Northern Ireland. I have also benefited from shared working with the Northern Ireland Policing Board.
24. An obvious area of linkage concerns police powers to stop and search (sections 41 and 44 of the 2000 Act) and the stop and question powers (section 21 of the 2007 Act). As I said at the start of my report last year (paragraph 29), this continues to need careful scrutiny. I discuss this issue more fully in Part 5.



## *Timescales*

25. I submitted my first report in October 2008, covering the first year of the operation of the Justice and Security Act, to 31 July 2008. This second report covers the next calendar year – from 1 August 2008 to 31 July 2009.

## *Review activity*

26. I have kept in constant touch with developments in Northern Ireland throughout the year so as to reflect events during the year as a whole as well as the most significant trends and conclusions.
27. Lord Carlile and I have jointly met the Police Service of Northern Ireland and the Security Service. We have also met the Lord Chief Justice of Northern Ireland and senior judges.
28. I have held regular meetings throughout the year with the police, the Security Service and the armed forces. These meetings give me insights into how security operations are being conducted, especially in the aftermath of significant and serious events such as the murders of Sapper Patrick Azimkar and Sapper Mark Quinsey at Massereene on 7 March and Police Constable Stephen Carroll in Craigavon on 9 March, and also the murder of Kevin McDaid in Coleraine on 24 May. The impact of these terrible events was felt across the community in Northern Ireland and more widely. It is right that, before commenting further, I should extend my own sympathies to the families of all four men, and also to those wounded at Massereene, and add my voice to the condemnation of brutal acts of violence of this kind.
29. In the course of the year I have met the Chief Constable, Sir Hugh Orde OBE, on several occasions, and also the Deputy Chief Constable, first Mr Paul Leighton LLB QPM and subsequently Mrs Judith Gillespie OBE, and four of the Assistant Chief Constables, Mr David Jones, Mr Drew Harris, Mr Alistair Finlay and Mr Duncan McCausland OBE. I have also been briefed by the police District Commander in Coleraine about the murder of Kevin McDaid. I have once again met the Chairman of the Police Federation for Northern Ireland, Mr Terry Spence.
30. The powers which I am required to review also involve public order. Training and preparation for maintaining public order is a major commitment in Northern Ireland. I have visited the police Advanced Public Order Commanders course at Steeple police station in Antrim and watched the training for police officers in handling a variety of public order scenarios which is conducted at Ballykinler military base. I have also observed the contingent military training for public order situations which is provided at Tidworth Garrison near Salisbury for the public order standby battalion.
31. As last year, I attached importance to first hand observation of police activity in relation to the marching season. The context was set during a briefing at the Parades Commission with the Chairman, Rena Shepherd, and the Secretary, Ronnie Pedlow. I have also been briefed on the current position of the Strategic Review of

Parading in Northern Ireland under the Rt Hon Lord Ashdown of Norton-sub-Hamdon. I spent the day of the Twelfth of July parades in Belfast and Coleraine.

32. I have made frequent visits to HQ 38 (Irish) Bde. I met the new Brigade Commander, Brigadier George Norton CBE, shortly after he had taken up command. I have also kept in close touch with his policy, operational and legal staff. These regular briefings cover the specialist support which the armed forces provide, which principally these days consists of a capability to defuse explosive devices, but also includes contingent public order capability and specialist technical support. The armed forces operate in support of the police under Operation Helvetic, the successor since 1 August 2007 to Operation Banner.
33. In relation to military complaints, I have kept in close touch with the staff responsible for the oversight of military complaints and have read through in full detail every file at HQ 38 (Irish) Bde relating to formal complaints this year. These complaints relate principally to helicopter flying. To give me the full picture of the issues I arranged to hold a briefing with helicopter crews operating from RAF Aldergrove and was taken on a helicopter flight over County Antrim to observe training manoeuvres and assess for myself the impact of helicopter activity on local communities. I shall consider these issues in Part 6.
34. I mentioned last year that I wanted to see what lessons might be learned about helicopter flying from practice in Great Britain. I therefore visited the Directorate of Air Staff at the Ministry of Defence in London, accompanied by staff from HQ 38 (Irish Bde) and one of the Civil Representatives. I comment further on my conclusions from this visit in Part 6. I also attended a civic reception in Belfast arranged by the Royal Air Force Presentation team whose purpose was to promote community understanding of the role of the RAF.
35. I said last year that I wanted to invite written formal comments from those who might have views about the issues under review. I therefore wrote in March to those listed in **Appendix C**. I asked for their views under five headings: the security profile in Northern Ireland in the year under review, police operations under the Justice and Security Act, military support to the police under Operation Helvetic, public order and military complaints. I am grateful for the comments and advice received.
36. I specifically wanted to hear from those whose oversight roles overlap with mine. I have therefore, as last year, kept in touch with the Northern Ireland Policing Board and the Police Ombudsman for Northern Ireland.
37. As before, I invited all the political parties in Northern Ireland to meet me so that I could hear firsthand their views on the current security situation. I have met the DUP, Sinn Fein, the SDLP, the UUP and the Alliance party. I have also met the Conservative front bench spokesman on Northern Ireland, Mr Owen Paterson MP, and have received written comments from the Conservative front bench spokesman in the House of Lords, Lord Glentoran.
38. I have met the Independent Monitoring Commission and have discussed their reports with them, specifically their Twenty First and Twenty Second Reports (May

and November 2009) which give assessments of the current activities and state of preparedness of paramilitary groups covering most of the review period. I have also met the International Independent Commission for Decommissioning to hear their current assessment, especially of recent developments on the loyalist paramilitary side.

39. I am once again very grateful to all of those who have given me their time and advice. The range of advice and experience available, not only to me but to those with executive and operational responsibilities, is rich and impressive.
40. Under my terms of reference, I may make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act. I shall deal with this in Part 7. Any such recommendations need to be informed by my assessment of security operations, which I deal with in Part 5. First I will briefly examine the political and security background in Northern Ireland against which operations have been carried out this year.

### **Part 3: The Political Background**

#### ***Preliminary***

41. In my first report I commented on the close connection between political progress and the security profile in Northern Ireland. This linkage has been reinforced by everyone to whom I have spoken in the course of this year's review. I invited all the political parties in Northern Ireland to offer me comments on the security situation and to meet me for discussion. I am grateful to those who have responded: the DUP, Sinn Fein, the SDLP, the UUP and the Alliance party.
42. I have also met others able to offer me a range of opinion, especially British Irish Rights Watch, the Committee for the Administration of Justice and, and the Northern Ireland Human Rights Commission. I am similarly grateful to these bodies for their comments.
43. In accordance with my terms of reference, my focus has continued to be on the utility of the powers under review, their operational effectiveness and their impact on the community in Northern Ireland. This focus on the operational aspects means that political developments in Northern Ireland are of no direct concern to this review. They are however relevant as context in which security operations are carried out and in assessment of community impact. This is particularly the case when, as in the past year, there has been substantial turbulence in the security profile. All the political parties to whom I have spoken have mentioned the recent setbacks and all have expressed concern about their possible impact on community confidence and the continuation of political progress.
44. But I have also been struck by the determination of all parties that recent incidents, however tragic, should not hinder, or worse still derail, the path of clear progress towards the normal functioning of effective political institutions. This includes linking accountability for the police service much more directly to political institutions in Northern Ireland. Lord Carlile has also commented in the same vein.

#### ***The prospects for devolution of justice and policing***

45. All the parties, in their discussions with me, have commented on the prospects for devolution of justice and policing in Northern Ireland. This has been an active issue of political activity during the period under review and subsequently.
46. The tighter financial position this year featured as a factor in assessment by the political parties of the prospects for devolution of justice and policing. This is part of the background to current events but is not directly relevant to my review. Planned policing activity, as set out in the policing plan for 2009-12 prepared by the Northern Ireland Policing Board and the PSNI, shows the resources needed for security operations, for tackling serious crime, for public order and for the extension of community policing programmes. The position adopted by the Policing Board, as set out by the Chairman in his foreword to the plan, is "*to meet the challenge set by budgetary constraints to ensure that the front line policing service which is so important to the public is in no way diminished*".

47. I repeat the point I made last year that, whatever supervisory structures are in place, operational judgments over the use of powers such as those in the Justice and Security Act must continue to be made solely by police commanders. They will want to retain the maximum flexibility in their response as they pursue their objectives, both strategically across Northern Ireland and in working with their District Policing Partnerships.

*The continuation of these powers: views of those consulted*

48. My terms of reference invite me to make recommendations on whether to repeal powers in the Act. I shall make my judgment largely on whether there is likely to be a continuing operational need for them.
49. The political parties, and other groups whom I have consulted, have offered me comments on the future of these powers and it is right to record them here for consideration by those who have to make the relevant decisions.
50. Some of those to whom I have spoken to referred both to recent events and to the longer term prospects. They took the view that the recent murders were a setback to progress and a reminder of the need not to make changes to security powers unless the rationale was clear and the reasons were compelling. Dealing with the dissident republican threat was likely to be a long drawn out process, leaving little or no scope for dispensing with these powers for the foreseeable future. Even if the dissident threat were not to grow significantly, its impact on public safety would remain a close focus for police activity for some time to come and would preclude major changes to the powers available to the police.
51. Some of those who took this view also said that, until it became clear that the security threat had effectively been brought to an end, it would be necessary to keep these powers because it would be impossible to bring them back once they had been repealed, and it was better to retain them than run such a risk over the longer term. The use of these powers had so far been reasonable and proportionate, and as long as the police continued to use the powers this way they would have large-scale public support which would inhibit the capacity of dissident groups to generate any momentum or traction.
52. Others took the view that, if it had not been for the problems this year, the further need for the powers would by now be questionable on the overall balance of arguments: however, the recent activities of dissident republicans made such a move impossible. The suggestion was also made that, on a best case scenario, if devolution were to come about and the security situation did not get any worse, removal of these powers would be taken as an indication of significant progress and would give added impetus to new strategies.
53. The view was also expressed that retention of these powers ties Northern Ireland to unhappy periods in the past and that change in Northern Ireland had come about through politics, not through security operations. To dispense with them would signify a move to a style of community-based policing found in the rest of the United Kingdom and in the Republic of Ireland. In that way, the police service and the community would be brought much closer together, at a time when local

policing and local political strategies are both focused on the goal of strengthening the links between the police and the community. The criminal justice system, it was said, would be made more accessible to a much wider range of people, again drawing in people who had felt marginalised or excluded in the past.

54. As well as speaking to the political parties I have had the benefit of discussions with other groups with a close interest, particularly in individual cases with which they have been involved. Some of these groups took the view that the very existence of these powers acted as a source of opportunistic grievance for extremists and that their use in particular cases conferred notoriety on people who would otherwise have little claim to the attention of those around them. Furthermore, those with misgivings, for example the effect on communities of extended periods of detention in some recent cases, with its resonance in some people's minds of past episodes of internment, were clearly concerned about other powers, such as those under section 44 of the Terrorism Act.
55. I should record that all the comments I received which were opposed to the Justice and Security Act powers related to their existence, and none to the police operations under them.
56. I shall consider the balance of the arguments in Part 7.

## Part 4: The Security Background

### *Preliminary*

57. The briefings which I have received from the Security Service, the PSNI and the military authorities have examined security issues generally but have looked in particular at:
- The threat from terrorism
  - The public order situation
  - The activities of organised criminals

### *The threat from terrorism*

58. The picture is significantly darker than it was this time last year.
59. I base that judgment on my observation of events (in particular the murders of members of the Army and the police service, and other attempts to murder police officers), the range of discussions I have held, the formal briefings from the security authorities, and the reports in May and November by the Independent Monitoring Commission (IMC – Twenty-First and Twenty-Second reports) which between them cover most of the period under review.
60. I have had the benefit of discussing those reports with the IMC. The Twenty-First report gives the general public an assessment of the current activities of paramilitary groups. The IMC say at paragraph 2.6:

*“The current ongoing violence is an attempt to destroy the peace process and return the community to the period of violent struggle from which it has so painfully and relatively recently emerged. Dissident republicans are attempting to deflect the PSNI from maintaining community policing and so disrupt the increasing community acceptance of normal policing. There is also a hope that sufficient violence would provoke an over-reaction by the authorities which would play into their hands.”*

61. The IMC report records in detail the recent activities of dissident republican groups, mainly the Continuity IRA (CIRA), the Real IRA (RIRA), the Irish National Liberation Army (INLA) and Oglagh na hEireann (ONH). The IMC say that they believe that a faction of RIRA was involved in the murder of Sappers Azimkar and Quinsey and the wounding of others in that incident. They note that CIRA has claimed responsibility for the murder of PC Carroll. They make no further comment on these cases since they are *sub judice* and for the same reason I shall follow suit.
62. The activities of the dissident republican groups described by the IMC, and the incidents which they have described, are of direct concern to me because of the potential use of powers in the Justice and Security Act. Attempts to procure weapons and ammunition and to make and explode home-made bombs may require the powers of search in the Act. Attempts to explode home-made bombs may require the police to establish cordons, under other powers, to keep the public away

from potential danger and to allow the deployment of Army bomb disposal staff and the subsequent retrieval of forensic material.

