

**REPORT OF THE INDEPENDENT REVIEWER**

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

**Robert Whalley CB**

**October 2008**

The Rt Hon Shaun Woodward MP  
Secretary of State for Northern Ireland  
Castle Buildings  
Stormont  
Belfast BT4 3SG

### **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:*

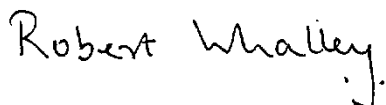
- *to review the operation of sections 21 to 32 of the Act and those who use or are affected by those sections;*
- *to review the procedures adopted by the GOC NI for receiving, investigating and responding to complaints;*
- *and to report annually to the Secretary of State*

*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”.*

You invited me to report in Autumn 2008 on the first year of the operation of the Act (from 1 August 2007 to 31 July 2008).

I have pleasure in submitting my report. **My conclusions are set out in Part 7, with key judgments in paragraphs 209 to 213 and recommendations in paragraph 214.**



**ROBERT WHALLEY CB**

October 2008

## **CONTENTS**

<b>Part 1: The Legislative Background</b>	<b>4</b>
<b>Part 2: The Review Process</b>	<b>8</b>
<b>Part 3: The Political Background</b>	<b>14</b>
<b>Part 4: The Security Background</b>	<b>17</b>
<b>Part 5: The Operation of Police and Military Powers</b>	<b>21</b>
<b>Part 6: Military Complaints Procedures</b>	<b>29</b>
<b>Part 7: Conclusions</b>	<b>35</b>
<b>Appendix A: The Powers Under Review</b>	<b>44</b>
<b>Appendix B: Statistics</b>	<b>49</b>

## Part 1: The Legislative Background

### *Introduction: the appointment of a reviewer*

1. This is my first report, which covers the period from 1 August 2007 to 31 July 2008. Parts 1 to 4 of this report are essentially background material, and I shall not repeat them in any detail in my report next year. Parts 5 to 7 deal with activity in the year under review. My conclusions are set out in Part 7, with key judgments in paragraphs 209 to 213 and recommendations in paragraph 214.
2. The background leading up to the appointment of an Independent Reviewer may be familiar to many of those closely involved in the affairs of Northern Ireland. But it may be less so to any wider audience. Since my report will be laid by the Secretary of State in the United Kingdom Parliament it may be helpful to set out the legislative context in full, especially since the Independent Reviewer is a new appointment, at least in this form.
3. The Justice and Security (Northern Ireland) Act 2007 received Royal Assent on 24 May 2007. Section 53 of the Act provided that sections 21 to 40 and Schedules 3 and 4 came into force on 1 August 2007. Section 40 (Review) required the Secretary of State to appoint a “reviewer”, and it was to this position that I was appointed on 22 May 2008. I summarise below the main provisions of section 40, and I also summarise below the main provisions of sections 21 to 32, with more detail in Appendix A.

### *Functions of the reviewer*

4. 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 in the Explanatory Notes published on Royal Assent 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. 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.
5. 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*

6. A brief summary of the legislation on justice and security which applies in Northern Ireland may be helpful. The principal legislation is the Terrorism Act 2000. This was enacted to provide a permanent frame of reference, for the United Kingdom as a whole, for legislation on terrorism. It has been supplemented by extensive further legislation to deal with the threat from international terrorism since the events of 11 September 2001.
7. Part VII of the Terrorism Act 2000 contained provisions specific to Northern Ireland. It was subject to annual renewal in the United Kingdom Parliament, with a "sunset clause" limiting it to 5 years – that is, in the absence of further primary legislation, it would have expired at the end of 18 February 2006. That further legislation was the Terrorism (Northern Ireland) Act 2006 which extended Part VII for a further limited period.
8. At this point I note that the Government took the view when introducing what became the 2006 Act that the Part VII provisions were likely to remain necessary for a specified period ending before 1 August 2007. The Justice and Security Act provided a mechanism for continuing such of the Part VII powers as were thought necessary into the future and indeed it did so without a break since much of it came into force on 1 August 2007.
9. The powers which had their origins in Part VII and are carried over into the Justice and Security Act are no longer subject to annual renewal, so the concept of an Independent Reviewer producing an annual report to assist annual Parliamentary deliberations may not be thought to have the same topical relevance. But, conversely, in the absence of annual Parliamentary scrutiny, there is an added dimension to an annual report from an Independent Reviewer, especially since my terms of reference invite me to offer views on whether any of the powers should be

repealed. I shall therefore explain in Part 2 how I have approached this part of my terms of reference.

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

10. 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, based on the Explanatory Notes prepared by the Northern Ireland Office when the Justice and Security Act received Royal Assent. 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: I shall examine their operation in Part 5.

11. 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***

12. 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***

13. The powers set out in section 40 of the 2007 Act in relation to the investigation of military complaints are not new. They are in substance based upon section 98 of the Terrorism Act which, together with Schedule 11 to the 2000 Act, provided for an Independent Assessor of Military Complaints Procedures. That post has now been abolished and its functions have been subsumed into the post of Reviewer under section 40. The previous exclusion of criminal complaints or those with a financial compensation dimension has not been carried over into the new legislation.
14. In relation to complaints addressed to the GOC (which for the sake of convenience I shall describe with the shorthand “military complaints”) the drafting of section 40(6) makes clear which of these provisions are mandatory and which optional. The reviewer must investigate any representations he receives about the procedures adopted by the GOC but then has discretion to pursue how those procedures have operated in a particular case or more generally. This may extend both to requiring the GOC to review matters and to making recommendations about inadequacies in the procedures.
15. In response, the GOC is placed under an obligation in section 40(7) “*to provide and disclose documents and to provide such assistance as the Independent Assessor (the reviewer) may reasonably require*”. Taken together, the powers in section 40(6) and (7) provide a powerful mechanism in relation to military complaints. I shall discuss them in Part 6 of this report.

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

### ***Reviews of legislation against terrorism***

16. The concept of 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. The Shackleton review of 1978, of which I had the privilege to be the Secretary, covered legislation applying to both Northern Ireland and Great Britain. Thereafter the process involved annual reviews in some form, focusing on operation and effectiveness, in recognition that these were basically emergency measures to deal with ongoing terrorist threats – in other words, abnormal situations whose duration was expected only to be temporary. Hence the process of annual renewal, enabling Parliament to take a view each year as to whether exceptional powers continued to be necessary.
17. This has always involved striking a fine balance between conflicting arguments and judgments, in the light of the operational evidence and events on the ground. On the one hand, there has always been a strongly argued view that, unless powers of this kind were provided, the police, with military support as necessary, would not be fully able to counter terrorist threats, and the judicial system would not be able to deal adequately with those charged with terrorist offences. On the other hand, exceptional powers represent a departure from normality, which can be justified only in strict circumstances in terms of the United Kingdom's international obligations. There have also been fears that such powers stand in the way of a transition to normality, and carry the risk of alienating sections of the community whose support for the police and judicial system is essential in any condition of normality.
18. Getting this balance right has been a central pre-occupation of the authorities for over 30 years. Independent reviews of emergency legislation have been designed to provide a source of advice to Parliament and Government as part of their annual review processes of these sensitive and complicated issues, against whatever political or security situation applied at the time.

### ***The Terrorism Act 2000 and subsequent legislation***

19. The introduction of the Terrorism Act 2000 provided something of a departure. It followed a detailed review by The Rt Hon Lord Lloyd of Berwick. For the first time, legislation was passed to provide a permanent basis in the United Kingdom as a whole for dealing with terrorism, in recognition that the threat from international terrorism was growing and was likely to require a long-term response, but one which also needed to be proportionate.
20. At the same time, the particular circumstances of Northern Ireland were recognized by the maintenance of the concept of annual renewal of powers specific to Northern Ireland, which formed Part VII of the Terrorism Act 2000, albeit with a time limit of five years in that form. But the concept of the reviewer was maintained both in relation to the permanent powers and the annually renewable Northern Ireland



powers, and it was to that post that The Rt Hon Lord Carlile QC was appointed when the 2000 Act came into force.

21. The terrible events in the United States on 11 September 2001 gave rise to further legislation – the Anti-Terrorism, Crime and Security Act 2001 - to deal with aspects of the Al Qa’ida threat which were manifested in those events and for which the legislation of the previous year was thought to be insufficient. Further legislation followed the decision of the House of Lords in December 2004 that some provisions of the Anti-Terrorism Act were incompatible with the United Kingdom’s obligations under the European Convention of Human Rights, and yet more legislation following the London bombings on 7 July 2005.

### ***How the review process now works***

22. The Government has asked Lord Carlile to take on a continuing role in relation to legislation since 2001 and in January 2007 he was also invited to review the new arrangements for national security in Northern Ireland, on an annual basis, in the context of the assumption by the Security Service of the lead responsibility for intelligence work in Northern Ireland.
23. With the ending of Part VII of the Terrorism Act 2000, Lord Carlile’s role in this respect has come to an end. The powers in the Justice and Security Act which are continued from the now-repealed Part VII in relation to the police and the armed forces now fall to me to review. But Lord Carlile will continue to have a role in relation to the operation within Northern Ireland of other powers in the Terrorism Act 2000. These powers 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.
24. The powers which I have been asked to review are not limited in their application, so far as terrorism is concerned, simply to terrorism associated with the affairs of Northern Ireland. They are capable of application to international terrorism as well. They are also concerned with public order and serious crime, taking a broad view of threats to stability in Northern Ireland as a whole.
25. It follows then that my task has several dimensions. First, I intend to maintain continuity with Lord Carlile’s review of the old Part VII powers, which is why I have set out in Appendix A the linkages between the former powers and their successors. This is relevant and appropriate, but only to a limited degree, having regard also to the wider political and security issues, discussed in Parts 3 and 4.

