

**REPORT OF THE INDEPENDENT REVIEWER**  
**JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007**

**FOURTEENTH REPORT**

**1 August 2020 – 31 July 2021**

Professor Marie Breen-Smyth

June 2022

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



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**FOREWORD**

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

My terms of reference were set out in that letter as follows: “the functions of the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 are to:

- review the operation of sections 21 to 32 of the Act and those who use or are affected by those sections; to review the procedures adopted by the military in Northern Ireland for receiving, investigating and responding to complaints; and
- report annually to the Secretary of State.

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

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

I now have pleasure in submitting my first report, which is the 14th annual report, covering the period 1 August 2020 - 31 July 2021.

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

Marie Breen-Smyth

June 2022

## **1 INTRODUCTION**

- 1.1 The role of the Independent Reviewer is set out in section 40 of the Justice and Security Act (JSA) 2007.
- 1.2 The Independent Reviewer has a responsibility to review the operation of sections 21 to 32 of the Act and those who use or are affected by those sections; to review the procedures adopted by the military in Northern Ireland for receiving, investigating and responding to complaints; and to report annually to the Secretary of State. Sections 21 to 32 of the Act are summarised in Part 1 of Annex C to this report. Broadly speaking, they contain powers to stop and question, stop and search and to enter premises to search for munitions etc., to stop and search vehicles, to take possession of land and to close roads. They are designed to address the specific security situation which exists in Northern Ireland where it is necessary for the preservation of peace or the maintenance of order. These powers are subject to specific regimes of authorisations which are set out and discussed in this report.
- 1.3 Under section 40(3) the Secretary of State can require the Reviewer to include in the report specified matters other provisions set out in the JSA. In his letter of 6 October 2017 to my predecessor, David Seymour, the then Secretary of State requested that the issue of Non-Jury Trials (NJT) be addressed in the annual Report of The Reviewer. The provisions in the JSA 2007 relating to NJTs are set out in sections 1 to 9 and are at Annex F. The Public Prosecution Service's (PPS) internal guidance on how those provisions are to be applied, which form the terms of reference for this review of NJTs, are at paragraph 14.2 of the 10th report, and at Annex G of this report.
- 1.4 The Independent Reviewer also reports on two aspects of Army operations: Explosive Ordnance Disposal activity (EOD) where the Army supports the PSNI in dealing with explosive matériel; and the operation of the Army complaints procedure.
- 1.5 The previous 13 reports covering the years 2008 to 2020 can be found on the GOV.UK website. <https://www.gov.uk/government/publications/annual-reports-of-the-independent-reviewer-of-justice-and-security-northern-ireland-act-2007>

- 1.6 Lord Anderson QC, the former Independent Reviewer of Terrorism Legislation (IRTL) for the UK, has said that the value of the Reviewer lies in the fact that [they are] independent; have access to secret and sensitive national security information; are able to engage with a cross section of the community; and produce a prompt report which informs public and political debate.
- 1.7 It is necessary to review secret and sensitive material in carrying out my duties in relation to NJT determinations by the PPS and in relation to cases of stop and search under the JSA 2007. Access to this information is contingent on the submission of the incumbent to a Developed Vetting (DV) process of security clearance. Further information on the vetting levels and processes can be obtained at <https://www.gov.uk/government/publications/united-kingdom-security-vetting-clearance-levels/national-security-vetting-clearance-levels>.
- 1.8 I applied for DV clearance in February but the process was not completed until late 2021, which greatly delayed my review of NJTs and some of the material relating to individual cases of JSA stop and search. I am very grateful to those who facilitated this work late in the day and for accommodating me, often at their own inconvenience.
- 1.9 This report is divided into three Parts. Part 1 deals with the use of the powers in sections 21 to 32. This includes a section on military provisions. Part 2 examines the operation of the NJT system. Part 3 sets out my conclusions relating to the exercise of the powers in respect of NJTs.
- 1.10 I am grateful to the very many community-based organisations, charities, human rights organisations and public watch-dogs who have met me and given me the benefit of their views. These are listed at Annex B. I am also grateful to the political parties and public representatives who engaged in this process and to the many public servants in the Northern Ireland Office (NIO), Ministry of Defence (MoD), Police Service of Northern Ireland (PSNI), the Department of Justice (DOJ), the Northern Ireland Policing Board (NIPB) and their staff, the Police Ombudsman for Northern Ireland (PONI), The Independent Reviewer of Terrorism Legislation (IRTL) in the UK,

my predecessor David Seymour CB, The Northern Ireland Bar Association, the Lord Chief Justice and the Lady Chief Justice, Criminal Justice Inspection Northern Ireland (CJINI) and Public Prosecution Service (PPS) who have cooperated and assisted me in my review.

- 1.11 The passing of the JSA in 2007 was a significant move away from the emergency provisions laws that preceded it. It limited the powers of the police and the judiciary and instituted levels of oversight that the previous law did not require. On the one hand, the limitation and oversight of extraordinary powers of the state in the JSA may reassure those who worry about overweening state power. Yet this occurs in the context of a broader permanent installation of sweeping powers in laws such as the Terrorism Act 2000 and its sequelae. Mindful of important civil liberties, principles of democratic accountability and the need for continued vigilance and oversight, the IRTL, Jonathan Hall QC has oversight of terrorism legislation throughout the UK. His work has been an important touchstone in the preparation of this report. The Human Rights Advisor to the Northern Ireland Policing Board, John Wadham has been an invaluable colleague.
- 1.12 The JSA 2007 will have operated for almost 15 years when this report is laid in Parliament. In that time, significant changes have occurred. In 2007 Gerry Adams (Sinn Féin) and Ian Paisley (Democratic Unionist Party) met face to face and agreed to power-sharing and the British Army's Operation Banner, its longest single deployment, ended after just over 37 years. In 2010, the then British Prime Minister David Cameron issued an apology on behalf of the British Government for the killings on Bloody Sunday in 1972. In 2012, Queen Elizabeth II held a private meeting with Martin McGuinness, a former commander of the IRA. Since then, the Northern Ireland political parties and the British and Irish Governments have made several attempts to resolve the outstanding issues of disagreement following the peace process through the 2013 Haas Initiative, the 2014 Stormont House Agreement and the 2015 Fresh Start Agreement. By 2015, the Democratic Unionist Party (DUP) had elected its first female leader, Arlene Foster, installing her as Northern Ireland's first female First Minister in 2016. The outcry across the country at the death of 29 year-old journalist Lyra McKee, shot dead during rioting after police searches in



Derry/Londonderry in 2019 provided definitive evidence of widespread grassroots revulsion at political violence. Whereas the national security threat from terrorism to the whole of the UK is ranked as 'Substantial', the threat in Northern Ireland was ranked as 'Severe' during the period under review here (August 2020-July 2021), largely related to dissident republican armed groups.

- 1.13 The enduring desire and commitment of those in the criminal justice and policing and security systems to ensure the safety of the population and national security is both indispensable and, in many instances, heroic. The system within which justice and security is delivered is large, complex and often moves more slowly than those within it and the public might expect or desire. Even the smallest of changes to such systems presents multiple challenges and often attracts resistance on the part of those who have operated the status quo for some years or even decades. It may also stimulate anger and anxiety on the part of those who see any proposed change as an inherent criticism. Change can also inspire a sense of being overwhelmed by the enormity of the time and work involved where proposed change involves amendments to legislation or other executive actions. It also requires the management of expectations of both those within that system and those outside looking in.
- 1.14 The criminal justice system in Northern Ireland has been transformed since the Belfast (Good Friday) Agreement. It is the role of the Independent Reviewer not only to review the operation of the JSA as part of that system, but to recommend change where it seems necessary or desirable. I hope to continue to enjoy the goodwill of those in that system noted by my predecessor. I must rely on the willingness of those in the criminal justice and security systems to consider my findings and recommendations with an open mind and to examine the feasibility and advantages of any changes whilst coping with the demands and challenges that change entails.
- 1.15 All references in this report to sections are to sections of the JSA 2007 unless otherwise stated.

- 1.16 All references to “mainstream criminal justice legislation” are references to the Police and Criminal Evidence (Northern Ireland) Order 1989, the Misuse of Drugs Act 1971 and the Firearms (Northern Ireland) Order 2004.
- 1.17 As with previous reports comments may be directed to [thesecretary@nio.gov.uk](mailto:thesecretary@nio.gov.uk).

## **2. EXECUTIVE SUMMARY**

- 2.1 The methodology adopted for the report is set out in section three. There was more emphasis on direct engagement with communities than in previous reports. As a result of the pandemic meetings were held remotely at the beginning of the review period, moving to a hybrid approach as the restrictions permitted.
- 2.2 The security situation remained at Severe during this review period and is summarised in paragraphs 4.3 to 4.10. There has been a further reduction in violence and increase in those apprehended for such violence. The threat from dissident republican groups (DRs) remains and loyalist paramilitaries continue to carry out violent attacks, intimidation and petty criminal and more serious criminal acts. Whilst the public order situation has continued to show signs of improvement, loyalist discontent and protests about the Protocol, COVID restriction protests, and the unrest associated with bonfires continue to require policing. (paragraphs 4.15 to 4.21).
- 2.3 There is an overall downward trend in combined use of the use of stop and search under all powers in Northern Ireland although the PSNI continue to rank amongst the most prolific users of stop and search powers compared to other UK police forces. This review period saw the distribution of stop and search activity, change, with a 7% increase of stop and searches under the Misuse of Drugs Act, a 6% increase of those under PACE and decreases in the number of stops under section 24 of the JSA 2007 (14% decrease) and section 21 (31% decrease), marking a downward trend in the use of the JSA in favour of the use of the ordinary criminal law. (paragraphs 5.3 to 5.5)
- 2.4 Authorisations continue to be scrutinised carefully and there has been one further lapse of fifteen minutes on 26 April 2021 when no authorisation was in place due to the premature cancellation of the previous authorisation before the new one was in place. However, the powers were not exercised during that period. I examined whether the authorisation of powers across all of Northern Ireland could be justified and found that although the powers were used much more frequently in some policing districts, there were no districts in which the powers were not used each year. I examined the proportionate use of the powers and found that any less targeted use of these powers

requires the strictest vigilance and scrupulous monitoring in order to comply with the spirit and intent of the ruling in Ramsey judgment in the Court of Appeal. (paragraphs 5.8 to 5.19)

- 2.5 This report will address six key areas for consideration, with several recommendations being made within these specific areas. The first is a requirement for a review of various policies and procedures and an update of the Code of Practice for Stop and Search procedures in Northern Ireland using the Justice and Security Act.
- 2.6 This includes the continuing recommendation to review the authorisation period, key policies and practices in relation to seizure and return of property, a specific policy around how the JSA interlocks with other investigatory powers and clarity around policing the various paramilitary groupings. Attention also needs to be given to how the PSNI makes search records available to the public and ensures that all changes are captured within the Code of Practice.
- 2.7 I have also called for various pieces of data to be made available to inform this report going forward. It is key that data on seizures of weaponry, ammunition and explosives following a stop and search are extrapolated and made available. Equally detailed PSNI records in relation to JSA stop and searches should be made fully available for the next review period.
- 2.8 I have also commented at length on the long running issue of community monitoring, and the requirement to gather community monitoring data for people searched under the JSA. I urge the PSNI to implement a method for gathering this data without any further delay and whilst resolving other concerns around legislation. I also have recommended that they consult the Equality Commission on this issue and review their procedures and practices in relation to targeting, assessing, reporting and responding to community impact, particularly in communities where stop and search activities are concentrated.
- 2.9 I also recommend that periodic Full Community Impact Assessments (FCIAs) are completed with findings informing future police operations and policy. In relation to

the effectiveness of stop and search, I recommend that the PSNI take a series of representative samples of those stopped and searched under JSA powers, track them through the system and document any beneficial outcomes in terms of crime detection or prevention.