63. In order to test out the relevance of the Justice and Security Act powers to incidents of this kind, I asked the police and the military authorities to analyse their response to specific incidents, so that I could judge the precise utility of the Justice and Security Act powers. This analysis is included in Part 5 below.
64. There have been many other incidents, of greater and lesser severity, in addition to those mentioned by the IMC. These have included attempts to attack police officers both on and off duty. Both the PSNI and the Police Federation have provided me with briefing about these attacks.
65. I note also the formal position of the Chief Constable, Sir Hugh Orde OBE, who said in March that the current terrorist threat from the dissident republican groups was the most serious in his seven years as Chief Constable. It was in that context that he was reported as having asked for the deployment of specialists to increase technical capability. Furthermore, the formal assessment by the Security Service of the threat from dissidents was raised in February from “Substantial” to “Severe”, the second highest in the tiered level of threats. The murders carried out by dissident republican groups in Northern Ireland were the first subject mentioned (at paragraph 6.26) in the description of terrorism in the updated version of the National Security Strategy published by the Government in June.
66. The IMC have also commented, in their Twenty-First and Twenty-Second reports, on the activities of loyalist paramilitary groups. They have done so in the context of moves towards the decommissioning of weapons by these groups. I was able to discuss these developments with the International Independent Commission for Decommissioning.
67. The current year has shown a reduction in violence by the loyalist paramilitary groups but there are still manifestations of paramilitary-style assaults and attempts by individual members of these groups to acquire weapons. Removing such weapons from circulation, and preventing their possible use, may generate circumstances requiring powers of search in the Justice and Security Act. Much of the activity of loyalist paramilitary groups is involved with serious crime, which I consider in more detail later on in this Part of the report.

### ***The public order situation***

68. The Justice and Security Act provides the police with powers which may be needed to deal with public order disturbances. These powers may also be used in conjunction with military support, if the police consider that to be necessary.
69. I have been assisted in consideration of these issues by the briefings which I have received from the police and the military authorities. My observation of police and military training has shown me the extent and nature of the current capabilities to deal with difficult public order situations.



70. Additionally, the Parades Commission have briefed me on their work throughout the year and more particularly for the summer parading season. The Civil Representatives have offered me their comments on how the parades this year have been viewed at street level. The human rights adviser to the Northern Ireland Policing Board has been particularly helpful.
71. Finally, my own observation of the parading activity around the traditional Twelfth July marches (held this year on Monday 13 July) has given me first-hand experience of this year's events. On the morning of 13 July, I visited Antrim Road PSNI station to observe the Silver command operational briefing of police units who were to be deployed in North Belfast. I then went to the police Gold command centre at Castlereagh PSNI station and watched the CCTV coverage of various parades, looking especially at the activity at the Ardoyne shop fronts. Next I travelled to Coleraine PSNI station to see the handling of seven major parades, formed from 188 feeder parades, in rural areas in County Antrim and County Londonderry, watched several of them on the ground and observed the road closures associated with them. After that I came back to Belfast, saw some of the returning parades and then went to Castlereagh to observe the overall picture, in the company of representatives of the Parades Commission.
72. Others will have their own views on parading activity this year, but my own judgment is that it has been the most difficult in the recent past. The violence which took place in the Ardoyne on the evening of 13 July, and over the succeeding two nights, was the worst seen in Belfast for several years, and there was trouble in Armagh, Lurgan, Rasharkin and Strabane. There were also incidents in Londonderry on 8 August. But the Ardoyne violence was not on the scale of the violence there in 2004 or the Whiterock disturbances of 2005. The parade in Drumcree on 5 July passed off peacefully. Many thousands of marches and parades took place without any incidents at all, reflecting great credit on all those involved – the Parades Commission, the police, the organisers, and community groups.
73. It was suggested to me that the ongoing uncertainty about the process of devolution of justice and policing created background instability to the parades this year, but that of course is not a new factor.
74. The House of Lords and House of Commons Joint Committee on Human Rights produced a report in March entitled "*Demonstrating Respect for Human Rights? A human rights approach to policing protest*". Paragraphs 163 to 169 set out the lessons which can be drawn from Northern Ireland, in terms both of police strategy and of the efforts on the part of PSNI and the Policing Board to ensure respect for human rights. The Joint Committee comment: "*We pay tribute to their efforts in trying to ensure that policing of contentious parades and protests accords with human rights standards.*"
75. The Joint Committee go on to say that: "*Whilst we recognise that the political and historical situation in England and Wales is different from that in Northern Ireland, there are undoubtedly lessons that can be learned from the Northern Irish experience of policing contentious protests whilst trying to ensure respect for human rights*".

76. My own observation of the preparatory work in many quarters (civic, political and operational) throughout the year has led me to the same conclusion – Northern Ireland has much to teach the rest of the United Kingdom in handling parades and demonstrations. The key question is whether all the prior planning will turn out to be successful in the event, will respect the human rights of all those involved, and will protect life and property. I shall examine in Part 5 how the police dealt with the Ardoyne disturbances.

### ***The activities of organised criminals***

77. I include the activities of organised criminals within the scope of this review since the Justice and Security Act provides powers to search for weapons and munitions which may be used in the course of acts of organised crime. These are in addition to the powers under PACE.
78. I have once again had the benefit of the annual report and threat assessment from the Organised Crime Task Force. Their report for 2009 gave an assessment of paramilitary involvement in organised crime in Northern Ireland in these terms: *“Whilst some paramilitary groups are moving away from involvement in criminality others remain deeply involved in aspects of organised crime. In some instances the association is as a result of a small number of key individuals and in other instances the group survives only as an organised criminal gang using the name of a former paramilitary group in order to try and exert control over a community...Dissident republicans remain a threat to national security and are also heavily involved in crime including extortion, armed robbery and the supply of contraband cigarettes as well as paramilitary style attacks.”*
79. The IMC have also commented on organised crime in their assessment of the current activities of paramilitary groups in their Twenty-First and Twenty-Second reports, as I have mentioned above. Their comments cover both dissident republicans and loyalist groups.
80. I have had specific briefings from the Organised Crime Task Force and the police on the current profile of organised crime in Northern Ireland. These have examined both the links with paramilitary groups and the impact of organised crime more generally.

## **Part 5: The Operation of Police and Military Powers**

### *Introduction*

81. The security background sets the context for examination of the use made of the powers in sections 21 to 32 in the review period from 1 August 2008 to 31 July 2009 and what this shows about any continuing need for them.
82. I shall look at this in five respects:
- *The use which has been made of these powers*
  - *Police operational assessments*
  - *Statistics on the use of the powers*
  - *Case study: Castlewellan 27-31 January 2009*
  - *Planning for public order situations*

### *The use which has been made of these powers*

#### *Powers against the terrorist threat*

83. I have received from both the police and the military authorities presentations on several recent cases where they have taken action in response to activities of dissident republicans. These cover both preventative action to disrupt the planning and carrying out of terrorist acts and responses both to actual terrorist devices and to hoax calls and packages.
84. Before assessing this in detail I shall first consider the linkage between police powers which caused some difficulty in the first year of the operation of the Act.

#### *The linkage between police powers*

85. When the police need to stop and search someone they have available powers in the Police and Criminal Evidence Order (PACE), the Terrorism Act 2000 and the Justice and Security Act.
86. The powers in Part V of the Terrorism Act 2000 are available to the police throughout the United Kingdom, without limit of time as to their duration. Section 44 of the 2000 Act is the main power to stop and search vehicles and people on foot.
87. This power does not fall to me to review, since the Independent Reviewer of the Terrorism Act 2000 is Lord Carlile. But because of the close linkage with circumstances where the Justice and Security Act may be relevant I shall offer some comments on its impact in Northern Ireland. It is arrest under the Terrorism Act, not the Justice and Security Act, which triggers the extended powers of detention, whose use following the murders of the two soldiers in March caused some disorder.
88. A geographic area may be covered by an authorisation by an Assistant Chief Constable under section 44 of the Terrorism Act 2000 where it is considered expedient for the prevention of acts of terrorism. It has been the practice on some

occasions to include the whole of Northern Ireland under such an authorisation because of the threat from terrorism across the whole of the Province. On other occasions, however, the authorisation has been confined to specific geographic areas. Under such an authorisation (wherever in the United Kingdom it is made) a police officer may stop and search a person or a vehicle to look for articles which could be used in terrorism, but needs no specific suspicion in relation to the person or vehicle concerned. However, by virtue of section 45(1), the power under section 44 may be used only for the purposes of searching: it confers no authority to question as to identity and movements. That power is found in section 21 of the Justice and Security Act.

89. There is a further point which has caused difficulty about the operation of section 44 - the apparent randomness of such searches in the choice of those to be searched in the absence of specific suspicion. Lord Carlile has drawn attention to the conclusions from *R (Gillan) v (1) Commissioner of Police for the Metropolis (2) Secretary of State for the Home Department* to the effect that any person stopped and searched must be given all the information s/he needs to know, and the police in stopping and searching cannot act arbitrarily.

90. Lord Carlile drew the following operational conclusions from *Gillan*, in paragraph 138 of his report:

*“... it is essential that the police must know what they are doing, with every officer being accurately briefed. This means that police officers on the ground, exercising relatively unfamiliar powers sometimes in circumstances of some stress, should have a reasonable degree of knowledge of the scope and limitations of such powers”.*

91. He also said, in paragraph 45, in relation to the use of section 44 in Great Britain:

*“It is fully recognised as important that police officers on the ground (in sometimes challenging situations) must have a fuller understanding of the differences between the various stop and search powers open to them. The aim should be that in all circumstances they stop and search in appropriate circumstances only, and that they use the powers most fit for purpose.”*

92. In my judgment, Lord Carlile’s comment about the use of section 44 in Great Britain applies with equal force in Northern Ireland, and also applies to police use of the powers in the Justice and Security Act.

### ***Police operational assessments***

93. In my report last year I drew attention to an anecdotal case (paragraph 177) when someone stopped in the street by the police was given an imprecise and unsatisfactory reply to her enquiry as to which power was being used. I also reported (paragraph 178) that the then Deputy Chief Constable had written to me to explain the work in hand in PSNI to form better judgments about the relative utility of closely related sets of powers. I commented that it was essential that this work was done if the case for retaining these powers was to remain persuasive.