### ***Military complaints***

26. The second aspect of the new review process concerns the investigation of military complaints. Here again the new Act carries over powers from the Terrorism Act 2000. But whereas under that legislation the investigation of military complaints was a separate process, under a separate reviewer, the review task has been combined with the review of powers so that all aspects of military activity in Northern Ireland are brought together in one function. That has logic in enabling the Secretary of State, Parliament, and the wider public to be informed about the

nature and extent of any military activity in support of the police service in Northern Ireland. It also makes a more direct link with the consequence of any activity in terms of complaints. The review role however is cast in lighter terms (the detailed support structure in Schedule 11 to the Terrorism Act 2000 has not been carried over), presumably to reflect the lower profile which this work is expected to have in the future.

27. That is however subject to the important point that even if the military in future perform only a “garrison” role, complaints will from time to time occur, which the GOC will have to investigate. This is bound to be more sensitive than would apply across Great Britain because of the past history of heavy military involvement in Northern Ireland and its legacy in the minds and feelings of some parts of the community. One aspect of this which is clearly topical is the question of complaints about helicopter flying. I shall examine this in more detail in Part 6.

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

28. The review mechanism in the 2007 Act therefore combines the review of some of the successor powers to Part VII of the 2000 Act and the military complaints provisions in the 2000 Act. It focuses on the operational end of the process, concentrating mainly but not exclusively on the public order rather than the terrorism dimensions. Lord Carlile will continue to have a role in those aspects of the 2000 Act which apply to the UK as whole in so far as they are used in Northern Ireland, so the review processes will overlap at some points.
29. An obvious area is the whole scope of 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), a highly sensitive area which will continue to need careful scrutiny. Police powers to stop, search and question are essential to prevent and detect crime. At the same time there is always the potential for their use to be perceived as directed against particular communities for reasons unconnected with their ostensible purpose. There is a deep legacy of this in Northern Ireland.
30. I have discussed these issues with Lord Carlile and I am working closely with him to ensure that the two review processes are aligned in their approach and objectives. The Secretary of State, Parliament and the public need to be given a coherent picture of the impact of security activity on the operational security priorities but – equally important – on public mood and confidence, especially in the current transitional process and timeframe. I have carefully studied all of Lord Carlile’s recent review reports and I am very grateful to him for his advice on these important matters.
31. The same is true of the investigation of military complaints. I have had the benefit of a full briefing from the outgoing Independent Assessor, Mr James McDonald CBE LVO JP DL, and am likewise grateful to him for his advice. I have studied all the reports he prepared in his term of office from 1997 to 2007, and also the reports prepared by his predecessor, Mr David Hewitt CBE, from 1993 to 1997. They contain a wealth of information about the process by which military activity in Northern Ireland has been scaled down and the work which has been carried out with communities as part of this process.

## ***Timescales***

32. I was appointed on 22 May 2008 and was asked to prepare my first report in Autumn 2008. This was to cover the period from 1 August 2007 to 31 July 2008. There is inevitably therefore a degree of retrospection, indeed of catching up, in this first report. This has a bearing especially on the compilation of statistics, which is key to understanding the degree of activity and its impact. I set out below the activity I have covered in the first few months, in which I have tried to balance the need for an early report to Parliament with ensuring a thorough and comprehensive overview of the issues and the evidence. The main conclusions and judgments which I make in Part 7 inevitably therefore reflect this limited timescale.

## ***Review activity***

33. On my first visit to Northern Ireland in June I was fully briefed about the political and security situations, on which I comment in Parts 3 and 4. I was also briefed by the Security Service in respect of matters for which they have lead responsibility.
34. At an early stage I made contact with the Police Service of Northern Ireland and am grateful to them for the briefings which I received. On my initial visits I met the Deputy Chief Constable, Mr Paul Leighton LLB QPM, and three of the Assistant Chief Constables, Mrs Judith Gillespie, Mr Drew Harris and Mr Duncan McCausland. The comprehensive briefings which they and their staff gave me set out clearly the nature of their current responsibilities and the strategies being followed.
35. Since the powers which I am required to review involve public order I was anxious to observe police activity in relation to the marching season. To give me the best possible understanding of how these issues affect communities, I first toured the whole city of Belfast with one of the Civil Representatives, closely observing the current configuration of communities and the peace lines which separate some of them, and assessing the potential areas of tension during the marching season. I also met the Parades Commission and was briefed by the Chairman, Roger Poole, and the Secretary, Ronnie Pedlow.
36. I was briefed by the police about their plans for handling parades and about their public order training. I then arranged to see first hand the activity on 11 and 12 July in Belfast. Escorted by the police, and accompanied by a legal adviser on human rights to PSNI, I observed the lighting of bonfires across the city. I toured North and West Belfast as the parades got under way next day, closely watched a parade in the Springfield Road, and saw the parades as they came together in Belfast city centre. I then spent some time in Police Gold command centre at Castlereagh PSNI station and watched the CCTV coverage in the operations room of various parades.
37. As part of my induction I also visited HQNI and 38 (Irish Bde) and met the GOC Northern Ireland, Major General Chris Brown CBE, and his policy, operational and legal staff. I was fully briefed about current military activities, both the specialist support which the military provide, and the reserve capacity to deal with public

order situations, and was given a demonstration of current military procedures, equipment and training, including spending a day observing military training. I was shown current procedures for defusing explosive devices, exemplified by briefing about the action taken in response to the discovery of an improvised explosive device (IED) disguised in a milk churn and a beer barrel at Rosslea in County Fermanagh on 14 June 2008.

38. In relation to military complaints, I met the staff responsible for the oversight of military complaints and was shown an example of a case study involving a complaint of low helicopter flying. I shall deal with this case more fully in Part 6.
39. The wider picture is just as important as the detail. To deal with any issues of overlap between my role and that of others, I have met the Northern Ireland Policing Board, the Police Ombudsman for Northern Ireland and the Northern Ireland Human Rights Commission. I have also met the Committee on the Administration of Justice and British Irish Rights Watch.
40. I have invited all the political parties in Northern Ireland to meet me so that I can hear firsthand their views on the current security situation and have so far met the DUP, Sinn Féin, the SDLP and the Alliance party, with a meeting with the UUP pending.
41. I have met the Independent Monitoring Commission and have discussed their reports with them. Their Sixteenth Report (September 2007) comments specifically on the prospective role of the Independent Reviewer, while their Eighteenth Report (May 2008) and their Nineteenth Report (September 2008) are particularly relevant to the security situation against which I make my assessments. I have also met the International Independent Commission for Decommissioning.
42. I have met The Rt Hon Lord Ashdown of Norton-sub-Hamdon, who is chairing the Strategic Review of Parading in Northern Ireland, and discussed the Interim Consultative Report of his review.
43. I am very grateful to all of those who have given me their time and advice as my work as Independent Reviewer has got under way.

### ***Future work***

44. While this report is informed by the discussions and activity described above, I intend to broaden that process in the future. I am required to make detailed enquiries of people who use or are affected by sections 21 to 32 of the 2007 Act. I shall therefore continue to keep in close touch with the police and the military in Northern Ireland, as the main “users” of the legislation.
45. But there are many other interests affected, both general and specific, ranging from other public bodies in Northern Ireland to others – more particularly, those who have made complaints against the military. Without re-opening individual complaints, I shall want to hear their own views of how a particular complaint has been handled. I shall also seek to meet as wide a range of opinion as possible and look forward to deepening my contacts in this way. Given the short time scales this

year, it has not been possible to invite formal written comments, but I hope to do so next year.

46. 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 the current political and security background, so I shall consider these matters next in Parts 3 and 4.

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

#### ***Preliminary***

47. My review is concerned with operational procedures and their impact and effectiveness. But an operational review is bound to be limited in its scope unless it is informed by the current political position in Northern Ireland. Politics affect everyday life in Northern Ireland quite differently from the rest of the United Kingdom, and although operational decisions must be taken by the police and the military in response to operational demands, everything that happens on the security front in Northern Ireland takes place against a political background.
48. For this reason, both Lord Carlile and Mr McDonald have framed their reports against the wider political background and I shall do the same. The new legislation with which I am concerned would not have come about without the massive and welcome transformation of the political scene in Northern Ireland which has led directly to similar progress on the security front. The Assembly and the Executive are now firmly established and the process of security normalisation, launched by the Secretary of State in August 2005 and reviewed by the International Monitoring Commission, is now complete.
49. The enormous transformations which have been achieved in recent years have been commented on so frequently, and in so many quarters, that comment from me can add little. Certainly, those who are in daily contact with political events in Northern Ireland can measure the progress and assess what still has to be achieved. A review such as mine does however need to take account of the steady progress of recent years and the aspirations across the communities in Northern Ireland for a better future, free from the incessant political turmoil and violence which has blighted communities and destroyed individual lives to such a terrible extent in recent decades.
50. I have therefore decided that I should comment briefly on the political dimension, for which I acknowledge with gratitude the comments offered to me by the political parties in Northern Ireland and by others. These points seem to me to be relevant:
  - the political background against which the legislation was passed
  - the current political scene
  - prospects for further progress

#### ***The political background against which the legislation was passed***

51. To give me the fullest picture, I have studied the Hansard reports of all the debates in the UK Parliament from the introduction of the new legislation in December 2006 to Royal Assent on 24 May 2007.
52. The best way to find out what new legislation is designed to do is to look at what is said when a Bill is presented for Second Reading in the House of Commons. For the particular circumstances of Northern Ireland, that makes the linkage between the legacies of the past and the intended direction of travel. The Government's intentions in the new Bill, and the comments made by the other political parties during the Parliamentary proceedings, set the context.