- 2.10 I make several further recommendations around the use of Body Worn Video (BWV). I recommend that the percentage of officers using this valuable device is examined, that the degree and timeliness with which footage is made available to external agencies such as lawyers and PONI when requested is reviewed and footage is used in training of new officers. I recommend that the use of BWV for Performance Management is piloted. I also recommend that BWV is used all stops and searches of Young People and the footage made available for analysis.
- 2.11 Young people are also a focus in a number of recommendations. I recommend that the PSNI implement the plan to establish regional YIAGs (Young People's Independent Advisory Group) without delay and share minutes of these groups with partners and online. I recommend that a stop and search card designed for young people be developed and adopted by the PSNI and I recommend that the PSNI adopts the Scottish Code of Practice in relation to Young People.
- 2.12 I also make a number of recommendations around the provision for Non-Jury Trials (NJT). I recommend a continuing review of a variety of policies and procedures around NJT, a retrospective longitudinal comparison of the outcomes of jury trials and urge that continuing delays in the Criminal Justice System are examined and reviewed.
- 2.13 I recommend that a contemporary and focused security risk assessment of the specific level of risk to juries is completed, particularly noting societal changes. I also make several recommendations on how intelligence material is used. Noting the importance of the independence of the PPS, I revisit my predecessor's recommendation to proceed with a low risk case using the CJA 2003, and recommend an examination of the possible legal basis for such a move.

### 3 METHODOLOGY

- 3.1 Unlike both my predecessors, I am a native of Northern Ireland and resident there. I have a long involvement with both communities and with the voluntary sector and various Government departments over the previous decades. I am well acquainted with many of those I met in the course of my role as Reviewer and also made a significant number of new connections. The role is part-time. I began in February 2021, conducting online meetings and when restrictions allowed, I met individuals and organisations in person. In some cases, where it was merited, I had multiple meetings with the same individual or organisation.
- 3.2 I read a wide range of legislation, codes of practice, jurisprudential material, official reports, including those of my predecessors, policy articles and research papers. There has been no legislative opportunity to amend the Justice and Security (Northern Ireland) Act 2007, although the powers within the JSA pertaining to non-jury trials (NJT) was renewed on its two year cycle this year and was debated in the House on 7 July 2021<sup>1</sup>.
- 3.3 I had discussions with a wide variety of people in Northern Ireland including the political parties, community leaders, non-governmental organisations, the Criminal Justice Inspectorate Northern Ireland, the Chief Justice (both outgoing and incoming), the Policing Board, the Ombudsman, human rights organisations, former paramilitaries and ex-prisoners and members of the public. A full list of all those consulted is at Annex B.
- 3.4 I am grateful to the senior Police Service of Northern Ireland (PSNI) officers at their Knock Road headquarters in Belfast, who met with me to provide briefings and insights into the use of JSA powers. I am also grateful to the officers who met with me formally and informally at Strand Road Station in Derry/Londonderry and at Musgrave Street in Belfast. I attended a meeting of the Performance Committee of the Northern Ireland Policing Board. I am also grateful for the briefing by MI5-The Security Service in

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<sup>1</sup> [https://hansard.parliament.uk/Commons/2021-07-07/debates/b590851d-77d9-4a3b-b32f-897e25a5d86b/DraftJusticeAndSecurity\(NorthernIreland\)Act2007\(ExtensionOfDurationOfNon-JuryTrialProvisions\)Order2021](https://hansard.parliament.uk/Commons/2021-07-07/debates/b590851d-77d9-4a3b-b32f-897e25a5d86b/DraftJusticeAndSecurity(NorthernIreland)Act2007(ExtensionOfDurationOfNon-JuryTrialProvisions)Order2021)

Northern Ireland and by the 38 (Irish) Brigadier and NI Garrison and his staff in Thiepval Barracks and for the cooperation of his staff in compiling that aspect of this report.

- 3.5 I wish to thank the staff in the Northern Ireland Statistics and Research Agency (NISRA) who deal with security statistics for their patience and cooperation. I am also grateful to my colleagues IRTL Jonathan Hall QC, and Human Rights Advisor to the Northern Ireland Policing Board John Wadham for the benefit of their experience and expertise. I am grateful to those with legal and administrative expertise who have advised me and supported my work in this role. I am particularly grateful to those in the NIO who have assisted in arranging meetings, digging up documents and researching various matters that I deemed relevant to the discharge of my duties. This was always done with the greatest of courtesy and efficiency and for that I am very grateful. I wish to especially thank those involved in assisting me in the preparation of this report for publication, for their meticulous and unfailing assistance.
- 3.6 In his 2020 report my predecessor, David Seymour, pointed out that this review is not an inspection, inquiry or investigation but a review of the exercise by the police of the exceptional powers in the JSA. He also pointed out that the Reviewer is “not concerned with individual conduct or complaints which are matters for the Ombudsman, PSNI disciplinary proceedings and the courts.”
- 3.7 I have no power to compel people to produce evidence or to co-operate (other than the power in section 40(7) in relation to the Army which is required to provide me with documents). I do not attribute views to any particular individual or organisation unless those views are already in the public domain or I have their specific permission. I am grateful to all those individuals and organisations who gave up their time freely to speak openly about their views and experiences. The report is based on what they have told me.
- 3.8 My work as Reviewer depends for its effectiveness on the willingness of a wide range of people in Northern Ireland to contribute to the process by talking honestly and openly about these powers; how they are used; issues they face in using them; or having them used on them and the impact on their communities.

3.9 I attended a range of community meetings in various locations at which individuals approached me with specific concerns about being stopped and searched under the JSA. Each individual was advised of the role of the Police Ombudsman. I also informed the PSNI of each case. I am unable to engage with complaints about the conduct of the police, that is a matter for PONI. In such circumstances, I will inform PONI and ask that she exercises her discretion to undertake her own motion investigation under (section 55(6) of the Police (NI) Act 1998 or a policy and practice investigation section 60A of that Act. Where there was *repeated and frequent* use of the JSA powers on the same individual over a protracted period, I deemed that to fall within my remit. I have commented on these cases in section seven, “Issues Arising from the Use of the Powers.”

3.10 I note and share the concerns raised by my predecessor about the reporting period (paragraph 3.9 of his 9th report, repeated at 3.8 in his 10th report) and his hope, shared by me, that it will be changed at some point in the future from its current cycle of August – July to the calendar year. It would greatly simplify the work involved for my colleagues in my cycle of annual reporting if my review coincided with the cycles used elsewhere in government and the criminal justice system. I have been advised that this will require legislative change, so I will raise it again in 2023 when parts of the JSA are due for renewal and amendment.



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

### SECURITY AND PUBLIC ORDER

4.1 The first report of the Independent Reviewer of the JSA, Robert Whalley CB in 2008, took the Secretary of State’s proposals as the starting point for assessing progress in the intervening period 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?

### Security assessment

4.2 Up until 2019, the Joint Terrorism Analysis Centre (JTAC) assessed the threat from international threats, MI5 assessed the level of threat to national security from Irish and other UK based groups in Northern Ireland and Great Britain. The system changed in July 2019 and from that time on, the assessment reflects all threats irrespective of ideology, creating a single national threat level based on threats from Islamist, Northern Ireland, left-wing and right-wing groups, with MI5 assessing the threat level in Northern Ireland. Threat levels are used in various security sectors determining the level of protective security response that may be required. The levels in use are: Low Moderate, Substantial, Severe and Critical. The system is set out in detail in “Threat Levels: The System to Assess the Threat from International Terrorism” (2006)<sup>2</sup>. MI5 ranked the threat level in Northern Ireland as ‘Severe’ throughout this review period.

4.3 The threat level in Northern Ireland has been consistently assessed as Severe since the system was introduced in 2010 and throughout the period covered in this report (August 2020 -July 2021, although it was amended to Substantial on 22 March 2022). The assessment is based on threats to national security – which the Security Service assess based on “available intelligence, terrorist capability, terrorist intentions, and the

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<sup>2</sup> Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/62530/threatlevels.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/62530/threatlevels.pdf)

likelihood of an attack in the near term"<sup>3</sup>. The threat level assessment in Northern Ireland during this review period has been largely based on the activities of dissident republican (DR) groups who see violence and attacks on the police and state agents and agencies as a legitimate means to achieve their political goals. Even though loyalist paramilitaries remain active, until now, they have not targeted state agencies. Therefore they do not currently meet these criteria and their levels of activity do not contribute to the assessment of threat in Northern Ireland.

- 4.4 Proscribing an organisation, makes it illegal to belong to it or invite or express support for it, arrange or attend its meetings or wear or display its insignia. Proscription has been used since the foundation of the state of Northern Ireland in the 1920s to ban organisations that seek to overthrow the state or terrorise the population by violent means. There are currently 14 proscribed organisations listed: Continuity Army Council; Cumann na mBan; na Fianna Éireann; Irish National Liberation Army; Irish People's Liberation Organisation; Irish Republican Army<sup>4</sup>; Loyalist Volunteer Force; Orange Volunteers; Red Hand Commando; Red Hand Defenders; Saor Éire; Ulster Defence Association; Ulster Freedom Fighters; and the Ulster Volunteer Force. The Independent Reporting Commission (IRC), established following the Fresh Start Agreement of 2015 to report on progress towards the ending of continuing paramilitary activity connected with Northern Ireland speaks of 'the complex landscape of paramilitarism'. Whilst law enforcement agencies consider that some of these groups are inactive and the threat they pose falls below the level of threat to national security, the IRC 'remain concerned about the risks posed to society by the continuing existence of paramilitary structures which can be harnessed for the purposes of violence or the threat of violence' (2021, p5). The IRC charts various degrees of involvement in paramilitarism, from 'dormant' members, those who wish to end paramilitarism, those who remain involved in paramilitarism for political and identity reasons which reach back to the Troubles, others who get caught up in it for reasons to do with socio-economic disadvantage, to those who are deeply involved in "extortion, drug dealing, threats, trade in counterfeit goods, money laundering, illegal money lending, sexual exploitation and other illegal

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<sup>3</sup> <https://www.mi5.gov.uk/threat-levels>