94. The Acting Deputy Chief Constable of the PSNI wrote to me in September 2009 with a full account of the work which the police have carried out to review their procedures. Since this account reflects further consideration by the police of the relative utility of the powers in the Terrorism Act and the Justice and Security Act I shall quote from it:

*“PSNI consider that the powers in the Terrorism Act 2000 and the Justice and Security Act 2007 are a key element of the PSNI’s ability to deal properly with the terrorist threat with which we are currently faced. PSNI officers will often exercise powers under both Acts in a single interaction with a member of the public. For example, if a section 44 authorisation is in place, a person may be stopped and searched. During this procedure, the officer may decide that s/he wishes to obtain information regarding the person’s identity and movements, exercising the powers under section 21 of the 2007 Act.*

*We consider that the powers in the Acts relating to stop and search are complementary, and that there is no overlap between them. They equip officers with a suite of powers allowing them to stop, search and question any person. For example, section 44 of the 2000 Act provides a power, once properly authorised, to stop and search any person within a defined area. This power, which is used in a targeted manner by PSNI, is useful in disrupting terrorist activity. It is of particular assistance to PSNI in situations where we may have very limited information regarding a planned attack or other terrorist activity. Section 44 also assists in providing a degree of public reassurance, through facilitating high-profile policing.*

*Section 21 of the 2007 Act is extremely useful, in particular because no reasonable grounds are required for it to be exercised. The ability to require any person to give details of their identity and movements provides officers with the ability to (i) focus police attention on known suspects and (ii) avail of spontaneous opportunities to gather intelligence (e.g. where a suspect is seen with an unknown person, section 21 allows details of that person to be obtained, without the requirement for any authorisation or reasonable grounds).*

*In conclusion, PSNI consider that the powers under the Acts provide a seamless range of powers to prevent terrorist acts and to gather information regarding terrorist suspects and their movements and associates”.*

95. The review which the Acting Deputy Chief Constable has reported to me, and from which the passage set out above is an extract, is in my judgment detailed and thorough. It meets the concerns which I expressed last year. This is welcome: it would have been unacceptable in my judgment if this work had not been completed in time for me to report it in this year’s review.
96. The outcome of this review has been carried forward into operational orders, the recording of specific use of the powers in individual cases (on which I comment below) and briefings for training of police officers, which I have examined in detail and which I have discussed, throughout their preparation, with the PSNI officers responsible for force-wide briefing, guidance and training.

97. This work has resulted in a comprehensive and thorough training package which deals with the points Lord Carlile has made about the correct use of powers, together with the conclusions I drew last year about the need to decide precisely which powers might be most appropriate in difficult and fast-moving operations. It makes a clear link between the overall security context, including sensitive legacy issues, and current policing operations. It describes typical scenarios where police officers may have to make rapid judgments and invites them to decide on appropriate action. It also brings out the need for police officers to have close regard to the impact of their actions on the community, and also to understand and protect the human rights of all those affected by their actions in dealing with the terrorist threat.
98. This should not be regarded as a one-off job. In my judgment it is very important that this training is actively pursued, and refreshed in the light of experience, to ensure that its messages are firmly embedded in the minds of all those police officers who might be called upon to deal with the terrorist threat. This is particularly important in the case of inexperienced officers or recent recruits.
99. In addition to the comments which I have quoted above from the Acting Deputy Chief Constable about the view which PSNI currently take about their powers, I received in June the views of the Association of Chief Police Officers of England, Wales and Northern Ireland (ACPO) from the then ACPO President, Sir Ken Jones QPM. He said:

*“The Justice and Security (NI) Act 2007 provides the PSNI, supported if necessary by the military under Operation Helvetic, with key powers to meet the specific demands of domestic terrorism in addition to issues surrounding parading in Northern Ireland.*

*In summary, ACPO is supportive of the additional powers available to the PSNI, supported if necessary by the military in countering the terrorist threat that is so clearly evident in Northern Ireland.”*

### ***Specific use of the 2007 Act powers***

100. **Table 1 in Appendix B** summarises the use made of powers in sections 21 to 32 of the Justice and Security Act in the period 1 August 2008 to 31 July 2009. The usage made of each power is shown in **Table 2**, divided into specific tables about each of the powers (**Tables 2A to 2E**). There is a requirement on the Chief Constable of the PSNI under section 37 to keep records of the use which police make of their powers under sections 21 to 26.
101. The statistics set out below have been provided by the Central Statistics Unit of the PSNI. They are aggregate figures which match as closely as possible the reporting year (1 August 2008 to 31 July 2009) bearing in mind that other indices (relating to the PACE and Terrorism Act powers) are collected and reported on the basis of calendar quarters. I am grateful to staff in the Central Statistics Unit for their assistance on the statistics, as well as to staff at the Northern Ireland Policing Board, particularly on the comparative usage of powers as above.

102. For the avoidance of doubt I should record here that I make no comment on individual cases or actions on the part of police officers. I have no remit to do so whereas others do – chiefly the Northern Ireland Policing Board and the Police Ombudsman.

### Section 21

103. **Table 2A** shows the numbers of people stopped and questioned by the police under section 21(1), month by month. The numbers showed an increase in March 2009 and a further increase in April. The increase in March was accounted for by increased police activity after the murders of the two soldiers and the police officer. The increase in April reflects both continuing police activity in relation to the terrorist threat together with revised police practice in recording use of the powers alongside section 44 of the Terrorism Act and section 24 of the Justice and Security Act. The increase is significant. The average for each of the first seven months of the reporting year was 7; in March it was 29, and for the last four months of the year the average was 187. The overall total for the year was 829, compared with 61 for the previous year.
104. There was no usage by the armed forces of the stop and question power under section 21(2).
105. The powers of the police under section 21 of the Justice and Security Act in relation to stop and question are limited to the time necessary to question the person stopped to ascertain his identity and movements. But they do not depend upon a reasonable suspicion of involvement in terrorism, and for this reason they must be used with regard to the circumstances presented in each case.
106. The threshold in an individual case is no different from a case where a stop and search is made under section 44 of the Terrorism Act: there is no specific requirement of reasonable suspicion in each individual case. For the latter of course an area wide authorisation must be in place as an expediency for the purpose of preventing acts of terrorism (following the test laid down in section 44 (3)), which would apply in the case of the current activity of dissident republicans.
107. In my judgment, the need to disrupt planning and prevent attacks, often in cases of operational urgency, which the recent threat level exemplifies, has met the circumstances envisaged when the powers under section 21 were taken.

### Section 22

108. Section 22 confers powers of arrest on members of the armed forces. It was not used in the year under review.

### Section 23

109. Section 23 allows a member of the armed forces or a constable on duty to enter premises if considered necessary for the preservation of peace or the maintenance of order. Its purpose is to enable an immediate response to be made to events as they arise. I reported last year that the police were not keeping detailed records of the

use of the power. That position has now been rectified, as part of the work reported to me by the Acting Deputy Chief Constable, and statistics have been kept this year. The power has been used on 57 occasions, 48 of them in the last four months of the year, which I judge is adequately explained by the circumstances of recent police operations. **Table 2B** sets out the usage of section 23 by the police this year. This may have on occasion engaged the armed forces in support of the police.

110. When the police use the power in section 23(1), they are required to make records of such use in accordance with section 23 (5) to (9). Now that records of the use of section 23 are being kept, the question arises of how best to monitor the nature and quality of the authorisations for use, which may be oral or written, and of any cases where, by virtue of section 23(1)(b), it is not reasonably practicable to obtain such authorisation.
111. I have raised this question with the Northern Ireland Policing Board. Because section 23 records have not hitherto been kept, the Board has not had the opportunity to scrutinise them. A detailed analysis of the records would indicate whether or not any general issues were emerging in relation to this power, which involves sensitive issues about entry to premises without a warrant. With the agreement of the Board, therefore, I have invited PSNI to keep the records of section 23 authorisations available for me to examine as part of my review. That would have to be done without prejudice to any formal complaint proceedings, which fall under the responsibility of the Police Ombudsman for Northern Ireland, in accordance with section 23(10).
112. In the present circumstances, when police resources are under pressure, any increase in recording requirements must be stringently justified, so as not to draw resources away from front line policing, whether in relation to terrorism or to community policing. In the case of keeping section 23 records, the requirement is statutory: it is not optional.

#### Section 24

113. Section 24 gives effect to the powers in Schedule 3 in relation to search for seizure of munitions and transmitters. **Table 2C** shows the numbers of persons stopped and searched (in separate categories of public and private place) and **Table 2D** the details in relation to the search of premises and articles seized.
114. So far as searches of people are concerned (**Table 2C**, Schedule 3 paragraph 4), there has been a slight drop this year in the extent of use of this power. A total of 356 people were stopped and searched, 266 in public places and 90 on private property. This compares with figures of 406 (303 + 103) last year. The exercise of this power depends on a reasonable suspicion, so far as searches of people carried out on private property are concerned. It is more likely to be linked to specific information or intelligence about the possession or movement of explosives, firearms and ammunition. Considering the increase in the threat from dissident republicans and armed criminal groups this year, the power has in my judgment been used appropriately overall.



115. The power to enter and search premises for munitions is found in paragraph 2 of Schedule 3 (set out in **Table 2D**). There has been a slight increase in the use of this power, which was used on 223 occasions this year, compared with 210 last year. Most of these searches are in private houses – 155 of the total of 223.
116. There is a power to seize items found in these searches (paragraph 5 of Schedule 3). This has been used on a similar number of occasions to last year – 43 compared with 42 last year.
117. The police may be accompanied by other people in cases where they search premises other than private houses (Schedule 3, paragraph 2(3)). The need for this may arise in the course of operations where civilian support may be required. This power has been used more this year – 20 occasions, compared with 10 last year. That too reflects the pattern of police operations in relation to the activities associated with dissident republican groups.
118. The powers in Schedule 3 which are provided under section 24 may also be used by the armed forces in support of police operations.
119. The police are required under paragraph 6 of Schedule 3 to keep records of searches of premises unless it is not reasonably practicable to do so. That would apply both to searches of both private property and other property. Similar considerations, involving searches of property without a warrant, apply as in the case of searches under section 23. I have therefore raised this with the Northern Ireland Policing Board, who confirm that they do not regularly see records of searches under paragraph 6. With the agreement of the Board, I have therefore invited PSNI to keep paragraph 6 records available for me to examine as part of my review.

#### Section 25

120. Section 25 provides the armed forces with the power to enter and search premises where there is a critical danger to someone who is being held, for example as part of a hostage or kidnap. It has not been used this year, but I can envisage circumstances, in the face of the current dissident terrorist threat, where the power might become needed.

#### Section 26

121. The powers of search in Schedule 3 may also, by virtue of sections 26 and 42, be used to search vehicles and seize articles found in them. **Table 2E** shows the use made of this power in the year under review, which is about the same as last year – 239 vehicles stopped and searched compared with 210 last year (10 months only). There is also a power to remove a vehicle for search. This was not used last year, nor has it been used this year.
122. These powers of search are provided in addition to the powers in section 44 of the Terrorism Act, but facilitate slightly different usage. Because they are part of the Justice and Security Act they are available when there is no section 44 authorisation in place.

123. The powers to search vehicles under section 26 are also subject to the recording requirements in paragraph 6 of Schedule 3. Similar considerations apply as to the records under sections 23 and 24 and I have made a similar invitation to PSNI to keep these records available as part of my review.
124. As with the powers to search people and premises, the Schedule 3 powers to search vehicles may also be used by the armed forces.

Sections 27 and 28

125. These sections cover the use of the armed forces in searches under the Act. As mentioned above in relation to each specific power, they have not been needed, because operations of this kind have been carried out solely by the police since 1 August 2007.

Sections 29 to 32

126. These are public order powers to deal with disorder or community tensions associated with the marching season. The disorder this year was not to such an extent as to require their use.

*Comparative use of powers*

127. Some of those who have offered me have comments have raised the subject of the use of powers in the Justice and Security Act compared with powers available to the police in the Terrorism Act and the PACE Order. In the light of the work which the police have done to ensure a better match of operations to available powers I have examined the current statistics in all three instruments, which are provided on a quarterly basis to the Northern Ireland Policing Board. These provide both an actual comparison of the powers used and an indication of trends. For convenience, I have (with the permission of the Board) set out this information in **Table 3**.
128. The quarterly returns are based on calendar quarters, so do not correspond entirely with the JSA reporting period (which is always one month adrift because of the different timescales), but they give sufficient indication both of comparative usage and of trends.
129. The PACE powers are not concerned solely with terrorism but are divided into seven categories (stolen property, drugs, firearms, offensive weapons, going equipped, "others", and "not specified"). In the nature of police operations, these categories will not necessarily be confined solely to one kind of criminal activity – firearms searches for example might be linked either with suspected terrorism or with other serious crime. The involvement of paramilitary organisations in serious crime generally, as shown from the comments quoted above from the Organised Crime Task Force, means that these statistics do not lead to straightforward conclusions about comparative patterns of criminal activity. Some of the PACE searches will have involved investigations into suspected terrorism.
130. The footnote to the table is also important: the statistics do not correspond to the total numbers of persons stopped and searched or questioned since a police activity

can be carried out under more than one power. The form which the police use to record individual stop and search actions enables them to record the specific grounds for action under PACE, the Justice and Security Act and the Terrorism Act, so more than one power may be used and its use recorded.