53. The picture described by the Secretary of State on 13 December 2006 was one of evolution towards a condition of normality. He gave an account of the security background against which the powers were being sought and the specific reasoning for seeking them, in these terms:

*“From 1 August next year (2007), the military will take on a fundamentally different role in Northern Ireland. Routine military support to the police will cease. However, the military will remain available for certain specialized tasks in support of the civil authorities, consistent with their role in the rest of the United Kingdom – for example, in the conduct of search and rescue operations. Additionally, while the armed forces are not responsible for maintaining national security in the UK, they provide focused support in this area to the civil authorities. As envisaged by the Patten report, the police will be able to call on military support for public order situations if they require it. It will be for the Chief Constable of the Police Service of Northern Ireland to decide if he needs support of this kind. The military will need some statutory powers; without them, a soldier would have no more powers than the average citizen. The Bill provides these powers. It creates powers of entry, search, arrest and seizure necessary for the military to carry out its role effectively. Some of these powers also extend to the police, as set out in the Bill...*

*“The powers are necessary to deal with a number of different circumstances. They will help in managing parades, road closures, and dealing with extreme public order incidents such as the Whiterock parade last year (2005), which mercifully was not repeated this year (2006). They may be used in dealing with organised crime and will be essential in combating loyalist and dissident republican terrorism, which is still with us. Let me give some practical examples. The stop and search powers may be used to search people for weapons around a parade or a sports event where it is anticipated that there might be trouble, to deal effectively with bomb threats by allowing police to cordon off the area and by providing appropriate powers of access if the device is on private property, to search premises ahead of VIP visits, and to allow the police or the Army to chase criminals across private land without breaching trespass laws.”*

54. The proposals set out by the Secretary of State are the starting point for assessing what progress has been made in the intervening period from December 2006 to July 2008 under three headings:
- Has the progress towards normal security been maintained?
  - What is the assessment of the security threat against which these powers were judged necessary?
  - What has been recent experience on the ground, especially in the handling of the marching seasons in 2007 and 2008?

55. I will look at these three questions in Part 4.

### ***The current political scene***

56. It is clear that much progress has been made to develop the new political structures and public confidence in them. Since the Secretary of State's speech in December 2006, the Assembly and the Executive were restored on 8 May 2007 on the basis of the decisions announced on 26 March 2007. At the same time, there is concern both to maintain the momentum of recent years and to consolidate the stability which has been achieved so far. This requires delivery of objectives at the local level as well as in respect of Northern Ireland as a whole.
57. 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 Féin, the SDLP, the UUP and the Alliance party. I look forward to more discussions of this kind in the future
58. From my discussions with the political parties in the preparation of this report, I think it is reasonable to draw the following conclusions. All parties are actively involved in discussion of security issues and all whom I have met have offered me their views on how progress could best be made. Some took the view that the powers in the 2007 Act had not been needed in the first place but all understood my explanation that the decision to enact them was not one for me to comment on. All seemed clear on the main risks in the current security situation and all were keenly aware of the need to support the police service in dealing with them. Views differed on the merit of maintaining the military dimension to the response: some advocated a further reduction in the military role while others emphasised caution in drawing down military support any further until the security situation improved.

### ***Prospects for further progress***

59. A significant issue facing the political parties in Northern Ireland is the prospective devolution of justice and policing. All the political parties offered me views on the prospects for achieving it. When it does come about it will have significant implications for the oversight of the delivery of policing functions in Northern Ireland. I shall therefore continue to keep in close touch with the political parties and others about progress on the devolution issue.



## **Part 4: The Security Background**

### ***Preliminary***

60. On my appointment I was given a full briefing on the security background. This traced the historical development of the security situation from the 1970s, through to the launch in August 2005 of the security normalization programme, the end of Operation Banner at the end of July 2007, and the period covered by this review. I also received a briefing from the Security Service in respect of matters for which they have lead responsibility.
61. I was also given a more detailed briefing on the operational aspects of the security situation by senior officers of the Police Service of Northern Ireland and by HQNI and 38 (Irish) Brigade at Lisburn. This supplemented the general context provided by officials and concentrated on what has happened since the end of Operation Banner – in other words, the period since the ending of routine military support for the police. It also looked ahead to prospects for the future.
62. This briefing has covered the broad development on security issues but has focused particularly on:
  - The threat from terrorism
  - The public order situation
  - The activities of organised criminals

### ***The threat from terrorism***

63. The reduction in terrorist activity in recent years has been comprehensively set out by the Independent Monitoring Commission in their reports.
64. Their Eighteenth Report was published on 1 May 2008, some three quarters of the way through the period under review in my first report. I have therefore taken careful note of what they have to say about paramilitary groups (both the assessment of current activities and the incidence of violence), the role of the leadership of paramilitary groups, and the process of normalization. I have also taken into account their Nineteenth Report, published on 3 September, on the leadership and transformation of the Provisional IRA. I note their conclusion, in paragraph 2.11, that “*We firmly believe that PIRA is set on and will remain on the political path. We do not believe that it presents a threat to peace or to democratic politics*”.
65. I was able to discuss the IMC’s conclusions, as set out in these two reports, with them in September, shortly before compiling this report.
66. The main points which I draw from these discussions and briefings are concerns about the residual loyalist and dissident republican groups. On the loyalist side, progress has been hindered by internal tensions, but it proved possible, in May this year, to despecify the Ulster Volunteer Force and the Red Hand Commando. On the dissident republican side individuals and small groups, associated with the Real IRA, the Continuity IRA and Oglaigh na hEireann, are still active.

67. In the year under review there have been at least twelve attempts directed against the lives of police officers, both on and off duty. One such – an attempted roadside bomb at Rosslea in County Fermanagh on 14 June 2008 – required the use of specialist military resources in defusing the device and making the area safe. I shall examine this incident in more detail in Part 5, where I look at the use which is currently being made of military resources under police supervision. Recent attacks on the police at Lisnaskea and Craigavon are outside the year under review but they exemplify the current threat, which has intensified over recent months.

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

68. The broad security picture is of course reflected in the public order situation. On the republican side, the background is one of a historic lack of consent for policing until the Sinn Féin Ard Fheis in January 2007. On the loyalist side, the Whiterock parade of 2005 demonstrated both capacity and intent to orchestrate and deploy serious violence against the police and military, recorded by the Independent Monitoring Commission in their Eighth Report.
69. I have been very helpfully briefed by the Civilian Representatives, who have a vital contribution to make to trying to defuse inter-community tensions in public order situations. That is painstaking work over the longer term, but it comes into sharper focus in civil planning for the 3200 parades associated with the marching season.
70. The role of the Parades Commission has also been important in trying to ensure that parades do not provide opportunities for long-standing community tensions to degenerate into violence, directed either towards the police or towards the other community. The Parades Commission told me that in their view steady progress is being made each year, but also that parades still present problems, especially in working class areas, both in North-West Belfast and elsewhere. The parades continue to fulfil their historical role in defining space, territory and hegemony and in testing out the boundaries of tolerance on the part of the other community. They remain a “touchstone”, in the views of the Parades Commission, of progress to stable public order.
71. The search for longer term solutions to parading has of course been comprehensively considered by the Strategic Review of Parading in Northern Ireland, under the chairmanship of Lord Ashdown, and I have carefully studied their Interim Consultative Report, published in April 2008, which of course falls within the review period. In particular, I have looked carefully at the principles, procedures and structures which they propose should be followed towards the long term goal which they set out so as “*to create a situation where, over time, parades and assemblies in Northern Ireland can be regulated in the same way as they would in any other European democracy*”. Lord Ashdown very helpfully discussed his Interim Consultative Report with me.

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

72. The annual report and threat assessment from the Organised Crime Task Force for 2008 gave an assessment of paramilitary involvement in organised crime in Northern Ireland in these terms:

*“Paramilitary groups in Northern Ireland have traditionally been known to be involved in various forms of organised criminality. In some cases the criminality has been used to fund paramilitary activity but in other cases it has been used to line the pockets of members. Despite the inactivity of many groups in relation to paramilitary activity over the past year, the move away from organised crime has proved more problematic. It is acknowledged that there are members and former members of current and former paramilitary groups who are still actively involved in organised crime in Northern Ireland.”*

73. The IMC have also commented on paramilitary crime in their assessment of the current activities of paramilitary groups in chapter 2 of their Eighteenth Report in May 2008. This covered both dissident republicans generally and loyalist groups.
74. In their briefings to me, the police said that they view the activities of organised criminality as a serious risk to community safety. The basis for this concern is the corrosive effect of organised criminality on attempts by the police and others to build trust within and across damaged communities. It also has harmful tactical manifestations such as the use or threatened use of firearms in criminal operations.

#### ***The current context and profile of policing in Northern Ireland***

75. The conclusion of Operation Banner ended the routine military commitment in Northern Ireland and confined it to specialist support under Operation Helvetic. It was a further, specific confirmation of the primacy of the Police Service of Northern Ireland in terms of operational policing strategies and their command and delivery.
76. The police perspective, in facing community police challenges, is one of a positive progression in terms both of the overall security position and of normal police work. Community support is stronger in some areas than in others, with support for police being conditional in some areas and police presence tolerated less in localities characterized by a greater dissident presence. There has been a marked increase in flows of information to the police in relation to crime unrelated to terrorism or public order, less so in areas where dissident republican groups were active.
77. In terms of public order, the manifestations of disorder at Whiterock in 2005 showed the capacity for vicious and organised rioting which could be rapidly escalated in its intent to harm. The legacy of “recreational rioting,” especially among younger people, remains a problem. The police told me that recent progress was encouraging, but that there was an underlying fragility, coupled with the proximity of security to political issues, which meant that resolving any particular scenario was rarely straightforward.
78. In terms of police manpower, the commitments under the Patten process envisaged a drop from 12500 in 2000 to 7500 in 2008, to be deployed very differently, much more in line with mainstream concepts of community policing, and without a military presence, except in small-scale, specialised aspects. This will include increased use of the National Intelligence Model, whose development across the rest of the UK is a major driver of policing strategies.