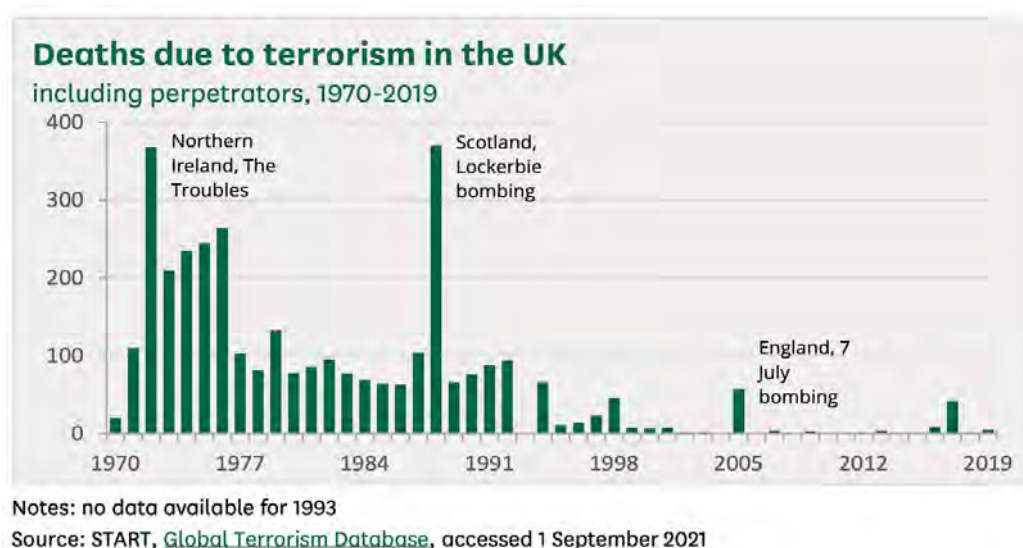
<sup>4</sup> On *R v Z* (Court of Appeal NI) Lord Carswell held that "the words "Irish Republican Army" were intended as an umbrella term, capable of describing all manifestations or splinter groups"

activities” to which I add violent paramilitary attacks up to and including murder. Where they do not target agents of the state or are not deemed to threaten democracy, loyalist - and some republican - activities are not included in the security assessment of the threat level.

### Progress towards Normal Security

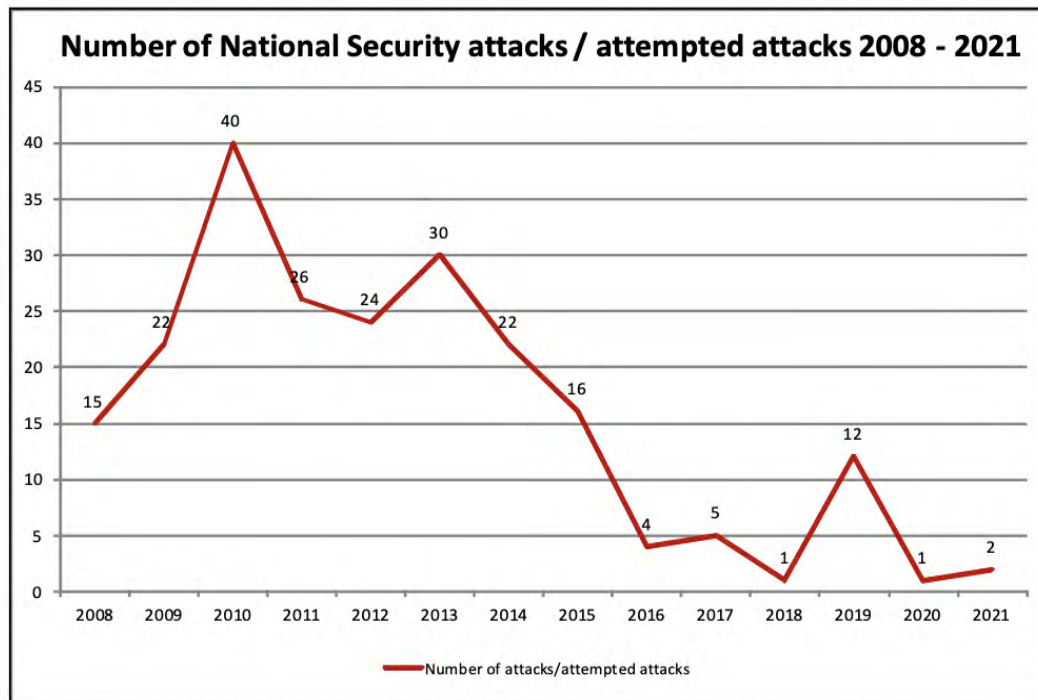
4.5 For those who lived through the 1970s in Northern Ireland, the threat assessment of ‘Severe’ may seem surprising, since it does not appear to reflect what is undoubtedly a vastly improved security situation, illustrated in Figure 4.1. Compared with the violence of the 1970s, for example, the threat level during this review period appears both low and highly localised. This point was made to me several times in meetings throughout the year.

Figure 4.1



Even over a shorter time-span, an improvement in the overall security situation in Northern Ireland is apparent in Figure 4.2, with a marked reduction in the numbers of attacks and attempted attacks since 2008. The highest number of attacks were conducted in 2010 when the security risk was ‘Severe’ and fell consistently to 2021, although the threat level does not reflect this. (Of course, the Security Services assess the security situation not only in terms of the number of attacks, but on a series of factors including the likelihood of future attacks – see paragraph 4.3 above).

Figure 4.2



Source: PSNI

According to the security statistics during the period 1 August 2020 – 31 July 2021, there has been a further reduction in violence (see Table 4.1). There was:

- 1 security related death<sup>5</sup>, compared to 2 during the previous 12 months;
- 13 bombing incidents<sup>6</sup>, compared to 19;
- 34 shooting incidents<sup>7</sup>, compared to 46
- 18 casualties of paramilitary style shootings<sup>8</sup> compared to 18 in the previous 12 months;

<sup>5</sup> Security related deaths are those which are considered at the time of the incident to be directly attributed to terrorism, where the cause has a direct or proximate link to subversive / sectarian strife or where the death is attributable to security force activity.

<sup>6</sup> These include all incidents where a bombing device explodes or is defused. If a device is found that is not complete or armed, then it is recorded as a 'find' and not as a bombing

<sup>7</sup> These include any shooting incident relating to the security situation and include shots fired by terrorists, shots fired by the security forces, paramilitary style attacks involving shootings and shots heard (and later confirmed by other sources).

<sup>8</sup> Paramilitary style shootings usually result in the injured party being shot in the knees, elbows, feet, ankles or thighs and the motive is supposedly to punish the person for anti-social activities. These paramilitary style shootings are generally conducted by loyalist or republican paramilitary groups on members of their own community. Paramilitary style shootings that result in death are counted as 'security related deaths' and are not reflected in the paramilitary style shooting figures.

- 38 casualties of paramilitary style assaults<sup>9</sup>, compared to 52.
- There was an increase in apprehensions of those responsible for violence:
- 120 persons arrested under Section 41 of the Terrorism Act 2000 compared to 80;
- 22 persons were subsequently charged, compared to 8.

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<sup>9</sup> Paramilitary style assaults are usually carried out by loyalist or republican groups on members of their own community as a so-called punishment. The assault will involve major or minor physical injury to the injured party typically involving a group of assailants armed with, for example, iron bars or baseball bats. Paramilitary style assaults that result in death are counted as 'security related deaths' and are not reflected in the paramilitary style assault figures.

**Table 4.1: Security situation statistics in Northern Ireland by attribution August 2020 - July 2021<sup>10</sup>**

	Aug 20 – Jan 21				Feb 21 – July 21 <sup>11</sup>				Aug 20 -July 21			
	REP <sup>12</sup>	LOY <sup>13</sup>	Unknown	Total	REP	LOY	Unknown	Total	REP	LOY	Unknown	Total
Security Related Deaths	0	0	0	<b>0</b>	1	0	0	<b>1</b>	1	0	0	<b>1</b>
Shooting Incidents	10	9	0	<b>19</b>	10	5	0	<b>15</b>	20	14	0	<b>34</b>
Bombing Incidents	3	8	0	<b>11</b>	2	0	0	<b>2</b>	5	8	0	<b>13</b>
Casualties of PS assaults	7	15	0	<b>22</b>	1	15	0	<b>16</b>	8	30	0	<b>38</b>
Casualties of PS shootings	6	3	0	<b>9</b>	8	1	0	<b>9</b>	14	4	0	<b>18</b>
Firearms found	3	2	4	<b>9</b>	13	13	4	<b>30</b>	16	15	8	<b>39</b>
Explosives found (kg)	0	0	0.15	<b>0.15</b>	0	0	0	<b>0</b>	0	0	0.15	<b>0.15</b>
Rounds of ammunition found	93	339	273	<b>705</b>	243	37	446	<b>726</b>	336	376	719	<b>1431</b>
S41 & TACT Arrests	35	11	0	<b>46</b>	47	27	0	<b>74</b>	82	38	0	<b>120</b>
S41 & TACT Arrests later charged	10	2	0	<b>12</b>	4	6	0	<b>10</b>	14	8	0	<b>22</b>

<sup>10</sup> Further information, including definitions of the above types of incidents, can be found in the Security Situation Statistics User Guide at the following link: [www.psni.police.uk/SecuritySituationStatistics](http://www.psni.police.uk/SecuritySituationStatistics)

<sup>11</sup> Figures for the period February 2021 – July 2021 are provisional and subject to change.

<sup>12</sup> REP = Republican, Attribution is as perceived by PSNI based on the information available at the time of the incident and does not necessarily indicate the involvement of a paramilitary organisation.

<sup>13</sup> LOY = Loyalist. Attribution is as perceived by PSNI based on the information available at the time of the incident and does not necessarily indicate the involvement of a paramilitary organisation.

## **Current threats**

- 4.6 The threat assessment for Northern Ireland for this review period, Severe, was based on the likelihood of an attack emanating from the dissident republican (DR) groups and led the PSNI to consider it necessary to exert constant pressure in order to contain this threat. The PSNI caution, however, that the threat from DRs is expected to extend beyond 2021 and while statistics provide an important optic, they should not be solely relied upon to understand the complex nature of the security situation in Northern Ireland. Nor indeed, does the assessment of threat reflect what is, undoubtedly, an improved security situation.
- 4.7 The most significant of DR groups are the new IRA and the Continuity IRA (CIRA) whilst other smaller groups Óglaigh na hÉireann (ONH), Arm na Poblachta (ANP) and the Irish Republican Resistance (IRR) are, or have been at one time, active. Some of these groups also target police and prison officers and members of the armed forces on a regular basis.
- 4.8 DR attacks have involved firearms or small IEDs such as pipe bombs and, in the past, larger and potentially more lethal devices such as vehicle borne IEDs and explosively formed projectiles (EFPs). During 2021, the CIRA are believed to have been involved in a shooting on 16 March directed at the PSNI in Enniskillen using a crude homemade firearm and the new IRA are believed to be behind the IED found at the home of a PSNI officer in Dungiven on 19 April. A number of hoax devices have also been deployed which the PSNI believe are used to assess police response and tactics.
- 4.9 Both republican and loyalist paramilitaries continue to carry out violent attacks against their own communities. Paramilitaries seek to control communities through the use of extreme violence up to and including murder and by intimidation. The activities of paramilitaries range from minor to serious criminality, drug dealing, extortion, fuel laundering and murder. The 56 paramilitary style assaults and shootings during this reporting period is a reduction from the 70 of the previous period, with assaults remaining more frequent than shootings. The brutality of these attacks at an individual level remains undiminished.