131. Nevertheless, these statistics show that for the general category of stop and search - covering all reasons for such actions, not only terrorism - the usage of the JSA powers is small by comparison with PACE and the Terrorism Act. Over the period 1 July 2008 to 30 June 2009, the number of persons stopped and searched in total, for all reasons, was 33,477. The number of those dealt with under PACE was 20,722 (62% of the total), under the Terrorism Act 11,830 (35%), and under the Justice and Security Act 925 (3%). As described above, the pattern changed slightly in the final quarter from 1 April 2009 to 30 June 2009, following the murders and changes in the pattern of police reporting, when the relative statistics changed to 56%, 38% and 6%. The period from 1 July to 30 September 2009 will be considered next year.
132. A more valid comparison so far as terrorism is concerned (but again subject to the qualification that the boundaries of terrorism and other serious crime in the initial stages of an investigation are not clearcut) is the relative usage of Terrorism Act and Justice and Security Act powers (that is, omitting the PACE statistics). On this basis, the number of those dealt with was 12,755, of whom the 11,830 dealt with under the Terrorism Act represent 93% and the 925 under the Justice and Security Act amount to 7%. For the final quarter, the proportions change to 86% and 14%.
133. It would be unwise to draw precise or definite conclusions from these summary statistics. They cover the whole range of police activity, not just against terrorism. The use of powers is not mutually exclusive, as the letter from the Acting Deputy Chief Constable makes clear, and the powers may be used in sequence as a police operation develops. Furthermore, the boundaries between types of suspected criminal activity are likely to vary and will develop as information becomes available in the course of the stop and search. But it would be safe to infer as a very broad generalisation that the Justice and Security Act powers continue to be used much less than the Terrorism Act powers.

#### *Military operations in support of the police*

134. **Table 4 in Appendix B shows the pattern of military activity in support of the police.** It is included so as to demonstrate the nature of the activity which has been necessary in the face of the dissident republican threat.
135. These statistics cover deployment of military assets for each month in the year 1 August 2008 to 31 July 2009. The top line (in bold) shows the total number of call outs each month. This is then broken down into cases where a live device was dealt with, where there was a find of explosive material, where the call out was a hoax call or a false alarm, or where the military were called to assist the police in a search. The number of call outs this year was 458, compared with 443 the previous year.
136. The armed forces operate in support of the police and it is for the police, not them, to make operational judgments about the need for support. This position has not

changed since last year, either formally or in the view which the police and the military take of their respective roles. Recent internal police operational documents which I have seen set this out clearly and accurately.

137. As last year, I asked the military authorities to provide me with information showing the extent of their involvement. They have done so in the form of a schedule describing for each call out its date and location, the type of task the armed forces were asked to perform, details of any items discovered and the method of disposal and its result, and descriptive information and analysis. The armed forces are on occasions required to mount searches in response to the reporting of suspicious objects and to deal with suspicious objects found by members of the public. The schedules which they have provided to me make disturbing reading. They disclose large quantities of dangerous weapons, ammunition and bomb – making materials, often randomly discarded and on two occasions found and handled by children.
138. The military authorities have also, at my request, described to me in detail some recent operational scenarios, drawn from the full list which they have provided to me:
- A vehicle borne improvised explosive device (VBIED) at Castlewellan in January 2009 (discussed further below).
  - A forensic search of the abandoned car at Randalstown following the murder of the two soldiers in March
  - An area search in Londonderry in April
  - A search of the main Belfast-Dublin railway line at Newry in June
  - An elaborate hoax in Fermanagh in July.
139. Other operations have dealt with real devices which have been left in areas open to the public and thus potentially fatal if touched or tampered with, for example by children, as has happened. These include:
- An improvised grenade at Lisnaskea on 16 August
  - A radio controlled improvised explosive device at Jonesborough on 14 September
  - A command wire and victim operated improvised explosive device at Wattlebridge Road on 6 October
  - A coffee-jar improvised hand grenade in New Barnsley on 19 November
  - An incomplete improvised explosive device at Rosslea on 13 May.
140. In addition there have been disruptive hoax incidents in Belfast on 30 March and 11 July intended to paralyse traffic movements and cause maximum inconvenience to the public.
141. In all these incidents there was the potential need for the military to provide specialist support to the police. The likely operational need included gaining access to private property, whether land or buildings, and searching or removing vehicles and items found in them in order to deal with a suspect or hoax device which was potentially dangerous to the public. Circumstances have arisen, as they did in one case in Belfast on 30 March, when the police found it necessary to use public order

powers to close roads and maintain cordons, in order to deal with a potentially lethal incident at a time when security activities were being hampered by a hostile crowd.

***Case study: Castlewellan 27-31 January 2009***

142. On Tuesday 27 January the police in Down became aware from calls from the public that an explosive device had been left in a car at Dublin Road in Castlewellan. There was also a telephoned claim that the device was destined for Ballykinler army base, but had been abandoned.
143. The police locally responded immediately to the threat and found a stolen Volkswagen Bora car, close to a local primary school and houses. It was clear immediately that if, the reports which had been received were true, a complex and lengthy operation would result which would require clearance of a wide area in order to ensure the safety of the local community. The police have told me that they were supported by the co-operation and patience of the local community when asked to avoid the area affected. A wide outer cordon was put in place in the Castlewellan area. The bomb proved to be a viable device containing some 300 lbs of explosive. The operation to deal with it lasted the best part of five days.
144. Specific police actions took place as follows, under Justice and Security Act powers as shown:
- Vehicle check points were carried out to provide cover and to advise local inhabitants of the ongoing operations. Some vehicles and people were also stopped, searched or questioned (*section 21(1), 21(2) and 21(5)*).
  - A number of roads leading to the scene were closed and manned by police officers. Vehicles and people were stopped and searched and people questioned (*section 21(1), 21(2) and 21(5)*).
  - Private lands on high ground were entered to provide cover to the road closures (*sections 23(1) and 24*).
  - Routes including fields were checked to establish cordons (*sections 23(1) and 24*).
  - Military support in the form of Royal Logistic Corps Explosive Ordnance Disposal Personnel and Royal Engineers search personnel was requested under Operation Helvetic and the Explosive Ordnance Disposal personnel carried out a number of controlled explosions.
  - Royal Engineers carried out a route check of Dublin Road to ensure that all was clear after the incident (*section 23(1) and section 24*).
145. This was a viable device with the potential to cause extensive death and injury to the public and damage to property. In my judgment the police actions to deal with it were proportionate in terms of the risk to the public. They would not have been able to do so without specialist military support.

***Planning for public order situations***

*The profile of public order incidents in 2009*

146. The past year has been the most difficult in public order terms since the Whiterock disturbances of 2005, although at no point this year has street violence reached the

levels which it did on that occasion. At the same time, many parades have passed off peacefully, defeating the attempts of those seeking to incite violence and inflame local feelings.

147. All this continues to show the value, and indeed the necessity, inherent in the efforts of all those involved throughout the year to ensure that parades can pass off without violence and harm to the interests of others. The civil community in Northern Ireland once more is in the debt of the Parades Commission, the Civil Representatives, the police, and community leaders, whether elected or otherwise.
148. As last year, the police managed to control the parading season without the need for military support. Military assets were available as a back-up but it was not necessary to deploy them. The context this year included contingent planning to deploy logistic assets to clear roads and obstacles. It was not thought necessary in that contingent planning to include plans for possible deployment of ground troops, thus maintaining the low profile which has been adopted in recent years. But assessment had not yet this year reached the point where such an option could be totally ruled out, hence the contingent planning involving military units, rear-based in England. Their public order training, which I have observed, includes familiarisation with current issues in Northern Ireland, including obligations under the Human Rights Act.

#### *The parades on 13 July*

149. The specific focus of concern in Belfast this year was the loyalist parade past the Ardoyne shop fronts. The operational briefing at Antrim Road police station early in the morning, which I observed, was thorough and well structured, explaining to police officers what was expected of them in the face of what was known about possible disorder when the parade was due to return. It also laid strong emphasis on the obligations on the police in respect of observing and protecting the human rights of all those who might in any way be affected by the parade.
150. The events later in the day will be the subject of detailed scrutiny by others with a direct oversight. But, from my observation throughout the day, including the initial disorder at about 4 pm and the more concerted disorder about two hours later, the police tactics were based on allowing the parade to pass as planned while containing the disorder with a minimum of force. Their conduct in the face of petrol bombs thrown at them from the top of the Ardoyne shop fronts was calm and disciplined, and designed to avoid giving those causing the violence any possible scope or excuse for escalating their actions. Water cannon were deployed, in my judgment very effectively – keeping the crowds back and moving them away from potential flashpoints, while avoiding causing injury.
151. Some 24 Attenuated Energy Projectiles (AEPs) were deployed during the disorder, the first occasion that this been necessary for several years. Such deployment automatically triggers investigation by the Police Ombudsman for Northern Ireland who has helpfully outlined to me the form such an examination will take. It also involves notification to the Policing Board who have also briefed me about their involvement. It is not part of my remit. I mention it now because this deployment has been raised with me in several quarters as a matter of serious concern.

152. Analysis of the disorder at the Ardoyne shop fronts will continue for some months, but it is reasonably clear to me from circumstantial comments that it was orchestrated by people coming into the area from outside rather than from the local community. There are also indications that the disorder was organised by dissident republican elements with the twin objectives of attacking the marchers and the police and putting pressure on local leaders, who by all accounts had done what they could to protect the interests of their community and keep the atmosphere cool by co-operating with the police and the parade organisers.
153. So far as police operations at the strategic level were concerned, the central monitoring of the parades at Castlereagh was professional and thorough, enabling judgments to be made about the need for any early interventions, with frequent contact between the Gold and Silver commanders and pragmatic operational decisions when necessary, such as last minute changes to an arranged demonstration at the corner of the Ardoyne shop fronts.
154. As before, the presence at Gold and Silver command of a legal adviser with a specific brief on human rights issues, together with representatives of the Parades Commission, gave an added transparency to the total operation and enabled lessons to be learned for the benefit of future planning.

*Lessons from this year about future planning and powers*

155. The experiences in handling public order this year showed that the possibility of disorder, though not on the scale of previous years, cannot be ruled out for the immediate future. It is likely to be fomented by dissident republicans rather than arising spontaneously from community issues. The scale of the incidents this year, widely spread across Northern Ireland, is worrying, but I do not sense that it generated momentum from one incident to another as has been the case in the past.
156. The need for speed and flexibility of response by the police, for example in relation to dealing with the fast moving scene outside the Ardoyne shop fronts, was clearly demonstrated this year. At the same time planning must provide for the proportionate and careful calibration of the response to events on the ground. The police need commensurate flexibility in the options open to them, which include the public order powers in the Justice and Security Act.
157. As last year, the PSNI planned to handle all public order situations within their own resources, apart from contingent specialist logistic support. Last year I followed up a point raised by the IMC in their Eighteenth Report in 2007, when they mentioned bringing in reinforcements for PSNI, by mutual aid from other police forces in the United Kingdom, in the face of the risk of serious public disorder.
158. This is a difficult issue and my impression is that more people see disadvantage than advantage in invoking mutual aid other than for specialist purposes. The operational call falls to new Chief Constable of the PSNI, although the issue would have wider political and financial implications both in Northern Ireland and in Great Britain.