79. The police attach high priority to community engagement, working with community leaders to defuse tensions, promote understanding, and enhance the flow of information. The police activity which I have seen shows that the need for community engagement is well understood and is being actively followed in partnership with other agencies. Given the historical legacy it is not surprising that progress seems slow and painful, with setbacks along the road, but the determination is clear.

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

### ***Introduction***

80. Against that background, I come now to the heart of this report – the use which has been made of the powers in sections 21 to 32 in the review period from 1 August 2007 to 31 July 2008 and what this shows about any continuing need for them.
81. I shall look at this in three respects:
- The use which has been made of these powers.
  - Statistics on the use of the powers
  - Case study: Rosslea 14-16 June 2008

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

#### ***The terrorist threat***

82. So far as the terrorist threat is concerned, the police have given me presentations on several recent cases where, based upon current and developing intelligence, they have taken preventative action to disrupt the planning and carrying out of terrorist acts.
83. The UK wide powers in Part V of the Terrorism Act 2000 are available to the police, without limit of time as to their duration, for the prevention of terrorism. Section 44 of the 2000 Act is the main power to stop and search vehicles and people on foot. It is not without controversy in its application by the police across the UK as a whole.

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

84. The police take the view that section 44 does not provide all the powers needed to deal with suspected terrorists, having regard to the way they currently operate in Northern Ireland, for example the need to establish identity and movements, for which section 21 of the 2007 Act gives them authority. They also point to the level of authority required for an authorization under section 44 – at least the rank of assistant chief constable, followed up by extensive counter-authorisation – as an inhibition. That is not in itself a good enough argument for needing extra powers. The question is whether a fast-moving operation, following up intelligence operationally, is likely to fail for want of the flexibility implicit in section 21.
85. The same arguments apply in the case of powers to enter and search premises under sections 24 and 26 of the 2007 Act and Schedule 3. These powers can be used without a warrant, so that the police can respond quickly, where otherwise they might be technically trespassing on private land. Several of the operations which they have demonstrated to me fit that profile. The powers of entry and search under sections 24 and 26 may also be needed in a public order situation, to enable the police to enter private land quickly, where they believe that missiles or weapons might be hidden.

86. The police said in their briefings to me that the powers to search dwellings were used “frequently”. Some of the dissident republican threats which were described to me involved attempts to acquire and hide weapons, ammunition and bomb-making materials, leading the police to use the search powers in Schedule 3, under sections 24 and 26.
87. In circumstances like this, the broader question is whether events in Northern Ireland have moved on to enable searches to be more tightly focused. The police say that they are nevertheless still dealing with fast-moving scenarios, in which they are looking for people who have demonstrated skill in counter-investigative tactics, whose intention is clear but whose precise movements and targeting are difficult to establish.

*Military support to the police in operations against terrorism*

88. The police specifically told me that, in some of these situations, they may need to call upon the military to support them in the use of the powers in the 2007 Act, largely to deal with suspected firearms, ammunition and explosives. They also do not yet think that they can yet dispense with powers to call upon military assistance in terms of search and arrest. They recognise the importance of keeping this question under close review.
89. The military operate in support of the police. In that sense the same position applies as it does in Great Britain. The military are in a secondary position, and it is for the police, not them, to ask questions about basic policing requirements. I found complete understanding of this on the part of both the police and the military. The context is the new role for the military under Operation Helvetic, the successor to Operation Banner, by which the military provide “residual support” to the Police Service of Northern Ireland. The difference from Great Britain is that only in Northern Ireland are the military given specific statutory powers.
90. The military do not routinely use the powers under the 2007 Act, but they say that the powers are necessary to underpin military operations in support of the police. This support is small-scale and specialised. There is a desire on the part of the military, in the face of the operational pressures in Iraq and Afghanistan, to scale down still further the military presence in Northern Ireland if the security situation allows it.
91. The military have described to me in detail some current operational scenarios where their capacity to support the police would have been substantially limited without the use of the 2007 Act powers. These scenarios include specific preventative actions, for example the deployment of Explosive Ordnance Disposal (EOD) personnel, as at Rosslea on 16 June 2008. This incident illustrates clearly how the military have recently provided specialist support for the police of the kind envisaged when the 2007 Act powers were under discussion in Parliament. I describe it in more detail below.

*Public order*

92. The context of public order policing was set out fully in the Patten Report of 1999. Some of those who spoke to me about this focused on recommendation 59 in the Patten Report of September 1999:

*“For as long as the prospect remains of substantial public order policing demands on the scale seen at Drumcree in recent years, the army should retain the capacity to provide support for the police in meeting those demands”.*

93. The Whiterock incidents of 2005 show unfortunately that progress, however substantial, can encounter setbacks. This was the backdrop to the Government’s decision to carry over into the 2007 Act the powers in the preceding legislation which might be required in the case of extreme public disorder.
94. It is, however, several years since the Drumcree incidents, and three years since Whiterock. The question therefore is whether there is still the prospect of “substantial public order policing demands” as set out by Patten and how these demands may best be met.

#### *Recent handling of public order situations*

95. The police have managed in 2008 without the need for military support, as they did in 2007. The military have been available as a back-up but it has not been necessary to deploy them. The number of incidents of rioting and disorder, whether directed towards the other community as a sectarian attack during the parading season, or against the police, has greatly diminished over this period. This reflects the efforts of the Parades Commission, the Civil Representatives, the police, and community leaders, whether elected or otherwise. For the efforts of all those involved, the civil community in Northern Ireland have much to be thankful.
96. The police have a comprehensive profile of each of the planned marches throughout the year, showing its affiliation, whether it has been notified to the Parades Commission, the assessed risk of disorder and the tactical planning to police it. Some 3200 parades take place throughout the year, of which around 25 are contentious and sensitive.

#### *The operational profile in 2008*

97. The briefing which the police gave me before the 12 July parades this year showed a degree of confidence that they were not expecting major trouble and would be able to handle any incidents and prevent them from escalating into sectarian violence. That proved to be the case, although it is deplorable that on the evening of 11 July rioting by a group of youths caused injuries to some 14 police officers in Portadown. That is not “normal” in a sense that would be understood elsewhere in the United Kingdom, even in town centres on Friday or Saturday nights. For the most part however, the parades passed off peacefully.
98. As indicated earlier, I observed events at first hand on 11 and 12 July. I noticed some incidents of small-scale disorder and I was aware of police concerns that one of the marching bands had decided at the last minute to display two provocative banners which had not been sanctioned by the Parades Commission. It was also

clear to me that the central monitoring of the parades at Castlereagh was professional and thorough, enabling judgments to be made about the need for any early interventions. The presence of legal advisers with a specific brief on human rights issues, working alongside those with operational responsibility, was an additional safeguard.

99. The police have described to me that, while they welcome greatly the progress in recent years, they regard the current position as potentially unstable and that the support they receive in some quarters can best be described as “conditional”. There is still the potential for things to go wrong despite the best efforts of all those involved. This is particularly the case during the marching season. The PSNI are now planning to handle all public order situations within their own resources. The question arises as to what if any contingency back-up options should continue to be available.

#### *Operational options*

100. A major operational difference from the rest of the United Kingdom is that mutual aid – rapid deployment of assistance from nearby police forces in the face of a sudden problem - is not available in Northern Ireland, for obvious geographic reasons. The only recourse in such circumstances hitherto has been to the military.
101. When the IMC looked at the normalisation programme in their Eighteenth Report last year, they held out the prospect in paragraph 5.11 of reinforcements for PSNI, by mutual aid from other police forces in the United Kingdom, where there was a risk of serious public disorder. That would significantly lessen the potential need for military support. It would categorically affirm the police role in handling public order. In logistical terms it is no different from the deployment from Great Britain of rear-based military troops.
102. But the differences would emerge in the planning required and in particular whether sufficient police officers could be released from police forces in Great Britain over the marching season. Furthermore, in view of the extreme circumstances of such a contingency, the police officers concerned would need to be fully and effectively trained, and have access to adequate personal protective security equipment, commensurate with the particular tactical situations which they might encounter in Northern Ireland. Perhaps more important, they would also need to be made completely familiar with all the particular sensitivities of policing difficult public order situations in Northern Ireland. This would be crucial.

#### *The role of the military in public order situations*

103. As far as the military are concerned, they are now clearly in a reserve position in public order situations, in line with the principles of Operation Helvetic, just as they are in respect of terrorism. That was clearly the case this year. Following Patten recommendation 59, the military have retained the capability to provide support for the police in meeting “substantial public order policing demands” as identified by Patten. This includes the capacity to deploy troops from Great Britain and the retention of physical assets on the territory of Northern Ireland.



104. That reserve capacity is well-maintained as a contingency. Extensive briefing is given to those in all ranks who might be called upon to assist the police in a serious public order situation. The legal basis is fully explained, emphasising the duty to protect human life in line with the UK's obligations under Article 2 of the European Convention on Human Rights. This obligation of course pre-dates the advent of the deployment of the military in Northern Ireland in August 1969 but its prominence was enhanced with the enactment of the Human Rights Act 1998. The briefing is supplemented by training on the ground. I have seen demonstrations of this training as well as of the physical capacity which could be deployed – for example the means of removing obstacles and barricades.
105. As long as the military are tasked with potential support for the police, even in only a contingent reserve role, it is essential that they are fully trained and equipped for the purpose – not only to maintain an effective capacity but also to ensure that any response is proportionate and delivered in line with current legal requirements. This planning and preparation are regrettably necessary, even at a time when the United Kingdom's military resources as a whole are stretched by the demands of other operational theatres, principally Iraq and Afghanistan.