## **Experience on the ground: policing the threat**

4.10 Regular arrests and seizures have depleted the personnel and resources of the main DR groups:

- In August 2020, Operation Arbacia, a PSNI led operation with support from MI5, An Garda Síochána (AGS), Police Scotland and the Metropolitan Police resulted in the arrest of nine suspected members of the new IRA, with a tenth suspect arrested days later. All ten - 8 men and 2 women - have been charged with offences including membership of a proscribed organisation, directing terrorism and preparation for acts of terrorism. Amongst the accused is a 62 year-old man from Scotland who has been charged with an offence of preparatory acts of terrorism. These arrests were conducted as part of an ongoing investigation into the activities and finances of the new IRA.
- In November 2020, following their arrest in 2014, seven members of the CIRA pleaded guilty to offences including membership of a proscribed organisation, providing weapons and explosives training, conspiring to possess explosives, firearms and ammunition with intent to endanger life and were sentenced to a combined total of 33 years.
- In June 2021, a 32 year old pleaded guilty and was sentenced to 24 years on one count of preparation of terrorist acts following the recovery of IED components in Larne.
- In July 2021, as part of Operation Arbacia, a man was arrested in the Dungannon area under the Terrorism Act as part of an investigation into the new IRA. He was subsequently released and a file is being prepared for the PPS.

## **Tackling paramilitarism**

4.11 Policing the paramilitary organisations in Northern Ireland - those deemed to be a threat to national security and those whose threat is assessed as primarily to the local community - involves the enforcement of both counter-terrorism and criminal law. In



2020, the British and Irish Governments launched the 'New Decade, New Approach'<sup>14</sup> document. This initiative marked a continuing commitment dating back to 2016 and aimed at ending paramilitarism. The Government undertook to ensure that the PSNI was "appropriately resourced to deal with terrorism and paramilitary activity provide funding to ensure the work of the Programme to Tackle Paramilitary Activity, Criminality and Organised Crime can continue and redouble efforts to address commitments arising from the Fresh Start Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland<sup>15</sup>". This was to be achieved through its participation in the multi-agency Paramilitary Crime Task Force, working alongside the National Crime Agency and Her Majesty's Revenue and Customs. The five year Tackling Paramilitarism, Criminality and Organised Crime programme (TPP) established under the Fresh Start Agreement<sup>16</sup>, was extended by three years in 2020 and that same Agreement established the four person IRC to report on progress on tackling paramilitary activity connected with Northern Ireland.

4.12 The Fresh Start Panel, composed of Lord John Alderdice and Professor Monica McWilliams reported on the Disbandment of Paramilitary Groups in NI. This led to the Northern Ireland Executive publishing its Action Plan for Tackling Paramilitarism Criminality and Organised Crime, which is based on four approaches:

- Promoting lawfulness;
- Support for transition;
- Tackling criminality; and
- Assessing systemic issues.

The Programme's current overall aim is to achieve safer communities, resilient to paramilitarism, criminality and coercive control. Through over 80 projects and interventions, the Programme aims to address complex, longstanding issues and Programme activity supports at least one of two key longer-term objectives:

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<sup>14</sup> NI Office, 'New Decade, New Approach' (2020)

<sup>15</sup> Ibid, p 48.

<sup>16</sup> NI Office, 'A Fresh Start: The Stormont Agreement and Implementation Plan', (2015) Section A.

- People and communities are safe from the harm caused by paramilitarism (Workstream one)
- People and communities are more resilient to paramilitary influence and involvement in paramilitarism, criminality and organised crime (Workstream two).

4.13 The Tackling Paramilitarism, Criminality and Organised Crime Programme was established in 2016 to deliver the Executive Action Plan. Phase 1 ran until March 2021. £50 million was provided to the programme (£25 million each from the NI Executive and the United Kingdom Government) and was allocated to various projects to support the delivery of the 38 commitments in the action plan. In April 2021, the Department of Justice announced a Second Phase of the Programme to run until March 2024, and £13 million of funding support for reconciliation initiatives and work to tackle paramilitarism and criminality within communities<sup>17</sup>. The UK Government contribution to this work included the £25m in ‘Fresh Start’ funding mentioned above, £5m in 2021/22 for TPP and £10m over three years to support the Communities in Transition (CiT) project and funding for the Paramilitary Crime Task Force was also confirmed.<sup>18</sup> CiT targets eight areas where paramilitarism is concentrated. These are:

- North Down (Kilcooley and Rathgill);
- West Belfast (Lower Falls, Twinbrook, Poleglass, Upper Springfield, Turf Lodge and Ballymurphy);
- East Belfast (The Mount and Ballymacarrett);
- Shankill; Derry/Londonderry (Brandywell and Creggan);
- Carrickfergus and Larne (Antiville and Kilwaughter in Larne, Northland and Castlemara in Carrickfergus);
- North Belfast (New Lodge and Ardoyne); and
- Lurgan (Drumgask and Kilwilkie).

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<sup>17</sup> <https://www.justice-ni.gov.uk/news/ending-harm-inflicted-people-and-communities-by-paramilitaries-and-criminals-executive-priority-says>

<sup>18</sup> Christopher Leebod, ‘£13 million announced to tackle paramilitarism in Northern Ireland communities’, *Belfast Telegraph*, 28 April 2021.

4.14 Although there are initiatives that can be availed of throughout Northern Ireland, in general, these schemes are targeted at priority areas. Other communities that have been blighted by paramilitarism, including some of the areas I visited this year such as parts of North Antrim, have not benefited from this scheme. The extension of this work into other areas of need would be beneficial. In their fourth report in December 2021 the IRC also urged the Governments to establish a Group Transition process whereby organisations urged the Governments to further consider the IRC's recommendation of a Group Transition process.

### **Experience on the ground: public order**

#### **The Protocol and loyalist discontent**

4.15 There has been an increase in protest and public disorder from 1 August 2020- 31 July 2021, compared to the previous reporting period. The perception amongst many loyalists, including some loyalist paramilitary groups, that their identity and culture is under threat has been exacerbated by the constitutional impact of the Northern Ireland Protocol and the future of Northern Ireland's place within the Union. The Loyalist Communities Council (LCC) and the Progressive Unionist Party (PUP), the political wing of the Ulster Volunteer Force, have withdrawn support for the Good Friday Agreement as result of opposition to the Protocol. None of this is assisted by the perception by loyalists of a system of 'two-tier policing'. This accusation by loyalists has persisted since the funeral of a leading Provisional IRA member Bobby Storey in June 2020 and the decision not to prosecute any of those attending, including Sinn Féin leadership, for breaches of COVID restrictions. Between April and May 2021 serious disorder resulted in deployment and use of water cannons and public order dog teams. For the first time in three years the PSNI discharged six rounds of Attenuating Energy Projectiles (AEP) or Impact Rounds<sup>19</sup>. Over 100 officers were injured during this disorder. The numbers involved in these protests varied, with varying attendances at what were mainly local events. There were some high profile events, with over 2000 people attending parades and subsequent rallies in Belfast and Portadown. Protests continued throughout the reporting period. Since then, discontent has manifested in

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<sup>19</sup> AEPs replaced the L21AI baton round, which had replaced "rubber bullets."

protests and parades, participation has been relatively low, with the majority taking place peacefully, although localised incidents continue to occur at times of increased tension.

### **Covid restrictions protests**

4.16 Throughout the 12 month period there were a sizeable number of protests against restrictions imposed by the Government related to the ongoing COVID pandemic. Protesters were discontent over restrictions, or opposed vaccinations and held protests at locations throughout Northern Ireland. The size of these demonstrations varied from less than ten to hundreds of people. For example:

- An anti-mask – anti-lockdown protest at Stormont on 18 October 2020 was attended by approximately 350 people leading the PSNI to issue 13 Fixed Penalty Notices and a make a number of arrests;
- Approximately 35 people gathered outside Belfast City Hall on 5 November 2020 to highlight how COVID restrictions contributed to mental health related deaths;
- Initially small numbers gathered in Belfast City Centre on 24 July 2021 to demonstrate their opposition to COVID restrictions, but the numbers swelled to a final tally of approximately 2000-3000 protestors.

### **Other protests**

4.17 The Pro-choice/Pro-life movements have organised protests throughout Northern Ireland, including outside hospitals and clinics. Though the majority have passed off peacefully there have been numerous complaints about the distressing images on display during some protests, and protesters accosting those accessing the medical facility. There have been protests against the seizure of bank accounts outside a number of PSNI stations and at commercial banks conducted by members of Saoradh, a dissident republican community and pressure organisation closely associated with the new IRA, who also protested outside HMP Maghaberry about the treatment of republican prisoners.

4.18 In May 2021 a very large Sinn Féin banner was draped on the outside of Divis Tower, on the lower section of the Falls Road in West Belfast facing the Shankill (PUL) community. The banner read: “A United Ireland is for everyone – Let’s talk about it”. The PSNI raised health and safety concerns and the banner was removed.

4.19 There were a small number of environmental protests during the reporting period. In March 2021 a protestor chained himself to a gate at the Dalradian Goldmine in Omagh and had to be cut free. Earlier that month police in Norfolk received a call from the Samaritans saying that they had been informed by a caller that an explosive device had been left at the mine. No device was located.

### **Bonfires**

4.20 Bonfires continue to be a focus of dispute and safety concerns, although the 2021 marching season and the accompanying bonfire issues were much lower-key than usual with local parades and smaller numbers attending. More than 230 bonfires were lit in loyalist areas across Northern Ireland as part of 12 July celebrations and in association with the celebrations of the Centenary of the foundation of Northern Ireland. Over the weekend there were a total of 378 calls to emergency services and 244 mobilisations, 81 dealing with bonfire incidents. A Northern Ireland Fire and Rescue Service spokesperson said: “Over the three nights this represents a significant increase in bonfire related incidents compared to 2020 when 24 bonfire related incidents occurred from 6pm to 1am on the night of July 11/12.”<sup>20</sup> Whilst many of these towering fires collapse at a safe distance from cordoned off spectators, others had to run for safety when a bonfire toppled in Portadown and a young man in the Ballysillan area sustained serious injury when he caught fire whilst attending a bonfire. Most passed off peacefully, but some raise safety concerns close to residential accommodation and the burning of flags, effigies and election posters can heighten sectarian tensions, particularly in interface areas. One such bonfire led a local resident to seek an order of mandamus and an injunction before Mr Justice Horner (JR169 [2021] NIQB 90

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<sup>20</sup> <https://www.independent.ie/irish-news/more-than-230-bonfires-lit-in-north-ahead-of-twelfth-of-july-parades-40642374.html>

21/09/2021). In his judgement, Mr Justice Horner set out guidance for future bonfire management whilst refusing an application for an order of mandamus and/or an injunction compelling the police to remove the bonfire materials assembled at an interface on Adam Street, Belfast prior to the 11 July night bonfire. The refusal was in the context of the bonfire already having been ignited. Mr Justice Horner commented that:

“The police were placed in an intolerable situation... On the one hand the police had a large bonfire which had been constructed on the peace line adjacent to nationalist residential properties. ... It is obviously wrong that members of either community should be permitted to indulge in criminal behaviour or to be seen to escape sanction for such behaviour when they do. However, against that it is also unacceptable that police action against such criminal conduct should endanger the lives of children and result in a real risk of further widespread civil disorder. The police were satisfied that these were real and serious risks. The court is in no position to gainsay the police’s conclusions on this issue.” [JR169 [2021] 31]

- 4.21 There are fewer bonfires in nationalist areas, although later, on 8 August 2020, 26 police officers were injured when trying to remove bonfire material in Distillery Street Belfast. This was from a bonfire built to commemorate the introduction of Internment Without Trial/Operation Demetrius on 9-10 August 1971.