## **Part 6: Military Complaints Procedures**

### ***Introduction***

159. The role of the Independent Reviewer extends to review of complaints against the armed forces in Northern Ireland. I have set out the formal position in Part 1 of this report. The process covers procedures adopted by the General Officer Commanding Northern Ireland (“GOC”) for receiving, investigating and responding to complaints. I shall use the shorthand “military complaints procedures” to refer to this part of the review task.
160. I shall follow the system which I developed for my first report, namely to:
- Set out the procedures currently operated by the armed forces for the investigation of complaints
  - Describe and analyse the pattern of complaints in the year under review
  - Examine the issue of helicopter flying, since this has been the subject of every complaint except one this year

### ***The procedures currently operated by the armed forces for the investigation of complaints***

161. The role of the armed forces in Northern Ireland now is very different from what it was before 2007, as I have described in Part 4. Complaints are likely to be limited to a small range of issues.
162. Nevertheless it is important that procedures exist for their investigation and oversight. This is especially the case, as was suggested in evidence which I received, because there is no role comparable with the Ombudsman’s role in respect of complaints against the police. The Independent Reviewer is the closest approximation to that role, and I have been given powers to hold the military authorities to account.
163. Last year I described how these procedures work. I shall do so again this year, because it is important that they are clearly understood, especially by anyone who might want to make a complaint. This is a subject which bears repetition from one report to the next.
164. The process begins with individual members of the public, acting either singly or in a group, who are affected by the actions of the armed forces to the extent that they wish to make a complaint.
165. All such complaints fall to be investigated by the military authorities in Northern Ireland. This activity is co-ordinated by the External Relations Unit (ERU) at HQ 38 (Irish) Bde which administers the military complaints procedure for Northern Ireland, acting as a focal point for the receipt of complaints. The ERU supports the Brigade Commander in all aspects of enquiries, and is the central point for complaints records management.



166. Military units in Northern Ireland have a role in the investigation of complaints. Because most complaints nowadays relate to helicopter flying, the Joint Helicopter Force Northern Ireland (JHF (NI)), under the command of the Station Commander, RAF Aldergrove, has had an important profile. JHF (NI) is responsible for all military flights in Northern Ireland and the administration of military airspace in Northern Ireland. JHF (NI) is responsible for the investigation of complaints made involving flights in Northern Ireland and can escalate a complaint to the RAF Police and the Directorate Air Staff (DAS) if necessary, for example in severe cases.
167. The DAS support the Chief and the Assistant Chief of the Air Staff and Ministers in all central policy, political and parliamentary aspects of non-operational RAF activity. They are copied in to details of all the complaints which are received, provide policy leads on investigations and liaise with the Complaints Investigation Team.
168. If a claim is made, the complaints procedure stops. The case then passes to the Directorate of Safety and Claims (DS&C) who administer the claims process, dealing with all claims and continuing to use loss adjusters. Within the Ministry of Defence, DS&C provide a central focus and provide linkage into the reporting of the incident. A full investigation of this kind will involve the ERU, the Unit concerned, possibly the Civil Representative, DAS and DS&C, leading to the complaint being resolved.
169. HQ 38 (Irish) Bde produced some time ago a leaflet "How to make a complaint against the armed forces in Northern Ireland". I commented last year that this leaflet was out of date since it did not reflect the new position since the end of Operation Banner and the changes to legislation. I urged that a revision be put in hand. I am glad that this process has started. I have been shown a draft of the new version and have offered comments on it. I hope that this task can now be taken forward to completion as soon as possible. I also note that the website for RAF Aldergrove includes basic information about how to make a complaint about helicopter flying, giving a 24 hour telephone number and an email address.

#### ***The pattern of complaints in the year under review***

170. Complaints may be broadly of two types. First there may be general complaints, formal and informal, concerning military activities, including complaints about behaviour. Then there are helicopter complaints, both formal and informal.
171. There have been no formal general complaints in the year under review: the last such complaints were in 2005. Nor were there any informal general complaints this year: the last one was in July 2007.
172. Helicopter flying is the one aspect of military activity in Northern Ireland which still causes complaints. It remains a contentious issue. Complaints involve noise, overflights, simulated landings, or endangering livestock. (Since the end of Operation Banner actual landings are carried out only on land for which prior authority to land has been given).

173. I will first analyse the complaints and their investigation by the military authorities and then draw some conclusions about helicopter flying.
174. The statistics in summary show that the overall number of complaints in the year under review was 124 compared with 85 in 2007-8. This represents an increase of 46%. Of these, there were 115 formal complaints, compared with 59 the previous year, an increase of 95%. There were 9 informal complaints, compared with 26 the previous year, a decrease of 65%.
175. The shift from informal to formal complaints, which I identified last year, has thus been continued. In practice there is not a lot of difference between formal and informal complaints and so far as I am concerned they all require proper and effective investigation and resolution.
176. **Table 5** shows formal helicopter complaints from 1 January 2007 to 31 July 2009, **Table 6** shows informal helicopter complaints for the same period. From these tables the trend in complaints is clear. There are surges in some individual months, but they do not correspond to the surges of the previous year.

#### *Analysis of the case files*

177. HQ 38 (Irish) Bde provided me with the folders of all the formal helicopter complaints from 1 August 2008 to 31 July 2009. I said last year that I did not think it was sensible to examine all these files as part of an annual review since issues might arise whose resolution should not wait till the end of the reporting year. I have therefore kept in periodic touch with the military authorities throughout the year to assess the pattern of complaints. In April I reviewed the files from August to March and in August I reviewed the files from April to July.
178. The source of these complaints, and the route which they can take to come to notice, is quite varied. They may come direct to the ERU or to the Joint Helicopter Force (JHF). Sometimes they come via the Civil Representatives or the police. Complaints are sometimes made direct to the Ministry of Defence Duty Officer or the Ministry of Defence Claims Officer.
179. The Civil Representatives may receive complaints directly or indirectly, which they pass on to the ERU, with a request for an investigation. The Civil Representatives may give advice, drawing upon their local knowledge, about extra care needed in particular farming areas, in relation either to dwellings or to livestock, or where claims have been made before, or where there may be difficult domestic circumstances. They can become involved in informal negotiation and resolution where that seems appropriate. They can judge whether an invitation to visit RAF Aldergrove, or a liaison visit from the station, is likely to be productive.
180. Their local knowledge is vital, given that helicopter crews may not have the opportunity, in short and pressured tours of duty, to develop a detailed knowledge of the area. The Civil Representatives play an important role in the handling and resolution of helicopter complaints and I have once again been struck by the range of the involvement of the Civil Representatives and impressed with the quality of their contribution.

181. When a complaint is received in the ERU it is formally opened in a file (MoD Form 953, entitled "Military Aircraft Public Complaints Form") and sent off to JHF (NI) for investigation. The ERU compile a checklist, kept at the front of the file, which gives the main factual information about the progress of the complaint, with a date for each event. This includes whether or not it is a formal or an informal complaint, the date of the incident, whether a telephone message has been received and returned, whether a Civil Representative is involved, when the complaint was forwarded to JHF (NI) for investigation, when the Defence Air Staff were informed, whether the Ministry of Defence claims organisation has been notified, the date a written acknowledgment was sent and whether the leaflet about low flying has sent with it, when a formal reply was sent, whether a visit has been arranged and when all this information was entered on the databases.
182. The replies which are received are then used by the ERU in the preparation of a reply to the complainant. There is a target period of 3 weeks from the date of receipt for the despatch of a reply. This target was met in every case this year.
183. The ERU are dependent on the JHF (NI) for information on which to base their reply. This is the crucial link in the chain and it is one which both the ERU and the JHF maintain with some care – correctly in my judgment. The ERU make efforts to ensure that cases are not delayed, by chasing for replies as the due date for reply approaches.
184. More important than the speed of reply of course is the accuracy and validity of the information supplied. This is the heart of the investigation. The ERU are not afraid to take a robust approach where this is required to establish the facts. There are bound to be challenges from time to time, especially when the JHF (NI) need to scrutinise records, ask helicopter crew for reports and possibly interview them, and the JHF are equally clear that it is up to them to pursue these challenges thoroughly.
185. The JHF (NI) are under a responsibility to supply the facts of the case to the ERU. It is for them to check the flight logs and records and to speak to the aircrew if necessary. Their responses are usually quick and clear. On occasion it is not possible to speak to the aircrew if they have been deployed elsewhere – for example to Afghanistan – or where there are a few days delay before the complaint is made. In those circumstances it is right to see if the facts can be established, although there will be a limitation on how much the aircrew can recall when they are focused on their task on location in Afghanistan, and there are arguments against deflecting them from their new operational duties. Realistically therefore it may not be possible to provide answers to complaints which can be guaranteed to be totally complete and accurate. But these cases should be the exception and it is important to meet the current expectations that every case will be pursued as quickly and thoroughly as possible.
186. In one case this year, when the statements of the air crew and the complainant could not be reconciled after several attempts, the ERU raised on the file the possible need to involve the RAF police. This formal escalation was not in the event necessary but it was right to include it as a possible step in order to clarify facts. In another case it was clear from the first response from the JHF (NI) that there was potential

confusion over the date on which a flight had taken place, which the ERU noticed and pursued. In other case the ERU were concerned whether a Local Sensitive Avoid (a specific instruction to the helicopter crew to avoid an individual, identified location) had been kept to and challenged the assertion that it had been, which was confirmed on further scrutiny of the case.

187. I have looked in every case at the reply which was sent. The complainant is told at the outset of the 3 week rule, which gives some reassurance that the case will be properly pursued. The formal replies which are sent after enquiries have been made give a brief summary of the findings. They include offers of apology for distress or inconvenience and express sympathy where this is appropriate. They make sure that the complainant is told of the route for compensation claims to the Ministry of Defence claims organisation. Where advice is offered on the telephone it is clear and direct. Where it is apparent that a non-military helicopter has been involved, contact points for the Civil Aviation Authority and the PSNI are given.
188. File handling is generally very good and the sequence of events is clearly shown. In a few cases it was not clear that the Form 953 had been used. This is important as a document of record and to show when the clock starts. There were gaps in the documentation on a few files, and some areas of the file were not always used, for example the details of previous complaints and the numbers of complaints to date. When I questioned this I was told that this information may be captured electronically, but it seems to me that it should be shown on the file wherever possible and thus available promptly if needed. Details of previous complaints are important: there is nothing more frustrating for a complainant than to feel that he is not getting his message across. In practice however the ERU are very familiar with repeat complainants and their circumstances.
189. In one case papers relating to a different case had found their way on to the file but there was no adverse effect. In a few cases it was not totally clear that all the follow-up work had been done, for example arranging a visit from a Civil Representative or sending of close-off letters.
190. I should record that in one case the complainant was unhappy with the response he received and the matter was finally resolved with a visit from the Civil Representative.
191. I am satisfied from both my examination of the files and my discussion with the staff concerned that they are aware of the importance of pursuing their enquiries diligently and also of the need to reply to the public as fully and quickly as possible. They also are aware of the need to keep good records, which can be available to me and others. I have found some minor blemishes in case handling but I am satisfied that in no cases have they affected the substance of the outcome in the case in question.
192. It follows therefore that I have not felt it necessary this year to invoke my power under section 40(6) to require the Brigade Commander to review a particular case or class of cases.

193. The basis for the complaints falls into several clear categories, in broadly equal proportions, affecting either people living in a house or animals and birds in the open or in outbuildings. Most of the complaints affecting people relate to nuisance disturbance from noise, mainly affecting those trying to sleep, children or chronically sick family members. The complaints affecting livestock reflect Northern Ireland's predominantly rural nature, and where for example they involve upset to horses in stud farms or riding stables, or rearing of game birds, the costs can potentially be quite significant and damaging to the owner. Where there is the potential for financial damage the route to a claim for compensation from the Ministry of Defence is clear. I myself have no *locus* in such cases and I offer no comment on them.
194. The timings of complaints show considerable variation from month to month. There were spikes of activity in September, November, January, March and July. The reason given to me, when I enquired about this, was the amount of pre-operational activity prior to deployment overseas.
195. The geographical breakdown, as last year, reflects the training pattern principally in the areas close to RAF Aldergrove and in the Bann basin area. The main areas affected are Ballymena and Limavady, plus some repeated complaints from single individuals. Additionally there was a clutch of complaints in the Downpatrick area associated with Ballykinler camp.
196. Repeat complaints are a cause of concern. One person complained eight times, and five people complained three times. The complainant whose case I discussed last year (paragraphs 154 to 157) complained again twice more this year. That is regrettable. There are some lessons here for the way helicopter operations are conducted, which I shall comment on below.