#### *Future planning and powers*

106. It is an operational judgment for the Chief Constable whether to continue to plan for handling public order situations using only the resources of PSNI, or whether to include in planning the potential recourse either to other police forces within the United Kingdom or to the military under the current arrangements. Wider political judgments are also involved and it is not part of my role to become involved in these decisions. But they do bear directly upon whether there will be a continuing need for powers in the Justice and Security Act, and to that extent they are relevant to my terms of reference.

#### *Statistics on the use of the powers*

107. The need to keep full and accurate statistics on the use which is made of powers under legislation specific to Northern Ireland is essential if judgments are to be made about the need for them. That is why section 37 of the Act lays a duty on the Chief Constable of the PSNI to keep records in relation to the exercise by the police of powers under sections 21 to 26.
108. I should say at the outset that I do not take the view that statistics provide an absolute guide to the utility of any particular power. They may not correspond to the underlying picture apparent to those on the ground, and one particular incident may have been enough to enable someone to be charged with terrorist offences or lives to be saved. Nevertheless, the statistics are an essential starting point.
109. I have discussed this in some detail with Lord Carlile, since it seemed to me important to try to provide a continuity of the narrative between the use of the 2000 Act powers and their successors in the 2007 Act, to the extent that there is such a connection. That would give a synoptic picture of the progression of the security profile, and especially in so far as the military had any part in it.

110. Lord Carlile has regularly reported the use of powers in Part VII of the 2000 Act. In his report in June 2008 on the operation of the Act in 2007, he commented specifically in paragraphs 209 to 229 on those powers which are replaced by sections 21 to 32 of the 2007 Act. He also reported in Tables NIO/F to NIO/L on the statistics on their use. These tables cover the years 2002 to 2007, thus enabling conclusions to be drawn about the extent of their use and any trends over time. For 2007, the tables in Lord Carlile's report show the three quarters January to March, April to June and July to September. The last quarter therefore overlaps by two months with the period under review in my report.

111. **Appendix B** sets out the available statistical material relating to the 2007 Act. **Table 1** shows in summary the use made of the powers in sections 21, 24 and 26 of the 2007 Act for the period 1 August 2007 to (30 June) 2008. **Table 2** breaks these statistics down into more specific detail, giving specific figures for the numbers of people stopped and questioned, and those stopped and searched in public places or on private property. Table 2 also gives further information in relation to searches of premises and vehicles.

112. To cover the overlap between statistics kept under the old and new systems the police have at my request shown the statistics for August and September 2007 (two months), followed by three quarters, each of three months, and finally the single month of July 2008. This gives an annual total which is necessary to enable me to report the use of the powers for the review year as a whole. For the future the police will report these statistics in quarterly tranches which cover the whole reporting year. These statistics will always be different by one month from those reported for the 2000 Act powers, so exact calendar comparisons will not be possible. Indicative trends should however be clear.

113. These indicative trends show that in the majority of cases, the police have relied upon powers in the Terrorism Act 2000. In the period from 1 July 2007 to 31 March 2008 (which covers the last month under the previous powers and the first eight months under the new powers) the number of persons stopped and searched under section 44 of the 2000 Act powers was 3234, an average of 359 per month. In the nearest comparable period (from 1 August 2007 till 31 March 2008) the number of people stopped and searched or questioned under sections 21 and 24 of the 2007 Act was 279, an average of 35 per month: only 10% of those stopped.

114. On one argument, that marked difference weakens the case for the extra powers: the police have been using permanent and UK-wide counter-terrorism powers in the majority of cases. The statistics do not however bring out any qualitative difference in the nature of the searches involved or the specific circumstances which might indicate which powers should be used.

115. The police have no statistical records of use of the powers of entry in section 23.

116. **Table 3 in Appendix B** shows the pattern of military activity in support of the police. This covers deployment of the armed forces in searching for explosives and firearms where specialist military assets may be needed. In every case this has been done in support of the police. The statistics in Table 3 are shown for the last month of the year under the old system (July 2007) followed by each month until

July 2008. They cover the categories of advanced search, ATO and the use of search dogs.

117. The military have also shown me detailed reports about each of the occasions on which they have acted in support of the police in Table 3. These deployments are made in response to a variety of information or requests, for example covering the response to specific intelligence or preventative searches in advance of a major event. The detailed reports which I have seen include the reason for each search, its date and location, the time taken to complete the task and any specific comments by the military personnel involved. Most important of all, they show the results of the searches. Overall, they reveal that a substantial amount of arms, ammunition, explosives, bomb-making materials and other dangerous items have been found in the year under review.

***Case study: Rosslea 14 - 16 June 2008***

118. The intervention by an Explosive Ordnance Disposal (EOD) team at Rosslea on 16 June 2008 is an example of the current security threat, the deployment of specialist military resources in response to it and the use of powers under the 2007 Act. I shall therefore examine this incident in more detail.

119. Shortly after midnight on 14 June 2008, the police were asked to attend a scene of suspected criminal damage in Rosslea, County Fermanagh. After some discussion, the police went to the area of a bridge over a nearby stream, stopping some 2 to 3 metres away from the bridge. While still in their vehicle they heard a loud bang and then left the scene quickly.

120. Since this seemed likely to indicate an Improvised Explosive Device (IED) attack, the police called for military EOD support. In the course of the operation during 15-16 June, a beer barrel and milk churn were found by the side of the road close to the bridge, each filled with about 50 kgs of home-made explosives, together with detonators, batteries and a command wire which ended some 200 metres away at a point giving sufficient visual access to enable the operator to observe the road and identify the target before detonating the bombs.

121. There are several relevant conclusions to be drawn from this incident. First, it indicates the continuation of a threat involving long-standing techniques – IEDs made from home made explosive packed into beer barrels and milk churns, targeted against police officers by means of a simple decoy based on an ostensibly genuine call for police assistance.

122. Secondly, it shows the need for military assets for specialist purposes. PSNI do not have these assets and are reliant upon the military for them. They are specialist resources which, while necessarily visible, were not deployed in any routine or preventative sense.

123. Thirdly, the planned operation to deal with the bombs required a co-ordinated police-military operation to survey the site, put a cordon in place, clear the vicinity of any members of the public who would otherwise have been at risk, gain entry to private property where the bombs and the command wires were located, search the

property for munitions, stop and question people, stop vehicles entering the area, and examine documents. In their report to me about this incident, the military noted that at some point during it the police had drawn on powers in sections 21, 23, 24 and 26 of the 2007 Act to provide the correct legal basis for handling the incident with military support.

124. It is right that the military should make a detailed record of the use of their powers in this way. I am satisfied that in this case the powers were all needed, as shown in the detailed reports I have seen, to enable this IED to be dealt with safely. I am also satisfied that their use in this case was proportionate, in the face of a threat which was targeted specifically and deliberately against police officers who had been deployed in response to a call from a member of the public.

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

### ***Introduction***

125. In Part 1 of this report, at paragraphs 13 to 15, I referred to the duty laid upon me by section 40(1)(b) of the 2007 Act to review the 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. Here again there is a preceding power – section 98 of the Terrorism Act 2000, though without the supporting structure provided in Schedule 11 to the 2000 Act.

126. Since the review power is broadly the same in its scope and requirement as its predecessor, I have been anxious to provide a continuous narrative linked with the reports of the previous Independent Assessor of Military Complaints Procedures, Mr Jim McDonald. This has seemed to me significant so that any trends over time can be identified, both in the incidence of complaints and in assessing whether they have been dealt with to the satisfaction of the complainant. “Customer satisfaction,” as identified by Mr McDonald, is not the only criterion on which to base a judgment about the quality of investigations, but it is an important one.

127. In my first report therefore, I shall:

- Set out the procedures currently operated by the armed forces for investigation of complaints
- Describe and analyse the pattern of complaints in the year under review
- Examine the issue of helicopter flying
- Examine a case study of a recent complaint for what it demonstrates about the quality of the procedures.

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

128. What follows here is based upon the briefing I have received from staff at HQNI and 38 (Irish) Bde. They have correctly identified the role of the Independent Reviewer at the point of overlap between a number of differing interests. First and foremost are those individuals who are affected by the actions of the armed forces to the extent that they wish to make a complaint. They may do so individually or through the medium of community leaders or elected representatives; or indeed issues can be raised by other groups, whether informal or formal.

129. Responses to complaints can involve an equally diverse range of interests, but the military side is co-ordinated by the External Relations Unit (ERU) at HQNI and 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 GOC in all aspects of enquiries and is the focal point for records management.

130. The Civil Representatives provide an impartial liaison between members of the local community and the armed forces. They broker meetings to aid better understanding, calm situations and reduce feelings of animosity and tension,

provide awareness training on community sensitivities and issues, and play a vital role in resolution of informal and non-criminal complaints. They also have a role in education and community development.

131. 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 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.
132. 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.
133. 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.
134. Staff at HQNI and 38 (Irish) Bde told me that complaints are broadly of two types. First there are helicopter complaints, both formal and informal, involving noise, overflights, landings, or endangering livestock. Then there are all other complaints, formal and informal, concerning military activities including behavioural complaints.
135. Once a complaint is made, it is logged and information is requested from the Unit concerned. This may lead to informal resolution, possibly using the medium of the Civil Representatives, in which the complaint is resolved to the satisfaction of the complainant. Or it may lead to a full investigation, involving the ERU, the Unit concerned, the Civil Representative, DAS and DS&C, leading to the complaint being resolved to the satisfaction of the complainant formally in writing.
136. HQNI and 38 (Irish) Bde produced some time ago a leaflet "How to make a complaint against the armed forces in Northern Ireland". This is now out of date since it does not reflect the new position since the end of Operation Banner and the changes to legislation. A revision is in prospect. This is overdue and needs to be completed as soon as possible.