## 5 SECTIONS 21-28: Stop and search and related powers

5.1 The PSNI have almost identical stop and search powers to those available to the police in England and Wales under the Police and Crime Evidence (Northern Ireland) Order 1989 and the Misuse of Drugs Act 1971 and associated Codes of Practice based on 'reasonable suspicion'. In addition to these powers, the PSNI have stop and search powers under the JSA that are often referred to as 'suspicion-less'. The old s.44/47A of the Terrorism Act 2000 and s.60 Criminal Justice and Public Order Act 1994 dispensed with the 'reasonable suspicion' requirement for a stop and search. These powers were amended by the Protection of Freedoms Act 2012 (PoFA) following *Gillan and Quinton v. the United Kingdom* in 2010<sup>21</sup>. This judgment found that the stop and search powers granted under section 44 of the Terrorism Act 2000 amounted to the violation of the right to a private life. The Court found that the powers were drawn too broadly and that the powers contained insufficient safeguards to protect civil liberties. Although *Gillan* related to the Terrorism Act 2000 and not to the 2007 Act, the then Secretary of State decided to make changes to the JSA in order to reflect the findings of the European Court. These changes included the introduction of the authorisation process for stop and search for munitions and wireless apparatus without reasonable suspicion under S.24/Sch3 4(A).

5.2 'Suspicionless' stop and search powers give rise to anxieties about the civil liberties of law-abiding members of the public who are also subject to such powers. 'Suspicion-less' stop and search powers are also available under Section 47A of the Terrorism Act 2000. It contains an exceptional power, enabling an officer of assistant chief constable rank or above to grant authority for suspicion-less stops and searches in a specified area if they suspect an act of terrorism will take place. Following the *Gillan* 2010 ruling<sup>22</sup> at the European Court of Human Rights (ECHR) the power was narrowed from the original which was held to be unlawful by the Court and subsequently repealed. There were no uses of this power in the past year in England and Wales.

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<sup>21</sup> *Gillan and Quinton v United Kingdom* (Application No 4158/05) 2010

<sup>22</sup> *Ibid* [79] "The safeguards provided by domestic law have not been demonstrated to constitute a real curb on the wide powers afforded to the executive so as to offer the individual adequate protection against arbitrary interference."

- 5.3 There is an overall downward trend in the use of stop and search under all powers in Northern Ireland from the highest levels from 2008, alongside a fairly consistent use of PACE powers.
- 5.4 Of all the police forces in the UK, the PSNI are the most prolific users of ‘suspicion-less’ powers. The stop and search rate for the PSNI is 14 per thousand population, the overall rate for England and Wales is six per thousand in April 2019- March 2020<sup>23</sup>.
- 5.5 Compared with the previous twelve months, there were increases in the number of stop and searches under the Misuse of Drugs Act (up by 7%) and PACE (up by 6%). There was a corresponding decrease in the number of stop and searches under Section 24 of the JSA 2007 (down by 14%) and Section 21 (down by 31%). If this downward trend in the use of the JSA in favour of the use of the ordinary criminal law can be sustained, it will mark a transition of policing, in line with Government policy, from the use of ‘exceptional’ powers associated with the past towards harmonisation with practice elsewhere in the UK.
- 5.6 Schedule 3 JSA powers are for the very specific purpose of finding munitions and wireless communications devices and tend to be directed at ‘known’ dissident republicans. Searches under Schedule 3 are often based on security-related intelligence. In a 2018 article<sup>24</sup> Topping and Bradford noted that, although there is “inevitably some ‘bleed across’ between the two sets of powers” (JSA and PACE), the JSA powers represent a different sort of power and a distinct sort of policing intent.
- 5.7 The Explanatory Memorandum to the Justice and Security (Northern Ireland) Act 2007 (Code of Practice) Order 2003 included here as Annex H, sets out the legislative context for these powers:

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<sup>23</sup> <https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest>

<sup>24</sup> Topping J, Bradford B. Now you see it, now you don’t: On the (in)visibility of police stop and search in Northern Ireland. *Criminology & Criminal Justice*. 2020;20(1):93-110 Available at <https://journals.sagepub.com/doi/10.1177/1748895818800742>



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

## **Authorisations**

5.8 An authorisation document provides a full intelligence picture and full justification for the use of the powers in order to support the case for the use of the powers. Each process of authorisation involves assessments at policing district level and data collected there contributes to the completion of the pro forma which is included as Annex E. The District Commanders must be convinced by the information in the documentation that the use of the powers is necessary and the documentation must support the case. The levels of scrutiny of the case involve the PSNI, lawyers, the NIO and then the authorisation is passed to the Secretary of State who has **48 hours to confirm or not, otherwise the power will lapse.**

5.9 Between 1 August 2020 and 31 July 2021 there were 31 JSA authorisations. Authorisations are currently obtained every two weeks so that there is a continuous availability to the PSNI (and potentially to the Army) of the powers to stop and search. Each of these authorisations continue for up to 14 days and may be cancelled. The JSA

Authorisation of 07/2022 was due to be in place until 23.59hrs on 28 March 2022 but was cancelled at 10.00hrs on 22 March 2022. Similarly, the JSA Authorisation of 07/2022A which reflected the amended threat level was authorised by ACC McEwan from 10.00hrs on 22 March 2022 was in place until 23.59hrs on 28 March 2022. There were no TACT S.47A authorisations during this period.

### **Scrutiny of authorisations: lapses**

- 5.10 In the last reporting period, an authorisation was signed on 29 July 2020 by an Acting Assistant Chief Constable who did not have the authority to sign it and it was therefore invalid. The error was not discovered until 11 August 2020 when the authorisation was revoked and a fresh one made. Consequently all stop and searches made without reasonable suspicion between 0000hrs on 30 July 2020 and 1615hrs on 11 August 2020 were unlawful. In this period some 115 individuals, 3 of whom were children aged 14, 15 and 17, were stopped and searched in 127 incidents, no use of force was recorded in any case, nor were any arrests made. On one occasion drugs were found and a Community Resolution Notice (CRN) issued which was subsequently rescinded, a mobile phone was seized and this was returned. All the relevant facts were put in the public domain and an apology was made to all the individuals affected. As a result the public and media reaction was muted. This lapse was extensively reviewed in the 13<sup>th</sup> report by David Seymour, who asked that the next Independent Reviewer be briefed fully about the outcome of any further deliberation by the Police Powers Development Group (PPDG) and the arrangements in place in both the PSNI and NIO to ensure that there is no further failure of the authorisation process.
- 5.11 On 7 June 2021, Deputy Chief Constable Mark Hamilton wrote to me to inform me that for a period of fifteen minutes on 26 April 2021 between 0945 and 1000 hrs there was no authorisation in place, due the premature cancellation of the previous authorisation before the new one was in place. DCC Hamilton also informed me that the powers were not exercised during that period, so no remedial action was required in terms of notifications or apology.

5.12 I sought clarification from the PPDG in relation to any arrangements made in the PSNI and NIO to ensure that there is no further failure of the authorisation process under paragraph 4A of Schedule 3 of the JSA. I am informed that:

“on the 17/12/20 a structured debrief was held with representatives from across PSNI and NIO, in order to identify organisational learning with those involved in the process. This debrief identified organisational learning under the themes of resourcing, equipment, planning / briefing, knowledge / training & communication, all of which have been taken forward through the TEAMING working group who have held meetings and taken forward programmes of work. This matter is subject to governance through the Police Powers Delivery group.” (by email).

### **Authorisations 1 August 2020 – 31 July 2021**

5.13 There was a substantial delay in obtaining my DV security clearance, so I did not have sight of the completed Authorisation Forms until December 2021. I am grateful to the PSNI for their responses to date to my questions and where answers are outstanding, this may be due to the time constraints imposed by this delay. I have dip-sampled a selection of the authorisations for the review period. The documentation was detailed and each application was supported by relevant and timely intelligence material.

### **Geographical spread**

5.14 Previous reviews have emphasised the need to ensure that authorisations extend over no greater an area and for no longer than is necessary, and that this must be kept under review and should not be taken for granted. I examined why all the authorisations to date have been ‘blanket authorisations’ covering the whole of Northern Ireland. The case for the authorisation in terms of threat is weaker in some areas than others. The PSNI explained that the powers were necessary on a comprehensive geographical area in cases where a fugitive suspect is fleeing the police.

5.15 Therefore I examined the *exercise* of s24 powers across Northern Ireland as a whole to determine whether there was a region where the powers were authorised but not used. If this were the case, this would call into question the need for such broad authorisations in the future. Table 5.1 shows the exercise of the s24 powers across Northern Ireland for the past five years.

<b>Table 5.1: Number of persons stopped and searched under JSA s24 during the past 5 years</b>						
	<b>Financial Year</b>					
<b>District</b>	<b>16/17</b>	<b>17/18</b>	<b>18/19</b>	<b>19/20</b>	<b>20/21</b>	<b>Total</b>
Belfast City	1,678	1,095	1,153	863	708	<b>5,497</b>
Lisburn & Castlereagh	427	388	463	326	189	<b>1,793</b>
Ards & North Down	160	130	210	160	90	<b>750</b>
Newry, Mourne & Down	807	456	353	340	173	<b>2,129</b>
Armagh City, Banbridge & Craigavon	939	971	806	566	530	<b>3,812</b>
Mid Ulster	179	269	315	279	217	<b>1,259</b>
Fermanagh & Omagh	179	214	214	279	101	<b>987</b>
Derry City & Strabane	1,859	1,454	1,521	941	717	<b>6,492</b>
Causeway Coast & Glens	554	380	433	289	289	<b>1,945</b>
Mid & East Antrim	803	670	432	581	432	<b>2,918</b>
Antrim & Newtownabbey	350	218	135	194	293	<b>1,190</b>
<b>Total</b>	<b>7,935</b>	<b>6,245</b>	<b>6,035</b>	<b>4,818</b>	<b>3,739</b>	<b>28,772</b>

As Table 5.1 shows, although there are districts in which the JSA powers are used more frequently than others, there is no district in which they are not used at all.