### *Some conclusions on helicopter flying*

197. My role in relation to military complaints is essentially concerned with whether the procedures are effective. But inevitably issues emerge which bear upon why complaints arise in the first place. In my report last year I set out some of my conclusions on these matters and I will do so again this year. There are two main areas: operational issues and links with the community.
198. My discussions with the helicopter crews and my helicopter flight over North Antrim clearly demonstrated the training requirement, especially in terms of low level turning and manoeuvring, which is considered an essential skill before these crews can be deployed overseas – now mainly Afghanistan, following the withdrawal of United Kingdom armed forces from Iraq. As I said last year, such a requirement is absolutely essential on a wider view, given the dangerous circumstances in which these crews will have to operate in Afghanistan - probably more dangerous this year than they were last year. But I am also aware – and some of those whom I have consulted this year have again made the point strongly – that there are many people in Northern Ireland who are opposed in principle to the United Kingdom's involvement in Afghanistan.

199. What was clear to me was that if this training is to have any value, it must be realistic and challenging. In so far as it involves low level close manoeuvres over the small towns and countryside of Northern Ireland, it is almost certain to have some impact on local communities. The pattern of small farmsteads, with a variety of agricultural activities, including animal husbandry, breeding farms and riding stables, is inescapable. Seen from the air, they are dotted around the landscape but the distances between them are not great. Sometimes animals are visible from the air, sometimes not, and of course animals and birds under cover are not visible.
200. The helicopter navigator has full details of local “avoids” (specific locations to be avoided below a certain height or within a certain distance on the ground) and I noted his command of complex and fast moving detail and also the speed with which the pilot responded to the navigator’s directions. The scene on the ground changes every few seconds. Avoiding causing nuisance is a key consideration for the crew, but it is not the main point of their training, which is to prepare them for the challenges in much more hostile theatres overseas.
201. The system of local avoids is a key to reducing nuisance to a minimum. The list of such avoids shows the grid reference of the property in question, its description, name and location, the height and ground distances to be avoided, the date of introduction and date of review. It is the basis of assurances in letters from the ERU, in response to complaints, that measures are in place to ensure that aircrew are made aware of the location of a particular property.
202. The advice from the Civil Representatives is important here. In one case such advice (to create a short term local avoid) was not followed through till a second complaint was made a few days later. It would have been better if that had not been necessary.
203. In some cases it is clear from the file that the complainant was aware of helicopter noise even though the avoid was being properly observed. The reason may lie in the complainant’s understandable unfamiliarity with the precise impact of noise over a short distance. It may sound as if the helicopter was flying very low when in fact it was 500 or 1000 feet above the ground. That is why it is important to make contact with complainants, especially repeat complainants, of whom there are not many, to explain if possible what activity is involved and, more important, to see what can be done to mitigate it – for example whether to widen the area of the avoid, or to tie it more closely to a specific local need, such as the breeding season for game birds. The complainant may be reluctant to engage in dialogue, but every effort should be made to do so, using whatever intermediary contacts may be available.
204. A good example recently was an approach from an organiser of a pony club camp with details of the days when riding was taking place. A local avoid was installed for the duration of the event. In that case the initiative came from a member of the public who, through making a complaint last year due to helicopter activity over the same event, was provided with advice on how to take suitable measures to avoid a reoccurrence. Equally important are initiatives to invite complainants to visit Aldergrove and meet aircrews and those involved in arranging flying. But if this results in changes to flying patterns it is very important that these changes are

followed through consistently and regularly: the risk otherwise is that members of the public will feel badly let down.

205. It is for others, not for me, to weigh up the balance of advantage and disadvantage in the issue of helicopter flying. The number of complaints this year has risen. Some nuisance is inevitable and against a background of suspicion and resentment of helicopter activity in the past, the disruption to the community in Northern Ireland has to be set against a clear training need.
206. A major change has recently occurred. On 30 September RAF Aldergrove closed. Air activity is continuing under the Joint Helicopter Command Flying Station, Aldergrove. This presents an opportunity to review what kind of helicopter flying can best reconcile military needs with the impact on the community. I very much hope that this opportunity will be taken. I hope also that there will be the fullest possible engagement with the community as part of this process.
207. The arrival of fast jets in Northern Ireland will introduce a new dimension. I have read the file on the first complaint, in relation to two RAF Typhoon aircraft on a short visit in July. It is for the RAF to decide whether to mount such activity but it will be important to explain to the public what is involved: their impact is very different from that of low flying helicopters. Public reaction may be favourable as well as negative.
208. That leads me on to community engagement more generally. Last year I commended HQNI for producing an excellent leaflet explaining why low flying was necessary. The new circumstances after 30 September will probably call for a revision of that leaflet. They also provide the new military authorities at Aldergrove with a ready-made opportunity to build further on the imaginative efforts made this year by the Station Commander in community outreach.
209. In my report last year I said that I thought there might be value in comparing practice in Northern Ireland with wider practice across the UK as whole. Arrangements were therefore made for me to visit the Directorate of Air Staff in the Ministry of Defence in London in December. I was accompanied by a member of staff from HQ 38 (Irish) Bde and one of the Civil Representatives. The discussions covered the Low Flying Area system (policy, rules, guidance and operations) and the work of the Complaints and Enquiries Unit and the Defence Flying Complaints Investigation Team, both located in London. They also covered the Regional Community and Relations Officers, who have a role in education and awareness. This last point has relevance to what one might call outreach activities on the part of the RAF. Part of that role is covered in Northern Ireland by the Civil Representatives.
210. My conclusions from a comparison of practice are that the challenges of how to engage the public are of equal concern in Northern Ireland and in Great Britain. Indeed, in many respects the position in Great Britain is more complex. But extensive efforts are made to explain the pattern of military flying: I was told that some £150,000 had recently been spent on a leaflet campaign. There is however one major difference. In Great Britain there is not the same deep-rooted suspicion

of military air activity, nor refusal to engage with the military authorities, as is the case in some areas in Northern Ireland.

211. That said, the efforts in Great Britain to publicise military air activity, for example on websites, local radio and other media, including dates and times of activity, are impressive. Such a strategy may not be fully possible in Northern Ireland for security reasons, but I do not believe that security considerations need be as much of an inhibition, for example on giving advance notice of helicopter flying, as may sometimes be argued. I am therefore pleased to see that HQ have included greater use of publicly accessible information on flights in their forward look for the forthcoming year.
212. Last year I reached the view that not everything was being done to exploit local media – radio, press, websites, meetings, leaflets, posters, contact with key groups for example among the farming and horse riding community – to explain the work of the military, why it is important, how the system of local avoids works (including rapid insertion of local avoids over particular properties), what activity is planned in a particular area and when, what is being done to minimise the impact on the community, and how the community can help.
213. I have been briefed about the extensive effort this year with the Ulster Farmers' Union, with local communities through the Civil Representatives, and specific efforts to improve communication with local landowners in respect of training rights. There is now an outreach strategy making appropriate use of stakeholders. The military authorities have specific commitments to identify an audience for their messages and create a two way dialogue with them.
214. I discussed the issues of community outreach with the Station Commander at RAF Aldergrove. He has done a great deal in his time in post to try to reach out to the community, with imaginative schemes, especially geared towards younger people. Over time, I believe that efforts such as this could go a long way to help overcome some if not all of the long and deeply held feelings of alienation and suspicion of military activity, which are still present. The armed forces have a responsibility, which they enthusiastically recognise, to engage in new forms of community outreach and liaison, as does every other public body in Northern Ireland.



## Part 7: Conclusions

### Preliminary

215. My conclusions relate to the second full year of the operation of the Justice and Security Act, from 1 August 2008 to 31 July 2009. They are based solely on the review activity described in the preceding text.

### The security profile

216. None of those to whom I have spoken differ from the view that the security picture this year is darker than it was this time last year.
217. That comment relates specifically to the terrorist threat from dissident republicans. It does not necessarily apply to the same degree, or in the same way, to public order and organised crime, where there have been significant areas of improvement as well as some setbacks.
218. As last year, I have considered the three distinct but closely related areas of terrorism, public order and serious crime, based on assessments, case studies, statistics and operational judgments.
219. In terms of terrorism, there is categoric evidence about the threat from dissident republicans, as shown by the raising of the threat level to “severe” in February, the comments of the Chief Constable in March, and the IMC reports published in May and November. This threat has taken the specific form of murders of a police officer and two members of the armed forces and many other attacks. It has also involved callous and wilful disregard for the safety of members of the public and has required response both from the police and from supporting military assets.
220. For public order, the profile has been in some respects more difficult than last year. The localised violence associated with the summer parades led to more incidents than last year, especially in the Ardoyne area in Belfast on 13-15 July, with trouble also in Armagh, Londonderry, Lurgan, Rasharkin and Strabane. But in other locations, notably Drumcree and Whiterock, events passed off without incident. The Ardoyne violence led to the police using water cannon and, more seriously, firing AEPs. But it was not on the scale of disturbances in recent years and lacked any community focus: rather it was an attempt by dissident republicans to orchestrate violence using people brought in from outside the area. On no occasion was it necessary to deploy military public order assets.
221. In respect of serious crime, the view of the Organised Crime Task Force is that whilst some paramilitary groups are moving away from involvement in criminality others remain deeply involved in aspects of organised crime. In some instances the association is as a result of a small number of key individuals and in other instances the group survives only as an organised criminal gang using the name of a former paramilitary group in order to try and exert control over a community.

### *Operation of the powers*

222. The information I have received from the police and the armed forces shows the increased activity needed to counter the threat from dissident republicans in the past year, including dealing with explosive devices and hoaxes, but otherwise with a reduced role for the armed forces.
223. So far as the police are concerned, they have resolved the issues raised last year about the relationship of various sets of police powers. Steps have been taken across the PSNI to ensure that these issues are better understood. Training has been improved to drive the messages home and recording of activity has improved, though there is still more to do. It would have been unacceptable if all this work had not been done and it needs to be continued and developed further.
224. No-one has raised with me issues relating to disproportionate, unjustified, unreasonable, unnecessary or discriminatory use of the powers by the police. From my observation, their strategic approach has been appropriate. They remain closely focused on their obligations under human rights legislation.
225. The improved recording of activity will enable me to develop more detailed analysis of the impact in individual cases. I shall do this in close conjunction with those who have the direct statutory responsibilities for such cases– the Policing Board for Northern Ireland and the Police Ombudsman.
226. The statistics continue to show the limited use of the Justice and Security Act powers by comparison with other powers under the PACE Order and, more specifically, the Terrorism Act. The police have used the Terrorism Act about ten times more than the Justice and Security Act. Lord Carlile is considering the use of section 44 of the Terrorism Act.
227. Direct comparison with the Terrorism Act may not however be helpful when the police are making judgments across the range of powers available to them according to the circumstances of each case. Their use must be carefully justified in every individual case, which is open to complaint and legal challenge and for which avenues of redress are plentiful and effective.
228. The powers have been used this year because of the activities of the dissident republicans, which are blocking the path towards normal security and are hindering the development of policing strategies focused on serving community interests. All communities in Northern Ireland are suffering from the effects of dissident republican activity.

### *The role of the armed forces*

229. The armed forces have continued to act in support of the police, at the request of the police, in the limited role specified under Operation Helvetic. There is no military presence on the streets, and my understanding is that there is no intention to change that.