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

137. Mr McDonald customarily reported under four headings: *formal non-criminal complaints (his Appendix A), informal general complaints (Appendix B), total helicopter complaints (Appendix C) and helicopter complaints requiring a written response (Appendix D)*. In his valedictory letter of 31 October 2007, Mr McDonald

reported that in the first seven months of 2007 – to the conclusion of Operation Banner on 31 July 2007 – “*there was a continuing absence of formal complaints, with the number of informal complaints, predominately regarding noise from military helicopters, totalling less than 90 incidents*”. Mr McDonald went on to say that 81 out of 83 informal complaints concerned helicopters.

138. There have been no formal complaints in the year under review: the last such complaints were in 2005. I have therefore not reproduced the equivalent of Mr McDonald’s Appendix A since it would show a continuing zero figure. If there are such complaints in the future I will report them specifically.

139. **Table 4 in Appendix A** to my report shows the informal general complaints for 2007 and the first seven months of 2008. There were no complaints in this category in the year under review. The last one was in July 2007.

140. **Table 5** shows the formal helicopter complaints for 2007 and the first seven months of 2008 and **Table 6** shows the informal helicopter complaints for the same period.

141. The pattern shown in these statistics is one where the low level of general complaints had been maintained. So far as helicopter flying is concerned, the statistics show that the downward trend reported by Mr McDonald for 2006 has been maintained in 2007 and into 2008. But there has been a shift from informal to formal complaints, with surges in some individual months. I shall therefore examine the issue of helicopter complaints in more detail below.

142. HQNI and 38 (Irish) Bde have provided me with summaries of 34 cases of formal helicopter complaints from 1 August 2007 to 23 June 2008. All of these were referred to JHF (NI) and replies were sent to the complainant within the target period of 3 weeks in 29 of these 34 cases. In all 5 of the remaining cases the reason for exceeding the 3 week working period was shown on the summary schedule. The longest case took 24 working days to complete. In some cases it was possible that a civilian aircraft was involved and the complainant was advised to contact the Civil Aviation Authority.

143. I have discussed with HQNI and 38 (Irish) Bde how best to assess the pattern of helicopter complaints and their investigation. It seems to me that it is not satisfactory simply to assess this at the end of each reporting year: the complaints are important to the individual complainant, and lessons of general relevance may emerge during the reporting year. Helicopter flying is a difficult and sensitive issue. I have therefore arranged to review complaints periodically throughout the year in addition to reporting on them annually.

### ***Helicopter flying***

144. The pattern of complaints about helicopter flying is concentrated on the areas bordering on Lough Neagh, reflecting the proximity to RAF Aldergrove. This in turn reflects the pattern of flights which are largely for training purposes. This training is unconnected with Northern Ireland and reflects the armed forces’ wider

strategic commitments – principally in Afghanistan and Iraq, as noted by Mr McDonald.

145. The strategic shift from flying in support of military activities in Northern Ireland towards flying in support of RAF activities globally is quite a dramatic change. But it may not be readily understood by some communities in Northern Ireland, who for historical reasons may have a very negative view about helicopter flying, making a direct connection with military activity which they have regarded with apprehension in the not too distant past. That sensitivity is inevitable and it is important that strategies for response should take account of it.
146. Mr McDonald described the position as he saw it in these terms: *“I perceive a continuing need for helicopter crews to train operationally, especially with current military commitments in Iraq and Afghanistan. So there does need to be a credible system of dealing with those type of complaints, as well as taking the chance to explain the developing role of the military, not only in Northern Ireland previously, but further afield for the future”*.
147. I agree with Mr McDonald and support what he said last year about the need to be active in explaining the new situation. I would go further: a truly normal situation would reflect what is normal in the United Kingdom as a whole, which includes helicopter flying over civilian areas. The past is probably too raw in Northern Ireland for that to be possible at the present, but that would be a true test of normality.
148. HQNI and 38 (Irish) Bde have produced a leaflet “Military Low Flying in Northern Ireland”. This gives the background, explains why low flying is thought necessary, explains why practice flying over the sea or with simulators will not meet the full training need, sets out the policy of spreading the effects of low flying across the UK as a whole, reinforces the importance of safety both for aircrews and the public, deals with the difficult question of overflying livestock or particular locations, makes clear the obligations on aircrews and sets out the procedure if there are grounds for complaint by contacting the local Civilian Representative or the External Relations Unit at HQNI and 38 (Irish) Bde.
149. This is a well-produced and helpful leaflet which deals frankly but carefully with the main points of concern. The question is whether all the target audiences are being reached by its message. HQNI and 38 (Irish) Bde’s engagement strategy includes the British Horse Riding Society, the local community through the Civilian Representatives, and agreements with local land owners in respect of training rights. Informal discussions I have held suggest that not all these messages were reaching those who might benefit from them at local level. In particular, warnings about the days and times when flying might take place over particular areas would enable those who, for example, need to exercise horses in the open air to plan out suitable times when they could be sure that there would not be unexpected helicopter noise overhead. There will always need to be last minute variations to cater for changes to the weather but that is no reason not to give as much warning as possible. I support the initiatives currently being pursued to give maximum information and urge that outlets for dialogue should be intensified



wherever possible, using local meetings, leaflets, messages on the web and informal contacts.

150. HQNI and 38 (Irish) Bde have provided me with information about the policy on avoiding certain areas (“avoids”). This covers built-up areas, medical establishments, industrial sites and other places needing protection (including farms, stud farms, poultry farms, riding establishments and bird sanctuaries), civil and military airfields and landing sites, other aviation sites (microlight, glider, hang glider, paraglider, free-fall parachute and model aircraft flying sites), high intensity radio transmission areas, and other obstructions (towers, smokestacks, masts, cranes, pylons and turbines). This permanent list can be supplemented by the imposition of immediate temporary avoids. A mechanism therefore exists for trying to keep disruption away from sensitive or potentially hazardous areas and to take account of reasonable personal circumstances. Better local dialogue might lead to reduced inconvenience.
151. I received some anecdotal evidence that immediate telephone responses to complaints about helicopter flying, either to PSNI or to HQNI and 38 (Irish) Bde, did not always elicit either information or sympathy. This may be a matter of perception and I make no judgments on whether it is true or reflects general experience. But dealing with perceptions is as important as dealing with reality and a poorly handled response can soon be portrayed as typical of the system as a whole. It is an area which would benefit from review to ensure that responses to telephone complaints give as much information as possible, that they are accurate, and that they anticipate and respond positively to the messages and feelings coming across the telephone line.
152. I doubt whether those who are fundamentally opposed to helicopter flying, either because they are opposed to British military action overseas or because they regard it as an unacceptable legacy of the British military presence, will ever be satisfied about this issue. The armed forces believe that the terrain and topography of the river Bann provide a valuable introduction to comparable areas in Afghanistan, but that argument cuts no ice with those whose opposition is fundamental.
153. It is not my role to make judgments on whether such helicopter flying is operationally necessary in Northern Ireland. But it is an important and unavoidable military objective to ensure that every effort is made to equip service personnel about to serve overseas with the necessary skills for their impending task. Those considerations are not incompatible with making maximum efforts to explain the position to local communities and to keeping the inconvenience to them to a minimum.

***Case study: a recent complaint***

154. I have examined in detail a case file of a recent complaint to see what it shows about the current investigation procedures. This concerned an incident in which a military helicopter, flying over an outdoor riding area, had frightened a horse, causing it to throw its rider, a child, who received various injuries, some of them serious and requiring hospital treatment.

155. The documents on the file included a summary final report from the RAF Police (dated 22 days after the incident and 15 days after a written complaint was received), a case summary, witness statements from the child's mother, from a Squadron Leader Operations at RAF Aldergrove and from the pilot of the helicopter involved, an Informal Helicopter Complaint Notification report provided by the Civil Representative's Office and an extract from the Belfast Telegraph.
156. HQNI and 38 (Irish) Bde provided me with a chronological sequence showing the activity from the date of the incident through to the completion of the investigation. The facts of the case were clear from the documents on the file and were not disputed. The investigation was straightforward, thorough and timely. A claim is ongoing which is being handled by DS&C, so I will not comment further on the facts of the particular case. But, by arrangement with the Civilian Representative, I visited the family home to hear firsthand about the incident from the family and from the local Sinn Fein councillor. I am reporting this case with the consent of the family, to whom I was able to offer my sympathy.
157. It is of course a matter of deep regret that a child was injured in this incident, and furthermore to such an extent that hospital treatment was required, with continuing medical problems. It was right that the family received visits from the Civil Representative and the Station Commander, RAF Aldergrove. Insofar as the military complaints procedure is concerned, I am satisfied that the response was appropriate and timely.