Table 5.2: shows the number of premises searched under JSA s24 by month and district during the current reporting period, August 2020 to January 2021. Only Ards and North Down, and Mid and East Antrim had no premises searched.

<b>Table 5.2 Number of premises searched under JSA S24 by month and district: August 2020 - January 2021</b>							
	<b>Aug-20</b>	<b>Sep-20</b>	<b>Oct-20</b>	<b>Nov-20</b>	<b>Dec-20</b>	<b>Jan-21</b>	<b>Total</b>
Belfast City	3	4	1	3	0	0	<b>11</b>
Lisburn & Castlereagh City	0	0	2	0	0	0	<b>2</b>
Ards & North Down	0	0	0	0	0	0	<b>0</b>
Newry, Mourne & Down	1	0	0	0	0	0	<b>1</b>
Armagh City, Banbridge & Craigavon	2	0	0	1	0	0	<b>3</b>

Mid Ulster	9	0	0	0	0	0	9
Fermanagh & Omagh	1	0	0	0	0	1	2
Derry City & Strabane	8	7	1	4	4	0	24
Causeway Coast & Glens	0	4	12	6	2	0	24
Mid & East Antrim	0	0	0	0	0	0	0
Antrim & Newtownabbey	0	0	0	1	0	0	1
<b>Northern Ireland</b>	<b>24</b>	<b>15</b>	<b>16</b>	<b>15</b>	<b>6</b>	<b>1</b>	<b>77</b>

These raw numbers of stop and search can be shown as a rate per 1000 of population, as in Table 5.3, PSNI District Stop and Search Rates 2019/20.

**Table 5.3 PSNI District Stop and Search Rates 2019/20**

(source Home Office 2018, PSNI Statistics 2020, NISRA 2018)

PSNI District	Arrest Rate	Stop and Search rate per 1000 population	PSNI overall stop and search rate + 14 per 1000
Antrim & Newtownabbey	7%	7.7	Average stop and search rate Eng/Wales = 10 per 1000
Ards & North Down	6%	5.6	
Belfast City	11%	20.8	
Causeway Coast & Glens	5%	9.2	Average stop and search rate Met Police = 31 per 1000
Armagh, Banbridge & Craigavon	5%	15.4	
Derry City & Strabane	7%	15.3	
Fermanagh & Omagh	5%	11.8	PSNI average arrest rate = 6.9%
Lisburn & Castlereagh	8%	12.1	
Mid & East Antrim	5%	15.3	Average arrest rate Eng/Wales = 13%
Mid Ulster	5%	12.3	
Newry & Mourne	4%	11.6	
Source: Home Office 2018, PSNI Statistics 2020, NISRA 2018 and Police Powers and procedures England and Wales, year ending 31 March 2020 <sup>25</sup>			

On this basis, I concluded that the data supports the authorisation of the powers across the whole of Northern Ireland.

<sup>25</sup> Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/935355/police-powers-procedures-mar20-hosb3120.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935355/police-powers-procedures-mar20-hosb3120.pdf)

## **Proportionate use of powers**

5.16 At Box 6, the Authorisation Form asks: ‘Authorising Officers should explain how the use of Para 4A Schedule 3 powers is an appropriate response to the circumstances and why the powers under s43 and s43A of the Terrorism Act or other PACE powers are not deemed sufficient...’. Invariably, the response to this question was:

“The use of stop and search of a person which does not require ‘reasonable suspicion’ is required by the PNSI to address the level of threat to police personnel and public especially from dissident republican terrorism. While intelligence is available on such activity it is rarely sufficiently specific to provide officers with a ‘reasonable suspicion’ for conducting a specific stop and search. In cases where intelligence indicates a potential terrorist attack, the precise date, time and location of the activity may not be known.”

5.17 Judgment in the case of Ramsey (Stephen) Application No2 [2020] NICA 14 [30] cites the eighth report of the Independent Reviewer on ‘the proper exercise of the power:’

“the power should not be exercised wholly at random but on the basis of intelligence or other factors that might indicate the presence of munitions or wireless apparatus. The power should be targeted at the threat based on informed considerations (which can include the officer’s training, briefing and experience). If the power is properly exercised therefore it will be used against known DRs and others otherwise involved in munitions.<sup>26</sup>”

5.18 On the Authorisation Forms that I reviewed I noted that the PSNI state that:

‘in cases where intelligence indicates a potential attack, the precise date, time and location of the activity may not be known...’  
and

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

‘based on an assessment of recent incidents and of emerging intelligence it is therefore considered a necessary and proportionate response that a Para 4A Schedule 3 authority should be available for the duration requested.’

The absence of detailed and specific intelligence means that, although the powers are not exercised ‘wholly at random’, their use may not be precisely targeted. This is particularly the case when authorisations provide continual authority to the PSNI for the use of these powers. **Any less targeted use of these powers requires the strictest vigilance and scrupulous monitoring in order to comply with the spirit and intent of the ruling.** The issue of monitoring will be examined in more detail at 6.1 onwards.

5.19 In total, under all powers including the JSA, 26,792 persons were stopped and searched/questioned in Northern Ireland in this reporting period. This is a 2% increase on the previous reporting period, 1 August 2019 - 31 July 2020. Of these stops, 71% were conducted under the Misuse of Drugs Act, where the arrest rate was 5%. A further 13% of stops were conducted under PACE and the arrest rate for these was 16%. Section 24 of the JSA accounted for 15% of stops, with an arrest rate of 1%. A further 2% of stops were conducted under S21 of the JSA where the arrest rate was less than 1%.

- **6% of stops resulted in an arrest. An additional 14% resulted in another form of outcome**, e.g. Community Resolution Notice.
- **12% (3,106) of those stopped were aged 17 and under.** Of these, around 2 out of every 3 (67%) were stopped and searched under the Misuse of Drugs Act\*.
- 86% of those stopped were male, while 45% were aged 18 to 25.
- There were 23 persons stopped for every 1,000 people in Mid and East Antrim. This compares to 14 persons stopped for every 1,000 people across the whole of Northern Ireland.

### **Outcomes and effectiveness**

5.20 In each of the authorisations it is asserted that: “the value of the power can be demonstrated in part by resulting arrests, seizures of weaponry, ammunition and explosives and by considering the threat picture; groups’ intentions and capacities to

mount attacks." I examined the data to ascertain whether the evidence supported these claims.

5.21 PSNI officers now record the outcome of persons stopped and questioned under JSA Section 21. The officer chooses the outcome from the following pick-list: arrest, community resolution, penalty notice for disorder (PND), report to PPS or no further police action. The results of this exercise for the period during 1 August 2020 to 31 January 2021 are shown in Tables 5.4 and 5.5<sup>27</sup>.

<b>Table 5.4: Outcome of stop and search under JSA s21: 01 August 2020 – 31 January 2021</b>		
Outcome	Number	%
Arrest	1	<1%
Community Resolution	1	<1%
Penalty Notice for Disorder	0	0%
Report to PPS	0	0%
No Further Action Disposal	203	99%
<b>Total</b>	<b>205</b>	<b>100%</b>

The outcomes for s24 stop and search is shown in Table 5.5.

<b>Table 5.5: Outcome of stop and search under JSA s24: 01 August 2020 – 31 January 2021</b>		
Outcome	Number	%
Arrest	28	2%
Community Resolution	14	1%
Penalty Notice for Disorder	1	<1%
Report to PPS	26	1%
No Further Action Disposal	1,693	96%
<b>Total</b>	<b>1,762</b>	<b>100%</b>

5.22 The data indicates that outcomes of stop and search in terms of arrest rates are consistently low. According to other figures provided by NISRA<sup>28</sup>, the arrest rates under the JSA for this year following a stop and question hover around 1% - the same as last

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<sup>27</sup> Persons may have been stopped and searched/questioned under only JSA or under a combination of powers, e.g. JSA and Misuse of Drugs Act S23.

The outcome may not be linked to the initial reason for the stop and search.

Percentages may not sum to 100% due to rounding.

<sup>28</sup> NISRA point out that the JSA may have been used in conjunction with other powers, that some items seized may not be linked to the initial reason of the search and the arrest rates are rounded to nearest whole number.



year; the arrest rate following a stop and search without reasonable suspicion was 1%, again, the same as last year; and the arrest rate following a stop and search with reasonable suspicion was 3% compared with 2% last year. Of over 4,309 people stopped under JSA powers, 52 people were arrested, 43 of whom had been stopped and searched without reasonable suspicion. During this review period, 136 premises were searched under JSA s24. Firearms, explosives and/or ammunition were seized on four occasions; wireless apparatus was seized on 93 occasions, and laptops or tablets were seized on 52 occasions. Following people or vehicles being stopped under the JSA, in this review period, wireless apparatus was found on six occasions, ammunition was found on three occasions and firearms were found on two occasions, but one of these was a replica and was seized and returned.

### **Community impact of stop and search**

5.23 In meetings throughout the year, a number of individuals and organisations have expressed grave concern about the effect of stop and search in communities and on younger age groups on which they are concentrated. On several occasions and in locations across Northern Ireland in both PUL and CRN communities, stop and search was described to me as ‘counterproductive.’ This was said to be due to the alienating effects of stop and search, especially amongst young people and the effect on relationships with authority in general and the police in particular. (The specific impact on young people is discussed further at 6.5 onwards and the PSNI survey of young people will be examined.)

5.24 Box 11 of the Authorisation Form, entitled ‘Community Engagement’ requires the Authorising Officer to provide:

‘a detailed account of the steps that have been taken to engage those in communities that will be affected by the authorisation. Where it has not been possible to carry out community engagement prior to authorisation, the Authorising Officer should carry out a retrospective review of the use of the powers.’ The explanatory notes further advise: “Authorising Officers should demonstrate that communities have been engaged as fully as possible throughout the authorisation process. When using the power, the PSNI may use existing community engagement arrangements. However, where stop and search

powers affect sections of the community with whom channels of communication are difficult or non-existent, these should be identified and put in place. Independent Advisory Groups (IAGs) should be as fully engaged as possible at all stages of an authorisation.”

5.25 The Authorisations I examined noted that: ‘Local communities have been engaged and community impact assessments have been conducted.’ No further information was recorded. In February 2021, HM Inspector of Constabulary Wendy Williams CBE commented:

“Through our most recent inspection work, we know that forces still do not fully understand the impact on individuals and communities of the use of police powers, despite stop and search data being available since the mid-1980s. We have been urging the police to improve their understanding in this area for years now.”<sup>29</sup>

5.26 I asked the PSNI for more information on their community engagement in the following terms:

- What methodology is used in conducting the impact assessments (CIAs)? What data is collected and examined, what sources of information are used?
- How frequently are they conducted, how many in the last reporting period?
- And where are they conducted, in other words what do you mean by ‘community’ - the whole of Northern Ireland? A single housing estate?
- And how do these locations relate, if at all, to areas where JSA stop and search activity is concentrated?