230. **Military units are garrisoned in Northern Ireland and, with the exception of specialist units, their function has nothing to do with events in Northern Ireland. Their main focus now lies overseas and there is no desire on the part of the military authorities to increase their presence in Northern Ireland – quite the reverse, from my observation. The fulfilment of security normalisation has been demonstrated by the reduction in the rank of the senior military commander in Northern Ireland and by the presence of regular soldiers living in the community.**
231. **Military assets have however been involved more than last year in dealing with actual or hoax Improvised Explosive Devices (IEDs) and finds of weapons and munitions. Table 4 in Appendix B gives detailed information. In the first seven months of 2009 the Explosive Ordnance Disposal (EOD) teams were called out on 297 occasions compared with 161 in the comparable period in 2008 – an increase of 84%. There is no police capability to deal with such incidents in Northern Ireland (nor is there elsewhere in the United Kingdom outside the Metropolitan Police District) and in terms of resource demands it is unlikely that PSNI can or would want to develop it.**

#### **Public order**

232. **In terms of public order, events this year have borne out some of the concerns which the police expressed to me last year about the possibility of disorder in specific locations. It did not in the event prove necessary to invoke any of the public order powers in the Justice and Security Act.**
233. **The police this year felt entirely able to handle public disorder within the resources of PSNI. This raises the question whether police capability has now reached such a level as to rule out completely the need for military support.**
234. **The view of senior commanders, taking account both of the increased disorder this year and the PSNI response to it, has not changed: the involvement of the armed forces in public order situations in Northern Ireland, while not completely ruled out, is highly unlikely for the future.**
235. **But if the possibility of using military assets, however unlikely, continues as a factor in strategic planning, it will remain necessary to maintain a contingent military capability, underpinned by a clear and proportionate legal framework, together with a training programme and logistic support, to ensure that any deployment is effective, while having minimal impact on the civil community.**

#### **Military complaints**

236. **So far as military complaints are concerned, there has been a significant increase in number, from 85 to 124, a rise of 46%. Of these, 115 (93% of the total) were treated as formal complaints. All 124 complaints relate to flying (all but one helicopter flying). I have read through all the files relating to formal complaints and examined how the informal cases have been resolved.**

237. **There is a target of replying to a formal case within 15 days of its receipt, which was achieved in every case this year.**
238. **In one case the complainant was unhappy with the response he received and the matter was finally resolved with a visit from the Civil Representative.**
239. **I am satisfied from both my examination of the files and my discussion with the staff concerned that they are aware of the importance of pursuing their enquiries diligently and also of the need to reply to the public as fully and quickly as possible. They are also aware of the need to keep good records, which can be available to me and others. The minor blemishes in case handling have in no cases affected the substance of the outcome.**
240. **It follows therefore that I have not felt it necessary this year to invoke my power to require the Brigade Commander to review a particular case or class of cases.**
241. **So far as the substance of the complaints is concerned, it is for others, not for me, to weigh up the balance of advantage and disadvantage in the issue of helicopter flying. The number of complaints this year has risen. Some nuisance is inevitable, and against a background of suspicion and resentment of helicopter activity in the past, the disruption to the community has to be balanced against a clear training need.**
242. **A major change has recently occurred. On 30 September RAF Aldergrove closed, although air activity is continuing under the Joint Helicopter Command Flying Station Aldergrove. This presents an opportunity to review what kind of helicopter flying can best reconcile military needs with the impact on the community. A review of this kind could with advantage include the fullest possible engagement with the community.**

**The future of these powers**

243. **In his letter of appointment, the Secretary of State said that:**
- “The Reviewer may make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act”.*
244. **I am not obliged to make recommendations and the Secretary of State is not obliged to do more than consider them but, as last year, I shall offer some recommendations.**

*Operational need and advice*

245. **The question of the continuing need for these powers turns principally on whether there is likely to be an operational need for them. The main factors in that consideration are the evidence of the past year, assessment of the likely security profile, and advice from the police.**

246. **All three of these indicators suggest that the powers will continue to be needed. They have been used selectively this year as part of security operations, as indicated in the discussion above and in the statistics. The terrorist threat remains at “severe” and dissident republican activity is continuing. Both the PSNI and ACPO have told me that they believe that these powers continue to be needed.**
247. **Some of the powers provided in the Act for the armed forces have not been used this year. That raises the question whether they could be dispensed with. There is the option of removing them, leaving only those powers which on this year’s experience might again be needed, but a judgment of this kind must inevitably be speculative at present.**

*Other views*

248. **The future of these powers has featured in the discussions I have held as part of the review. I have recorded these discussions in Part 3.**
249. **Some have said very strongly that it would be folly to remove these powers in the face of the current and foreseeable security profile. In their view, Northern Ireland is facing its most serious security challenge for many years. They see no prospect of immediate reduction in the threat from dissident republicans and take the view that the security authorities need the maximum flexibility in their response, in which the Justice and Security Act powers play a vital part.**
250. **Those who last year were opposed to these powers, which they regarded as counterproductive and likely to stigmatise particular communities, continue to fear that overreaction to the increased threat will play into the hands of the dissidents and produce the opposite effect from what is needed. In their view, the continued retention of these powers perpetuates a negative climate which dissidents will seek to exploit, with harmful effects on vulnerable communities.**
251. **Compared with last year, few of the groups and individuals to whom I have spoken have put forward the view that the security authorities are overestimating the security threat from the activities of the dissident republicans, who are small in number but highly dangerous.**

*Conclusion*

252. **I have reflected on all these comments carefully as well as considering the operational indicators. My conclusion is that, in the light of the activities of dissident republicans, the balance of argument in favour of continuing these powers is persuasive. I do not think that the issues are likely to look much different in the near future.**

## Recommendations

253. I recommend that:

- (1) The police should continue to develop their training programmes so that every officer likely to be involved in security operations is aware of the range of powers available and how to choose the most appropriate (*paragraph 98*)
- (2) Systems for recording the use made of the powers available to the police should be further developed, in particular the specific records required under section 23 and Schedule 3 paragraph 6 (*paragraphs 111, 119 and 123*)
- (3) Police operations against suspected terrorist threats or incidents should continue to involve specialist support from the armed forces as they have done this year (*paragraphs 109 to 124*)
- (4) Planning for public disorder should continue to include both specialist military assets and contingent military support, which should be effectively trained and prepared (*paragraph 148*)
- (5) HQ 38 (Irish) Bde should complete forthwith their information leaflet on military complaints procedures (*paragraph 169*)
- (6) Arrangements for handling military complaints files should be reviewed to ensure that action, records and information are complete in every case (*paragraphs 188 and 189*)
- (7) HQ 38 (Irish) Bde should take the opportunity of the closure of RAF Aldergrove to review the need for helicopter training flights (*paragraph 206*)
- (8) HQ 38 (Irish) Bde should review the information leaflet provided on low flying to cater for the changed pattern of military air activity (*paragraph 208*)
- (9) HQ 38 (Irish) Bde should give further consideration to making available as much advance information as possible about planned helicopter flights (*paragraph 211*)
- (10) Subject to any changes in circumstances in the near future, the powers in sections 21 to 32 of the Justice and Security Act should be continued in operation for a further year without change, accompanied by continued stringent safeguards and record keeping (*paragraph 252*).

**ROBERT WHALLEY CB**

**November 2009**

## **Appendix A: The Powers under Review**

1. I set out below a summary of each of the powers under review, drawn from the Explanatory Notes prepared by the Northern Ireland Office, with an indication of its predecessor legislation.

### **2. Section 21: Stop and question:**

*provides a member of the armed forces on duty or a constable with the power to stop and question a person for so long as is necessary to establish their identity and movements.*

*Additionally, members of the armed forces may stop a person to question him or her about a recent explosion or incident endangering life, or about their knowledge of a person killed or injured in a recent explosion or incident. These additional grounds are intended to assist the military to undertake explosive ordnance work, where they may wish to question people about explosions to gain knowledge which will help them ensure the safety of the area. Anyone who fails to stop or answer to the best of their knowledge and ability commits an offence.*

3. This power is based on section 89 of the Terrorism Act 2000.

### **4. Section 22: Arrest:**

*allows a member of the armed forces to arrest and detain a person for up to four hours if he or she reasonably suspects they are committing, about to commit or have committed an offence. Premises where that person is or is reasonably suspected to be may be entered and searched for the purposes of an arrest.*

*The power to detain a person for up to four hours is intended to allow sufficient time for a PSNI officer to attend in order to re-arrest the person and charge them with an offence, if appropriate.*

*It is envisaged that members of the armed forces will be deployed increasingly rarely, so will not have recourse to these powers on a regular basis. They are not expected to know the law as intimately as a police constable, hence in exercising their powers of arrest they will not be required to provide detailed legal grounds for arrest. Subsection (2) provides that members of the armed forces comply with any laws requiring them to state grounds for arrest by saying that they are making the arrest as a member of Her Majesty's Forces. There is an exception in subsection (5) for laws that have effect only by virtue of the Human Rights Act 1998. The effect of this is that the armed forces satisfy their legal obligations if they comply with subsection (2), except any overarching requirement under the Human Rights Act 1998.*

*A member of the armed forces can seize and detain for up to four hours anything he or she reasonably suspects is being, has been or is intended to be used in the commission of an offence under section 31 or 32 (offences related to powers of road closure and land seizure). This measure enables the retention of articles to be used*

*in the commission of those offences until a constable attends who will decide whether to arrest and charge.*

5. This power is based upon section 83 of the Terrorism Act 2000.

**6. *Section 23: Entry:***

*provides a power of entry to premises. Premises are defined at section 42 to include vehicles.*

*This section allows a member of the armed forces or a constable to enter premises if he or she considers it necessary in the course of operations for the preservation of peace or the maintenance of order. Since no warrant is required, this section enables officers on the ground to respond immediately to events as they arise.*

*A constable may not enter a building unless the conditions in subsection (2) are satisfied. First, there must be written authorization from an officer of the rank of superintendent or above. If no such authorization is in place and it is not reasonably practicable to obtain written authorization, then oral authorization may be provided by an officer of the rank of Inspector or above. If it is not reasonably practicable to obtain either written or oral authorization then a constable may enter a building without it.*

*An authorization must relate to a specified area within Northern Ireland. All authorizations must be retained in written form and constables who enter premises must make a record of each entry as soon as is reasonably practicable. Subsection 6 sets out the information that should be included in such records. Copies of records or authorizations must be given to the owners or occupiers of buildings which have been entered as soon as is reasonably practicable.*

7. The general power of entry is drawn from section 90 of the Terrorism Act 2000. The procedures to be followed for authorizations and record keeping are new: they are similar to those for the examination of documents, as an added safeguard on powers of entry.

**8. *Section 24: Search for munitions and transmitters:***

*gives effect to Schedule 3, detail of which is provided below.*

9. This section is the same as the preceding section 84 of the Terrorism Act 2000, together with Schedule 10 to that Act.

**10. *Section 25: Search for unlawfully detained persons:***

*allows members of the armed forces to enter and search any premises in order to search for any person whom they reasonably believe has been unlawfully detained and whose life is endangered. No warrant is to be required because time will be critical in these situations.*



*The section requires the power to search a dwelling to be exercised only if authorized by a commissioned officer. This recognizes the special status of people's homes: "dwelling" is defined at section 42 of the Act.*

11. This power is based upon section 86 of the Terrorism Act but is now restricted to the armed forces: the police rely upon powers under the Police and Criminal Evidence Order and the power of entry in section 23.

**12. Section 26: Premises: vehicles, &c:**

*provides that a power to search premises includes a power to stop a vehicle, and where necessary or expedient, cause it to be taken away for searching. References to premises (found in sections 22(3), 23, 25, 28 and 33 and Schedule 3) include vehicles by virtue of section 42. Where records must be made of a search, and that search is of a vehicle, references to the need to record an address will be taken as a reference to the location of the vehicle and its registration number. References to the occupier will be taken to refer to the owner or driver of the vehicle. An offence of failing to stop a vehicle is created.*

*Subsection (5) enables, when searching a vehicle for munitions and transmitters, the searcher to require a person to remain with the vehicle or to go to any place the vehicle is taken where the searcher reasonably believes it necessary for carrying out the search. Reasonable force may be used to secure compliance with these requirements.*

*Subsection (6) provides that a requirement to stay with the vehicle, or to go to where it is taken, may only last as long as the search, or for four hours (extendable to eight hours in certain circumstances), whichever is shorter. A record must be made and a copy given to the owner or driver of the vehicle.*

13. This power is based upon section 95 of the Terrorism Act 2000.

**14. Section 27: Examination of documents:**

*provides that a member of the armed forces may examine documents found in a search under sections 24 to 26 in order to ascertain whether the information contained in them is likely to be useful for terrorism, and if necessary or expedient remove them to another place, for up to 48 hours.*

*A person may not examine a document which he or she has reasonable cause to believe is subject to legal privilege.*

*It is an offence to obstruct a member of the armed forces in exercising this power.*

15. This power is based upon section 87 of the Terrorism Act 2000, but is now restricted to members of the armed forces. The police have separate powers under the Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007, Article 13, provided for a wider range of purposes.