## **Part 7: Conclusions**

### ***Final conclusions***

- 158. I shall now gather together the results of my review into some final conclusions.**

### ***Timescales***

- 159. My period in office (from 22 May 2008) covers less than three months of the period under review (1 August 2007 to 31 July 2008). This report is therefore an account only of first impressions. Nonetheless in the time available I have addressed all of the issues in sufficient depth to enable me to prepare a comprehensive report.**
- 160. During this initial period I have received briefings from police and military staff and from the Security Service. Equally important have been discussions with groups and individuals whose views and opinions are significant to the review process. Some of these groups and individuals are sceptical of the views put forward by the authorities, especially on the need for these powers.**
- 161. Despite the shortness of time, I have been able in this initial period to meet most of those whom I had hoped to meet. I also have seen statistical records which enable me to take up without a break the narrative of preceding reports from Lord Carlile and Mr Jim McDonald, for whose advice I am most grateful.**
- 162. Furthermore, I was able to spend 11 and 12 July in Belfast and to get out and about around the city with the helpful assistance of the Civil Representatives, the police and their legal advisers on human rights. I was also able to meet some of those who have made complaints about military activity.**

### ***The Legal Context***

- 163. The powers which I have been reviewing are not of course operated in isolation from other powers: they form part of the general body of public law in Northern Ireland and operational commanders rightly plan tactical options with all their powers in mind.**
- 164. At the same time the police must have regard to the safeguards and limitations on their use, especially in respect of considerations of human rights and the duty to act proportionately and without discrimination, and to use the powers only to the extent that they are strictly necessary.**
- 165. The powers in the Justice and Security Act are provided in distinct form and their use is recorded separately from other police powers. Other public bodies in Northern Ireland– for example the Policing Board and the Police Ombudsman – have statutory roles in relation to the oversight of the police and hence an interest in how these powers are used.**

166. But my review is the only one concerned solely with these specific powers. However, I decided that to review them in isolation from the wider context of police powers would limit the value of any comment, so my report is not confined to a narrow analysis.
167. In terms of impact, the distinctiveness of the 2007 Act powers lies as much in their legacy as in their current use, because they are derived from what was essentially temporary legislation, involving the armed forces in ways which were specific to Northern Ireland. I have found that this wider context is fully understood among the senior police and military leaders whom I have met and is reflected in the training given to those on the ground.
168. It is very important that that remains the case – all those who come into direct contact with the public, especially young police officers and military personnel coming new to Northern Ireland - need to have these sensitive legacy issues in their minds at all times, and it is the responsibility of their senior commanders to make sure that this is done.

### *The Political Context*

169. The arrangements outlined by the Secretary of State in December 2006 remain on course and are being followed through in the terms which he laid down. The wider questions of political progress in Northern Ireland are not my direct concern but any review of this kind would be limited in value unless it was prepared in the wider political context.
170. The next step in this process, if what the Secretary of State outlined then is followed through, will be the devolution of justice and policing to the Assembly and the Executive.
171. Devolution would bring about changes in the political oversight of the police in Northern Ireland, with roles for the Assembly and the Executive. Other aspects of what is a formidable oversight mechanism, including the Policing Board and the Police Ombudsman, would remain in place, unchanged by political developments. Operational judgments and decisions would continue to be taken by senior police operational commanders.
172. Whatever the developments on devolution, legacy issues will continue to resonate and have an impact on operational policing decisions, which must continue to be taken in partnership with the many agencies, both formal and informal, now working on the ground.

### *The Security Profile*

173. I was presented by the security authorities with a clear picture of the security profile across Northern Ireland in the three distinct but closely related areas of terrorism, public order and serious crime. This was based on assessments, case studies, statistics and operational judgments.

174. Some of the other groups and individuals to whom I have spoken have put forward the view that the security authorities overestimate the security threat and consequently exaggerate the need for the specific powers in the 2007 Act. They are not convinced of the need for these powers, which they regard as counterproductive and likely to stigmatise particular communities.
175. I have carefully reflected on all these points of view in reaching the judgments which follow. The powers under review need to be judged against the overall security profile which comprises a complex mixture of issues, assessed in sequence below.
176. In terms of terrorism, there remains a residual threat from the activity of dissident republican groups. Indeed in some respects I judge that the threat is growing, with a capacity and intent to commit acts of violence against individuals and property. Some recent examples have been demonstrated to me. The threat to the lives of police officers, as well as the potential for harm to the general public caught up in deliberate acts of violence, remains an active and anxious concern.
177. For public order, there has been no serious disorder for three years. The police are dealing with public order issues with increasing confidence and have not needed to call on military assistance since 2006. The parading season this year passed off largely peacefully, marred only by some isolated incidents and attacks on the police, which I deplore.
178. This largely positive picture reflects the quality of detailed police planning, the work of the Parades Commission and the Civil Representatives, and the active involvement on the ground of people who a few years ago would have withheld co-operation from the civil authorities. However, there is the ongoing potential for disorder which could be sparked off by one or more relatively minor incidents.
179. In respect of serious crime, the tendency for paramilitary groups and individuals to diversify away from political violence towards personal reward remains a serious threat to the social health and stability of too many communities in Northern Ireland. In this respect it has much in common with the influence of criminal gangs elsewhere in the UK but illegitimate structures of power are so deep-rooted at the local level in Northern Ireland that it will take some time to effect positive change.

#### *Operation of the 2007 Act Powers*

180. The statistics show a limited use of the 2007 Act powers. Other powers, for example the general powers in the Terrorism Act 2000, are also being used. The police are planning operations with the range of powers in mind, based upon the extent of their knowledge from intelligence sources and elsewhere.
181. The advantage of this approach is that, at the level of specific detailed planning, the action taken can be matched to the task in hand – for example, it can reflect what is known, whether much or little, about who might be in a

house or a car, what weapons or other materials they might have with them, and when they might intend to use them. It is thus more feasible to carry out police operations which are effective, safe, and proportionate.

182. I have seen details about specific operations using 2007 Act powers. I am satisfied that in these cases the powers were correctly used and recorded. There are two caveats. First, those bodies with a formal responsibility for the police service may wish to form judgments in individual cases and it is not part of my remit to become involved in them, for example where complaints are made against the police alone. Secondly, I have seen only a limited amount of material in my short time in post.
183. I judge that more work is needed to assess the use made of the powers in the Terrorism Act 2000 alongside those in the 2007 Act. This must be done in two stages. First, the police will need to continue to take careful decisions as to which is the more appropriate power to use in any particular case. The decisions made will then have to be recorded explicitly.
184. I was told of one case where a person was stopped in the street by the police and enquired under what power the action was taken, to which an imprecise and unsatisfactory answer was given. This is one anecdote but it had a negative effect on the individual concerned, and I quote it to exemplify the main point.
185. From the information about which powers are being used it will be possible to form better judgments about their relative utility and in particular whether the 2007 Act powers remain necessary. The Deputy Chief Constable has written to me to explain the work in hand in PSNI to take this forward. I welcome and support this initiative. Over what has been a transitional period, involving many changes, these issues may not have been fully worked through. It is essential that this is done as soon as possible.

### *The Role of the Armed Forces*

186. From what I have seen, the role of the military is developing along the lines envisaged in 2006. Police primacy is a reality. The military presence is diminishing. Soldiers are no longer seen on the streets. They were not involved this year in any public order situations.
187. In common with the remainder of the United Kingdom, the military give specialist support to the police. That has required in some cases the use of the 2007 Act powers, and I have seen examples where that has been necessary in terms of preventing crime and preserving life. These cases show a proportionate and sensitive understanding of the role of the military in the new situation in Northern Ireland.
188. In terms of public order, I have carefully noted the police view that the consolidated successes this year should not be allowed to mask the risk of serious incidents in the future. If the current progress were to be maintained, however, I think it should be possible to scale down the residual support

capability still further. That might raise the question whether PSNI envisaged handling public order issues in the future entirely from within their own resources or whether they saw the need for planning to include supplementary support.

189. In the latter case, one option would involve planning for the deployment of mutual aid from police forces in Great Britain so as to ensure that the response to extreme disorder going beyond the capacity of the PSNI was met solely by the police. Police officers deployed in these circumstances would of course have to be fully trained, and have access to adequate personal protective personal equipment, commensurate with the tactical situations which they might encounter in Northern Ireland.
190. The decisions on the strategic approach to be followed fall to be made by the Chief Constable of the PSNI. In so far as they extend beyond the resources of the PSNI, they involve wider political judgments as well. These are not matters for me to judge: my role is limited to comment on the future of these powers, not the strategic judgments which underpin them.
191. I should however record that the overall balance of all the views expressed to me was that the involvement of the military in public order situations in Northern Ireland, while it could not be completely ruled out, was now highly unlikely for the future.
192. But if that possibility, however unlikely, continues as a factor in strategic planning, my judgment is that it will remain necessary to maintain a contingent military capability which matches capacity to possibly adverse circumstances. That capability must be underpinned by a clear and proportionate legal framework, together with a training programme and logistical support, to ensure that any deployment is effective, while having minimal effects on the civil community.
193. This is not an easy judgment to make in view of all the other calls on UK military resources worldwide at present but seems to me to be inevitable.

#### *Military Complaints*

194. So far as military complaints are concerned, the trend identified last year remains downward overall. That is as it should be, in view of the greatly diminished military presence. But the duty to ensure that complaints against the armed forces are fully and scrupulously investigated remains a high imperative.
195. I believe that that point is fully understood at HQNI and 38 (Irish) Bde. I reinforce it now not because I have uncovered any concerns but because it is a normal expectation when military operations come into contact with the general public.
196. In the course of next year, I intend to involve myself more fully in the detailed processes for the investigation of military complaints. I also intend to do

more to seek out the views of those who have had cause to complain. I shall do so not because I have any views on the substance of their complaints but because it is important, as the Secretary of State said when appointing me, to find out the views of those who are affected by the 2007 Act.

197. I shall also keep a careful watch on complaints about helicopter flights. These are the predominant concern in military complaints. There is a balance between their potentially adverse impact on some communities and their value in training for service personnel. I intend next year to discuss these issues more widely with the Ministry of Defence to see what experience elsewhere in the UK can teach us about them.
198. I should record here that I received specific representations about the case of Peter McBride and the reinstatement in the Army of two soldiers convicted of his murder. My predecessor, Mr McDonald, commented on this case. I do not myself intend to offer any comment on it, since it predates my review, other than to note the clear concern and distress it continues to cause to Mr McBride's family and community. Unless new information comes to light or a new complaint is made that will remain my position.