5.27 Two forms of CIA are used by the PSNI, a short form which does not involve any source external to the PSNI, and a full CIA (FCIA), (see Annexes K and L ) which does require external consultation. The latter half of the FCIA appears to take the form of a risk assessment, but the completion of a FCIA requires external engagement. The PSNI’s Critical Incident Policy in relation to Critical Incident Assessment is at Annex J to this

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<sup>29</sup> Disproportionate use of police powers A spotlight on stop and search and the use of force

report. Initially I asked the PSNI for the numbers of CIAs they conducted in this review period and their location.

In response, I was told that CIAs were not completed for most stop and search activity since “most stop and searches under Drug, PACE and Security Powers are dynamic, therefore completion of a CIA is impracticable.” CIAs are used by the PSNI “primarily for pre-planned search activity, parades and events, which allows us to better understand community tensions and emerging risk, which assists with developing a working strategy.” Districts were keen to reassure me of their sensitivity to community impacts. Text within an e-mail from Inspector Burke explained:

“For example, the vast majority of Strand Road PSNI Justice and Security searches are carried out by the District Support Team to ensure a measured approach. These officers are very aware of the risk searches bring to community confidence, organisational reputation and officer safety and make efforts to ensure proportionate and professional usage. This team are highly skilled and took part in procedural fairness training, specifically in regards to stop and search, to ensure an appropriate use of the powers.”

5.28 According to the Service Instruction, CIAs should be conducted in relation to critical incidents, and the stop and search of a child is deemed a critical incident. In *Ní Mhurchú* No: [2021] NICA 17 at [21] the judgement recorded:

“A Community Impact Assessment must be completed for every search where a child, young person or vulnerable person is believed to be present.”

The PSNI responded on 14 February 2022 that “... it is not the current practise, nor policy that PSNI officers carry out a community impact assessment if they carry out the stop and search of a person under the age of 18 years old. Within the SI the wording “believed to be present” indicates that it is only intended to apply to pre-planned searches and it would not be practicable to carry out a community impact assessment in a spontaneous/dynamic situation, such as a stop and search encounter. The judgment doesn’t seem to specifically distinguish between these two scenarios

but it is clear from paragraph 21 that the judgment is reflecting what SP1316 states, rather than what is meant by this. It would appear that the Court was reflecting the terms of the SI, rather than setting out an order or decision, as community impact assessments are only conducted in respect of pre-planned searches.”

It is not the current practice to carry out CIAs in relation to all stops and searches of children, nor do I think it appropriate to conduct FCIAAs or CIAs in each of these cases.

5.29 I then asked the PSNI for the numbers of FCIAAs (which include external engagement) that they had conducted in the review period. In response to my questions about the geographic location of CIAs and how CIAs relate to areas where JSA stop and search activity is concentrated, the PSNI response did not directly address these issues, and it would appear that FCIAAs are not conducted with any degree of frequency. Rather, they explained that in order to support each application for authorisation, each district or area sends through evidence every 10 to 14 days on the “District/Area Evidence to Support Authorisation to stop and search – Para 4A, Schedule 3 under the Justice and Security Act (Northern Ireland) 2007.” (See Annex M) These submissions come in from the four districts, Belfast, South, North and Derry City & Strabane and are signed off by the chief superintendent of the respective district. I was told that ‘Each application should be ‘fresh.’ The intelligence material and list of incidents in each form showed signs that they are continually updated. Each district or area is responsible for documenting their own community engagement and accountability for that period (shown in Box 5 of the form). The guidance for Box 5 states:

**“Community engagement and accountability:**

Area Coordinators should provide a detailed account on the steps that have been taken to engage those communities that will be affected by the authorisation. Where it has not been possible to carry out community engagement prior to authorisation, the Area Coordinator should carry out a retrospective review of the use of the powers (Please see Explanatory Notes for details).”

5.30 I examined a sample of these completed forms. One district reported that: “As part of local accountability and to ensure proportionate and appropriate use of powers

supervisors regularly dip sample stop and search activity. Use of powers is formally scrutinised in accountability meetings.” Whilst dip-sampling is an important mechanism for ensuring compliance with the Code of Practice it is not clear how it forms part of local accountability. Another district used the Box 5 response to justify the use of the powers, without reference to any effort to whether or not they had carried out community engagement prior to authorisation.

5.31 A further district reported that it is active in community engagement and accountable through their respective Policing and Community Safety Partnerships (PCSP) on an ongoing basis” suggesting that the district deemed that responsibility for community impact assessment was fulfilled by engagement with the PCSP. According to the PCSP Effectiveness Report for 2020-21:

- 63 private Policing Committee meetings were held;
- 24 public Policing Committee meetings were held and 44 Consultation events with over 1100 members of the public attending;
- Over 69 Support/Concern Hub meetings were held dealing with over 164 referrals;
- Over 10,000 members of the public attended 218 PSNI engagement events and 134 Community Forum meetings all to improve confidence in policing.

5.32 It is not clear the extent to which the community impact of JSA stop and search was discussed at any of these meetings, if at all. **Next year’s review of JSA powers will examine the degree of involvement of the PCSPs with the issue of JSA stop and search especially in those areas where this activity is most intense, in order to ascertain the degree to which their impact is known and taken into account by the PSNI in development of policy and practice.**

5.33 Across all four policing districts a common form of words was used when completing Box 5, namely:

- “All District Commanders in X Area are consulted as part of this JSA application.
- Each District is active in community engagement and accountable through their respective PCSP’s on an ongoing basis.
- As part of the consultation each District Commander is asked to consider the appropriate use of powers in their District and any relevant community impact.
- There are no issues reported for this application and the balance to be considered is the reasonable expectation from the community that police will deploy resources to counter threat using and considering all appropriate powers.”

5.34 The use of identical words in forms completed in several districts suggests the assessment of community impact is a routinised tick-box exercise and is not ‘fresh’, as the guidance requires. I suspect that other parts of the form were completed without ‘fresh’ consideration of the community impact. I could find no “detailed account on the steps that have been taken to engage those communities that will be affected by the authorisation” nor could I find any ‘retrospective review of the use of the powers’ in those districts “where it has not been possible to carry out community engagement prior to authorisation”. In several instances, it was deemed sufficient that a District Commander ‘consider any relevant community impact’ with no clear indication of how they might do so.

5.35 Due to the time constraints mentioned previously, I have not had the opportunity to explore these questions further. **In the coming review period, I plan a further engagement with the PSNI on the extent to which PSNI community engagement policies and practices are both targeted at those parts of the community most affected by these JSA powers and the extent to which the PSNI take into account, and are responsive to, community concerns expressed therein.**

## Authorisation period

5.36 Currently, the legislation requires that authorisations for JSA stop and search powers, are renewed every two weeks. In the 13th report, David Seymour pointed out that:

“In all of my previous 6 annual Reports I have recommended that the period of the confirmed authorisation should be extended to 3 months... If these authorisations were processed less frequently, it would give greater opportunity for thorough examination and also close scrutiny by senior officers and officials.” (Para 8.11)

5.37 A reduction in frequency of the authorisation process would reduce the burden on staff in the PSNI and NIO. However, as the 13th report points out, in order to move to less frequent authorisations it will be important to ensure that other safeguards are in place and are more robust, including community engagement and more information about results cited from the use of the powers, such as weapons seizures. It will also be important to ensure that the renewal period achieves these outcomes whilst remaining sufficiently sensitive to changes in the security situation and levels of risk across Northern Ireland. For this reason, I tend to the view that a three month renewal period may be too long, whereas a move to monthly renewal will halve the administrative burden and offer opportunities for greater depth of scrutiny. **I support the conduct of a public consultation on David Seymour’s original proposal to change the authorisation period to three months.** This would canvas a wide range of views before coming to any firm conclusion. Primary legislation enabling any change can then be drafted.

5.38 **In anticipation of a reduction in the frequency of the Authorisation process, I recommend that the PSNI review their procedures and practices in relation to targeting, assessing, reporting and responding to community impact, particularly in communities where stop and search activities are concentrated.**

## 6 DIRECT SCRUTINY OF USE OF JSA POWERS

### Direct Scrutiny of use of JSA powers: dip sampling and body worn videos (BWVs)

- 6.1 The 13th report examined the use of BWV in JSA stop and search operations and found its use was beneficial (see from paragraph 7.12 onward) and that the frequency of its use, although improved, required further improvement. That report recorded a 61% use of BWV in August 2019, increasing to 88% by July 2020. The report recommended that any progress on this front be examined here and I am pleased to report this increase.
- 6.2 The 13th report cites the HMICFRS Inspection recommendation in September 2020 that the PSNI *“now needs to establish a better regime to dip-sample stop and search records more consistently.”* I am also pleased to report some progress on this. The PSNI reported that:

“At present, district commanders monitor the supervision of stop search encounters (i.e. dip samples) to ensure that they are at satisfactory levels...PSNI have been working towards ensuring that supervisors are carrying out dip samples of stop search encounters regarding officers under their supervision. The methods employed to ensure this have been the roll out of a new and improved stop search application and guidance published on the internal intranet stop search supervisor pages. The current guidance to supervisors is “An absolute minimum of 10% of stop and search encounters carried out by your team must be dip sampled as part of your supervision checks (Supervisors should strongly consider a 100% supervision check regarding the searches of juveniles (i.e. under 18), people from an ethnic minority background, vulnerable people and searches carried out in any area where management have identified high levels of complaints)”. The percentage of JSA S21/JSA S24 stops records dip sampled by supervisors for April 2021 was 27%, May 2021 22%, June 2021 25% and July 2021 12% - Please note that the new stops recording system, Origin, rolled out in July 2021 and we suspect that the roll out of this new system, contributed to the drop in dip sampling during this particular month. Again PPDG will continue to monitor performance” (email correspondence).



6.3 The current officer guidance is that:

“body worn video MUST be used when conducting ANY stop and search. Any stop and search not recorded on body worn video will require a reasoned explanation as to why this is the case.”

There has also been a further improvement on the frequency of use of BWVs in PSNI stop and search operations in this reporting period. During the six-month period from August 2020 to January 2021, BWV was used on average 86% of the time; this compares to a monthly average of 80% for the period August 19 – July 20. During the six-month period of February 2021 to July 2021, BWV was used on average 93% of the time. The Policing Powers Development Group (PPDG) continues to monitor BWV performance. (The terms of reference for the PPDG is included as Annex N). I commend the PSNI on these improvements and look forward to continued improvement. Four further aspects of BWV will provide a focus of attention for the next review period.

First, noting that, elsewhere, The Independent Office for Police Conduct (IOPC) has found that BWV was not used “consistently from initial contact,” I recommend that the PSNI and the Policing Board review **the percentage of officers remembering to activate their BWVs and the completeness of the BWV record and take any necessary steps to improve the completeness of BWV records.**

Second, the use of BWV footage in improving officer performance and accountability. I recommend that Dr John Topping at Queen’s University who has conducted extensive research on stop and search, Mr John Wadham, Human Rights Advisor to the NIPB and Dr Jonny Byrne of Ulster University, who directs academic programmes for new recruits to the PSNI, review **the value of BWV footage in police training, particularly at district level, and where appropriate deploy it for this purpose.**

Third, I recommend that the use of BWV for performance management through dip sampling by senior officers be piloted and monitored.