**16. Section 28: Examination of documents: procedure:**

*provides that documents examined using the power at section 27 of the Act may not be photographed or copied. Written records of examinations must be made as soon as reasonably practicable and must include the information listed at subsections (2) and (3). A copy of the records should be supplied to the person who had custody of the document or to the occupier of the building where the document was found.*

17. This power is based upon section 88 of the Terrorism Act 2000, but is restricted to members of the armed services in line with section 27.

18. **Section 29: Taking possession of land, &:**

*provides that the Secretary of State may authorize someone to take possession of land or property and carry out work on it. He may also authorize a person to place buildings and other structures in a state of defence, for instance through fortification. Property may be detained, destroyed or moved by authorized persons, and the Secretary of State may also authorize persons to take actions which interfere with public rights or private rights of property. These powers may only be exercised where it is necessary for the preservation of peace or the maintenance of order. It is intended that such powers will be used during the marching season in Northern Ireland and to allow the rapid creation of "peace walls" at interfaces where there is community tension. These powers may be exercised at very short notice, hence they are exempt from normal planning processes.*

19. This section reproduces section 91 of the Terrorism Act 2000.

20. **Section 30: Road closure: immediate:**

*provides that a member of the armed forces, or someone authorized by the Secretary of State, may close roads, divert them and restrict and prohibit the use of rights of way or waterways where it is immediately necessary for the preservation of peace or the maintenance of order. These powers are also intended for the management of the marching season in Northern Ireland. For example, roads and public rights of way may be closed at short notice in reaction to events on the ground.*

21. This power is based upon section 92 of the Terrorism Act 2000 but is restricted to the armed forces. The police rely on Article 12 of the Policing (Miscellaneous Provisions) (Northern Ireland) Order and powers under road traffic legislation.

22. **Section 31: Sections 29 and 30: supplementary:**

*creates an offence of interfering with works and equipment used to take possession of land or close or divert roads, rights of way, etc, unless there is a reasonable excuse for doing so.*

*This section also provides that authorizations under sections 29 and 30 may authorize the exercise of all powers, or only some of them, and that authorizations may relate to a person or to a group of people.*

23. This section reproduces section 93 of the Terrorism Act 2000.

24. **Section 32: Road closure: by order:**

*provides the Secretary of State with a power to close, partially close, or divert roads if necessary for the preservation of the peace or the maintenance of order. An offence of interfering with road closure works or equipment is created. Offences of executing bypass works within 200 metres of road closure works, having materials and tools for executing such works within 200 metres and knowingly permitting either of these to take place on land are created. There is a defence of reasonable excuse.*

25. This section reproduces section 94 of the Terrorism Act 2000.

## Appendix B: Statistics

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

Justice and Security Act – 1<sup>st</sup> August 2008 – 31<sup>st</sup> July 2009

	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Total
<b>1 JSA Section 21 - Number of persons stopped and questioned</b>	10	16	6	7	1	6	4	29	192	138	152	268	829
<b>2 JSA Section 23 - Power of Entry</b>	Not Available	Not Available	3	4	2	0	0	0	12	8	4	24	57
<b>3 JSA Section 234 (Schedule 3) - Munitions and Transmitters stop and searches</b>													
No. of persons stopped and searched, public place:	38	29	3	26	16	25	12	12	35	15	16	39	266
No. of persons stopped and searched, private place:	15	13	3	0	7	2	3	0	18	7	5	17	90
Persons stopped and searched - total	53	42	6	26	23	27	15	12	53	22	21	56	356
<b>JSA Section 234 (Schedule 3) - Searches of Premises:</b>													
No. of Premises searched - Dwelling:	23	24	7	7	8	3	4	23	8	11	5	32	155
No. of Premises searched - Other:	9	1	1	4	3	0	0	41	2	1	2	4	68
No. of Occasions items seized or retained	7	2	2	4	1	0	1	13	3	1	3	6	43
<b>JSA Section 234 (Schedule 3) - Use of Specialists:</b>													
use of Specialists - No. of Occasions 'other' persons accompanied police:	2	1	1	1	1	0	1	6	3	1	1	2	20
<b>4 JSA Section 234 (Schedule 3) - Searches of Premises:</b>													
(1)(a) Vehicles stopped and searched under section 24	38	38	3	11	10	21	15	5	32	8	15	43	239
(1)(b) Vehicles taken to another location for search	0	0	0	0	0	0	0	0	0	0	0	0	0

Source: Central Statistics Unit, Police Service of Northern Ireland, Lisnasharragh

**Table 2: Use of Powers by Police in Northern Ireland under the Justice and Security (Northern Ireland) Act 2007 between 1<sup>st</sup> August 2008 and 31<sup>st</sup> July 2009**

**Table 2A**

**Justice and Security (NI) Act 2007 Act Section 21 – Stop and Question**

Year	Police Service for Northern Ireland	
	Number of Persons Stopped and Questioned	
2008		
Aug-Sept		26
Oct-Dec		14
2009		
Jan-Mar		39
Apr-Jun		482
Jul		268

Source: Police Service of Northern Ireland

**Table 2B**

**Justice and Security (NI) Act 2007 Act Section 23 – Power of Entry**

Year	Police Service for Northern Ireland	
	Number of Persons Stopped and Questioned	
2008		
Aug-Sept		Not Available
Oct-Dec		9
2009		
Jan-Mar		0
Apr-Jun		24
Jul		24

Source: Police Service of Northern Ireland

**Table 2C**  
**Justice and Security (NI) Act 2007 Act Section 24 (Schedule 3) –**  
**Munitions and Transmitters Stop and Searches**

Year	Number of Persons Stopped and Searched by Police		
	Public Place	Private Place	Total
2008			
Aug-Sept	67	28	95
Oct-Dec	45	10	55
2009			
Jan-Mar	49	5	54
Apr-Jun	66	30	96
Jul	39	17	56

Source: Police Service of Northern Ireland

**Table 2D**  
**Justice & Security (NI) Act 2007 Section 24 (Schedule 3) – Searches of**  
**Premises**

Year	Searches of Premises by Police			
	Dwellings	Other	Occasions items seized or retained	Occasions 'other' persons accompanied police
2008				
Aug-Sept	47	10	9	3
Oct-Dec	22	8	7	3
2009				
Jan-Mar	30	41	14	7
Apr-Jun	24	5	7	5
Jul	32	4	6	2

Source: Police Service of Northern Ireland

**Table 2E**  
**Justice & Security (NI) Act 2007 Section 26 (Schedule 3) – Searches of Vehicles**

Year	Searches of Premises by Police	
	Vehicles stopped and searched under JSA Section 24 (Schedule 3)	Vehicles taken to another location for search
2008		
Aug-Sept	76	0
Oct-Dec	24	0
2009		
Jan-Mar	41	0
Apr-Jun	55	0
Jul	43	0

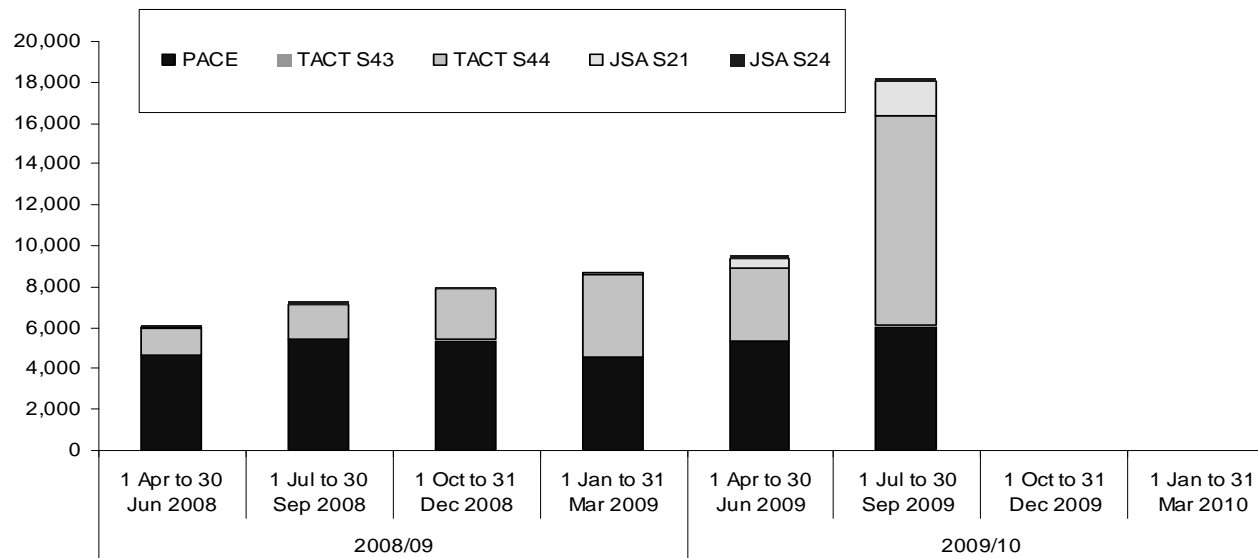
Source: Police Service of Northern Ireland

**Table 3: Number of persons stopped/searched and stopped/questioned under PACE, Terrorism Act and Justice and Security Act - Trend Information**

	2008/09				2009/10			
	1 Apr to 30 Jun 2008	1 Jul to 30 Sept 2008	1 Oct to 31 Dec 2009	1 Jan to 31 Mar 2009	1 Apr to 30 Jun 2009	1 Jul to 30 Sept 2009	1 Oct to 31 Dec 2009	1 Jan to 31 Mar 2010
Number of persons stopped and searched under PACE	4,626	5,437	5,380	4,568	5,337	6,074		
Number of persons stopped and searched under TACT S43	16	9	13	18	15	28		
Number of persons stopped and searched under TACT S44	1,341	1,657	2,524	4,026	3,568	10,265		
Number of persons stopped and questioned under JSA Section 21*	28	31	14	39	482	1,697		
Number of persons stopped and searched under JSA Section 24*	111	154	55	54	96	166		
<b>Total*</b>	<b>6,122</b>	<b>7,288</b>	<b>7,986</b>	<b>8,705</b>	<b>9,498</b>	<b>18,230</b>		

\*Please note that this is not the total number of persons stopped and searched/questioned as a stop and search/question can be carried out under two legislations e.g. TACT S\$\$ and JSAS21

**Number of persons stopped/searched and stopped/questioned under PACE, Terrorism Act and Justice and Security Act – Trend Information**



Source: Central Statistics Unit, Police Service of Northern Ireland





**Table 5: Formal Helicopter Complaints – 1 January 2007 –  
31 July 2009**

---

	2007	2008	2009
January	1	1	13
February	2	4	8
March	1	3	13
April	5	18	2
May	5	4	10
June	3	9	10
July	5	11	14
August	4	1	-
September	1	24	-
October	2	9	-
November	1	11	-
December	1	0	-
Total	31	95	70 <sup>1</sup>

---

<sup>1</sup> This represents the first seven months of 2009

**Table 6: Informal Helicopter Complaints – 1 January 2007  
– 31 July 2009**

	2007	2008	2009
January	8	3	1
February	12	4	0
March	3	2	0
April	7	1	1
May	9	0	1
June	7	3	1
July	13	4	0
August	4	0	-
September	0	4	-
October	3	0	-
November	0	0	-
December	2	1	-
<b>Total</b>	<b>68</b>	<b>22</b>	<b>4<sup>2</sup></b>

<sup>2</sup> This represents the first seven months of 2009

## **Appendix C: Organisations and Individuals Consulted**

ACPO

Alliance Party

British Irish Rights Watch

Civil Representatives

Committee for the Administration of Justice

Directorate of Air Staff, Ministry of Defence

DUP

HQ 38 (Irish) Bde

Independent Monitoring Commission

International Independent Commission for Decommissioning

Lord Carlile

Lord Chief Justice of Northern Ireland

Lord Glentoran

Northern Ireland Office

Northern Ireland Human Rights Commission

Northern Ireland Policing Board

Organised Crime Task Force

Owen Paterson MP

Parades Commission

Police Federation for Northern Ireland

Police Ombudsman of Northern Ireland

Police Service of Northern Ireland

SDLP

Security Service

Sinn Fein

UUP

University of Leeds School of Law