#### *The Future of these Powers*

199. 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".*

200. I am not obliged to make recommendations and the Secretary of State is not obliged to do more than consider them. But the invitation is there and I believe it would be helpful if I were to respond to it. I therefore offer the following conclusions.
201. The reasons why the Government took these powers were set out as the Bill went through. They were drawn up in the context of a process aiming at making political progress and achieving security normalisation, which was clearly mapped out. Political progress has been made and the security normalisation programme has been completed.
202. Taking all these issues together, I think it is too early for a judgment that all the elements are in place to say that a benign security situation has yet been achieved. The first year shows encouraging progress, but there is not yet enough evidence that the current position amounts to one which could be characterised as normal security in the context of Northern Ireland.
203. Some of those to whom I have spoken regard the existence of these powers as a complication to the achievement of normal security. They take the view that their continuation is inhibiting the full engagement in the political process of those who for too long have been held back but whose participation is essential if normal security is to be achieved.



204. These general concerns about the effect of specific security powers in Northern Ireland are of course not new and are familiar to those who take a longer view of Northern Ireland's history. The view expressed to me, in terms of their present day impact, is that such powers perpetuate past suspicions of the police and stand in the way of the promotion of community support for the police which will be crucial to improving the overall security profile.
205. I understand that point of view and record it carefully here. It deserves recognition in assessing how best further progress might be made. It is not part of my task, however, to second guess the judgments made at the time these powers were introduced. I have set out the background in some detail in Part 1 for the benefit of those who have expressed concerns about the Government's original decisions.
206. I can however reflect on these concerns in deciding whether to make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act. Any repeal of the powers under review could be either in their entirety or piecemeal – the legislation provides flexibility of this kind.
207. More practical concerns were also expressed to me to the effect that maintaining a residual security role for the armed forces was likely to be counter-productive and more intrusive than envisaged. I understand those views, which I believe are held in good faith, but I do not think the evidence substantiates them. Both the police and the armed forces are clear about their roles.
208. The military provide a contingent back-up which I judge to be necessary and proportionate. They therefore need the proper powers for that role. Their specialist support, for example in defusing bombs, remains essential in the face of recent dissident activity.

### *Key judgments*

209. In my judgment, countering the dissident terrorist threat is likely to be the main priority for the security effort for the foreseeable future. Other concerns, in particular dismantling loyalist paramilitary structures and consolidating recent progress on public order, will need to stay in close focus but the activities of the dissidents are the main hindrance to progress towards normal security.
210. In my view, nothing has changed sufficiently in the past year to alter the balance of argument about whether these powers are necessary. There have been no major shifts on either side of the argument.
211. Vigilance will continue to be required to ensure that the powers are exercised only when necessary. They must be used proportionately and without discrimination, and subject to the stringent safeguards which apply at present.

**212. The current activities of dissidents stand in the way of a further reduction in the security profile. The potential gain from repealing any of these powers will not at present deliver sufficient of value to match current security requirements in Northern Ireland.**

**213. My final conclusions therefore are that:**

- **From the limited evidence I have seen in the short period of this review, the powers have overall been exercised appropriately and proportionately in their first year**
- **They should be continued in operation for a further year without change, subject to stringent safeguards and record keeping.**

### ***Recommendations***

**214. I recommend that:**

- **Operational planning should continue to assume that there will be a need for specialist military assistance in support of PSNI to deal with threats and incidents of terrorism (*paragraph 88*)**
- **Unless a decision is taken that PSNI will henceforth meet all their potential commitments for dealing with serious public disorder entirely from within PSNI resources, operational planning should continue to provide for contingent support (*paragraph 99*)**
- **For as long as the military are tasked with potential support for the police in serious public order situations, even in only a contingent reserve role, they should remain fully trained and equipped for the purpose (*paragraph 105*)**
- **If it is desired to provide an alternative to the military for support for PSNI in dealing with serious public disorder, consideration could be given by those in authority to the possibility of providing support from police forces in Great Britain (*paragraph 106*)**
- **PSNI should keep statistics on their use of the powers under the 2007 Act in a different format from their statistics on the 2000 Act to allow for the different operational timescales (*paragraph 112*)**
- **HQNI and 38 (Irish) Bde should complete as soon as possible their revision of the leaflet about how to make a complaint against the armed forces in Northern Ireland (*paragraph 136*)**
- **HQNI and 38 (Irish) Bde should review their strategy for communicating with local communities about plans for forthcoming helicopter activity (*paragraph 149*)**

- The police and HQNI and 38 (Irish) Bde should review their procedures for responding to telephone requests from the public for information about helicopter flying (*paragraph 151*)
- More work is needed to assess the comparative utility of the powers in the 2000 and 2007 Acts and the police should complete their review of this as soon as possible (*paragraphs 183 and 185*)
- The powers in the 2007 Act should be continued in operation for a further year without change, subject to stringent safeguards and record keeping (*paragraph 213*).

**ROBERT WHALLEY CB**

**October 2008**

## **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 - 1st August 2007 - 31st July 2008**

	Aug-Sep 2007	Oct- Dec 2007	Jan- Mar 2008	Apr- Jun 2008	Jul- 08	Total
<b>1. JSA Section 21 - Number of persons stopped and questioned</b>	6	14	8	28	5	<b>61</b>
<b>2. JSA Section 24 (Schedule 3) - Munitions and Transmitters stop and searches</b>						
No. of persons stopped and searched, public place:	28	74	93	72	36	<b>303</b>
No. of persons stopped and searched, private place:	11	21	24	27	20	<b>103</b>
Persons stopped and searched - total	39	95	117	99	56	<b>406</b>
<b>JSA Section 24 (Schedule 3) - Searches of premises:</b>						
No. of premises searched - Dwellings:	8	65	28	38	29	<b>168</b>
No. of premises searched - Other:	4	16	7	14	1	<b>42</b>
No. of occasions items seized or retained	0	20	15	6	1	<b>42</b>
Use of specialists - No. of occasions 'other' persons accompanied police:	2	2	2	3	1	<b>10</b>
<b>3. JSA Section 26 (Schedule 3) - Search of Vehicles</b>						
(1) (a) Vehicles stopped and searched under section 24	Not Available	44	73	59	34	<b>210</b>
(1) (b) Vehicles taken to another location for search	Not Available	0	0	0	0	<b>0</b>

**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 2007 and 31<sup>st</sup> July 2008**

**Table A**  
**JSA Section 21 – Stop and Question**

Year	Police Service for Northern Ireland
	Number of persons stopped and questioned
2007	
Aug-Sept	6
Oct-Dec	14
<b>2007 Total</b>	<b>20</b>
2008	
Jan-Mar	8
Apr-Jun	28
Jul	5

Source: Police Service of Northern Ireland

**Table B**  
**JSA Section 24 (Schedule 3) – Munitions and Transmitters Stop and Searches**

Year	Number of Persons stopped and searched by Police		
	Public Place	Private Place	Total
2007			
Aug-Sept	28	11	39
Oct-Dec	74	21	95
<b>2007 Total</b>	<b>102</b>	<b>32</b>	<b>134</b>
2008			
Jan-Mar	93	24	117
Apr-Jun	72	27	99
Jul	36	20	56

Source: Police Service of Northern Ireland

**Table C**  
**JSA 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
2007				
Aug-Sept	8	4	0	2
Oct-Dec	65	16	20	2
<b>2007 Total</b>	<b>73</b>	<b>20</b>	<b>20</b>	<b>4</b>
2008				
Jan-Mar	28	7	15	2
Apr-Jun	38	14	6	3
Jul	29	1	1	1

Source: Police Service of Northern Ireland

**Table D**  
**JSA Section 26 (Schedule 3) – Searches of Vehicles**

Year	Search of vehicles by police	
	Vehicles stopped and searched under JSA Section 24 (Schedule 3)	Vehicles taken to another location for search
2007		
Aug-Sept	N/A	N/A
Oct-Dec	44	0
<b>2007 Total</b>	<b>44</b>	<b>0</b>
2008		
Jan-Mar	73	0
Apr-Jun	59	0
Jul	34	0

Source: Police Service of Northern Ireland

**Table 3: Army Powers - Deployments 1 July 2007 to 31 July 2008**

<b>Deployment Period</b>	<b>Advanced Search</b>	<b>ATO</b>	<b>Search Dogs</b>	<b>Total</b>
Jul - 07	19	26	31	76
Aug - 07	7	11	11	29
Sept – 07	8	32	8	48
Oct – 07	8	27	8	43
Nov – 07	11	18	11	40
Dec – 07	7	22	7	36
Jan – 08	11	26	10	47
Feb – 08	4	17	4	25
Mar – 08	18	21	18	57
Apr – 08	4	9	4	17
May – 08	11	7	11	29
Jun – 08	17	13	17	47
Jul – 08	10	5	10	25

**Notes**

1. Figures include base closures
2. All ATO taskings are Joint with the PSNI. Figures also include all Joint Ops with AS

**Table 4: Informal General Military Complaints – 1 January 2007 – 31 July 2008**

	2007	2008
January	0	0
February	1	0
March	0	0
April	0	0
May	0	0
June	0	0
July	1	0
August	0	
September	0	
October	0	
November	0	
December	0	
Total	2	0 <sup>1</sup>

1. Please note represents first 7 months of 2008

**Table 5: Formal Helicopter Complaints – 1 January 2007 – 31 July 2008**

	2007	2008
January	1	1
February	2	4
March	1	3
April	5	18
May	5	4
June	3	9
July	5	11
August	4	
September	1	
October	2	
November	1	
December	1	
Total	31	50 <sup>1</sup>

1. Please note represents first 7 months of 2008

**Table 6: Informal Helicopter Complaints – 1 January 2007 – 31 July 2008**

	2007	2008
January	8	3
February	12	4
March	3	2
April	7	1
May	9	0
June	7	3
July	13	4
August	4	
September	0	
October	3	
November	0	
December	2	
Total	68	17 <sup>1</sup>

1. Please note represents first 7 months of 2008