Fourth, I recommend **that the PSNI conduct a systematic review of requests for access to BWV footage of the use of JSA powers by legal advisors**, legal representatives, PONI and others. The purpose of this review is to determine how readily available such footage is to those who can legally request access to it. This PSNI review should focus on **the number and source of requests for use as evidence, the purpose for which access is requested, the outcome of the request, the degree of access and the length of time before access was granted, and where it was denied, the reason for denial.** This review should include the views of those requesting access.

### Stop and search and children

6.4 During the period 1 August 2020 - 31 July 2021:

- of the 4,309 persons stopped under section 21 and/or section 24 of the JSA 120 or 2.8% were children under the age of 18;
- of those, 120 under 18 year olds, 100 (83%) were male;
- of these 4,309 persons stopped under this same legislation, 1,467 (34%) were aged 18-25;
- some 3,899 ( 90%) of those stopped under JSA s21 and/or s24 were male;
- 3,106 (72%) of those stopped and searched were aged 17 and under;
- 48 (1.2%) of the 3,897 persons stopped and searched under JSA section 24 were under 17;
- 2,081 (67%), or two thirds of the under 17s, were stopped and searched under the Misuse of Drugs Act.<sup>30</sup>

This is in the context of a 7% increase in the number of stop and searches from the previous year under the Misuse of Drugs Act<sup>31</sup>, a 5% increase in S7Ss under PACE<sup>32</sup> compared to the previous 12 months and a corresponding 14% decrease in the number of stop and searches under the JSA Section 24<sup>33</sup> and a 19% decrease in the use of and Section 21<sup>34</sup>. This reduction in the use of JSA powers is welcome.

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<sup>30</sup> alone, or in combination with other powers.

<sup>31</sup> alone, or in combination with other powers.

<sup>32</sup> alone, or in combination with other powers.

<sup>33</sup> alone, or in combination with other powers.

<sup>34</sup> alone, or in combination with other powers.

## **Young people's experiences of policing and stop and search**

- 6.5 Throughout the year, I met with the Children's Law Centre, Include Youth, the Northern Ireland Commissioner for Children and Young People, Community Restorative Justice Ireland, Alternatives and a range of other community groups. This included those, such as Cooperation Ireland involved in the Communities in Transition programme, working in areas where there is a history of paramilitary activity, criminality and coercive control and where there is a risk of young people being drawn into paramilitary activity.
- 6.6 All of the groups and individuals in communities that I met with confirmed that the relationship between the PSNI and young people was very poor indeed. The word most frequently used to describe PSNI use of stop and search on young people was 'counterproductive'. With few exceptions, working class children and young people report low levels of trust in the police, experiences of being treated with suspicion and disrespect and that police presence is experienced as oppressive rather than protective. In some areas in particular, this distrust extends to other institutions associated with the criminal justice system. A combination of lack of awareness and young people's **distrust of 'the system' perhaps explains why the Office of the Police Ombudsman**, reports consistently very low levels of contact initiated by young people. As a result have undertaken a programme of work aimed at increasing young people's awareness. This includes the appointment of an Outreach Officer and the development of a Youth Engagement Strategy with the assistance of the Northern Ireland Youth Forum.

## **PSNI stop and search survey and the working group**

- 6.7 Over two years ago, the 12th report<sup>31</sup> noted the establishment by the PSNI of a working group "to seek feedback and engagement about how to increase community awareness around stop and search concerning children and young people along with working collaboratively to improve the effectiveness of the use of this power." The group, composed of PSNI officers and representatives from the Northern Ireland Commissioner for Children and Young Persons, Northern Ireland Youth Forum, Start 360, Include Youth, Youth Work Alliance, the Health and Social Care Board, the Children's Law Centre, Voice of Young People in Care and Northern Ireland Youth Forum and chaired at Inspector level, first met on 19 October 2019.

6.8 Between 30 April and 2 July 2021 an online survey canvassed the views of young people between 11 – 18 on stop and search. Although the PSNI practice of surveying young people's views is to be warmly welcomed, this particular survey suffered the limitations (such as low response rates and unrepresentativeness) of many online surveys. Led by PSNI Inspector Stephen Burke and designed by the working group, it attracted 3,235 responses. This comprises only 0.7% of young people under 18 in Northern Ireland so is not representative, although the results provide a useful snapshot of their views and experiences.

6.9 More eighteen year-olds than other age-groups responded, with fewer responses from younger ages, 51% of respondents were male and 44% female, 45% were from the Protestant community and 39% from the Catholic community. Derry/Londonderry & Strabane respondents were most numerous and South Belfast were least numerous, although the Belfast area as a whole had the highest response rate.

- 34% (870) of respondents had been stop searched by police
- 22.56% (577)- were stopped and searched over a year ago
- 32.18% (823) were stopped once
- 17.67% (452) twice
- 7.61% (194) three times
- 5.46% (139) four times
- 2.30% (59) five times
- 12.21% or 395 young people had been stopped more than five times.

An overwhelming majority, 76.71% said being stopped and searched was a negative experience, while 14.26% said it was positive and 9.02% made another response.

- 38% of respondents were not aware of why they may be stopped by police or their rights if they are stopped

The survey found that many of the young people believed they were stopped and searched for alcohol, drugs and antisocial behaviour. This suggests a lack of knowledge

about police powers, since there is no power to search for anti-social behaviour, there are powers to search for drugs, although this requires suspicion on the part of the police.

- 44% did not know the information a police officer should provide before stop search
- 41% believed an adult should be present when a person under 18 years of age is stopped.
- 32% of respondents had been stopped and searched once within the last 12 months.<sup>35</sup>
- 13.66% felt that their search was justified
- 71.51% felt that their search was unjustified

On the reason for their stop and search, free text responses mentioned discrimination against young people”, “young males”, “racial discrimination”, “religious discrimination”, “sectarianism” or their “area being targeted”.

On the quality of their experience and the attitude of officers:

- 77% described their experience as negative
- 65% of respondents found officers not polite
- 64% found officers not respectful
- 55% said officers were not professional
- 66% said they were not fair
- 50% found officers not calm
- 69% said officers were not understanding.

When asked how officers explained what they were doing during a stop and search:

- 41% said the officer who searched did not explain what they were looking for
- 66% said that the officer did not provide their details

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<sup>35</sup> Analysis of free text responses about stop searches other respondents had experienced is not complete

- 67% said they were not informed of their rights
- 72% said they were not informed of their right to ask questions during their search.

When asked about the impact of their experience on their attitudes to police:

- 65% had decreased confidence in local police as a result of stop search encounter
- 72% felt that their search was not justified
- 42% did not feel that young people in their community were stop searched fairly
- 50% did feel that stop and search was a good way to detect and prevent crime.

When asked if they were aware that they could make a complaint 58% were aware that they could make a complaint if they had not been treated fairly. The survey did not ask whether young people would, in fact, make such a complaint, or the reasons for their willingness or otherwise to do so.

Asked about approaches that would be more effective in tackling crime:

- 31% said relationship-building with communities
- 36% felt that building relationships with police through schools
- 29% felt that operational tactics to focus on places rather than people would be highly effective.
- A further 26% said that police social media directed at young people was not at all effective.

6.10 In summary, the survey found that young people's knowledge of the law, general awareness about stop and search powers and awareness of their rights about stop and search powers is poor, in spite of the work of Include Youth and other youth agencies to improve young people's rights education. The survey also points clearly to problems with officer behaviour. The majority of young people reported officers failing to provide basic information about police actions and their rights and the majority of young people found police attitudes and behaviours to be negative.

6.11 These poor relations between the PSNI and young people have been noted in the courts. On 26 February 2021 the judgement in the Application by Ailise Ní Mhurchú [2021] NICA 17 the court noted:

[38] “The relationship between children and young people and the police has been problematic both in this jurisdiction and in other parts of the United Kingdom. There is a clear recognition by those in charge of the relevant police forces of the detrimental effect upon children and young people from encounters with police that are perceived as oppressive and disrespectful. That explains the importance of the proportionate use of powers to stop and search in the 2007 Act.”

6.12 The basis for the dismissal of the Ní Mhurchú Appeal was that the PSNI implemented a scheme to meet “the legal duty flowing from paragraph 8.61 of the Code to record the trigger for the search in order to protect against arbitrary use of the power” (Ní Mhurchú [14]). The PSNI have now re-configured the Origin application (usually on a Samsung smart phone) to include a mandatory free text field so that officers can record data on the basis of the search.

6.13 Where children are subject to a search using the powers in section 24 of the JSA, the officer now makes a record of the specific basis for the search. In cases where the child is the principal target of a search, the officer will record the basis for the search, which they also do with an adult subject. In cases where the child is not the subject of the search, but who accompanies an adult who is the principal subject:

“the officer will record the reason why they decided that it was necessary and proportionate to conduct the search of the child, in addition to the search of the adult subject(s)... Whilst completing this record, the officer will select (from a drop down list) the basis for their search. The drop-down list comprises of the following options - Briefing, Incident, Subject’s behaviour and Subject’s location... officers must also complete a mandatory free text field which is titled “Please provide a rationale as to why this person has been searched”. The mandatory free text field was added to the stop search application and rolled out to the service on the 9<sup>th</sup> of July 2021...(by email)

6.14 As noted in previous reports, these records provide important contemporaneous evidence in controversial cases and opportunities for scrutiny of police practice both internal and external. **I recommend that the records in relation to JSA stop and searches be made available for examination in the next review period.**

### **Outstanding undertakings**

6.15 To improve relationships and gain the trust of children and young people and the agencies that work with and advocate for young people, it is crucially important that PSNI accord the highest priority to keeping promises made to children and young people. Unfulfilled and broken promises in the context of an already troubled relationship between police and young people will only compound mistrust. Below, I draw attention to a number of outstanding undertakings made by the PSNI that are yet to be delivered in relation to their use of JSA powers and children and young people.

### **Young People's Independent Advisory Group**

6.16 The 13th report noted the findings of an inspection of the PSNI in September 2020 carried out by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS). This inspection covered *inter alia* the arrangements for internal and external scrutiny of stop and search operations. This 2020 HMICFRS report of that inspection found that:

"The service doesn't use other means of external scrutiny from people who might have less trust and confidence in the police, or from young people. We were pleased to hear **that during interviews with senior leaders that the PSNI plans to introduce external scrutiny panels, including a specific young people's independent advisory group (IAG) in the next few months.** (my emphasis) Enhancing public scrutiny will help build public confidence in the way the PSNI applies stop and search powers and use of force. When established, the IAG should review specific stop and searches and advise the PSNI on community impact"<sup>36</sup> (p12)

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<sup>36</sup> HMICFRS (2020) The Police Service of Northern Ireland: An inspection of how well the service treats its workforce and the people of Northern Ireland. These comments also relate to the recommendations in relation to community impact during the Authorisation process, detailed above.



6.17 The PSNI informed me that “at present PSNI have not yet introduced any independent scrutiny panels regarding stop and search, but this remains an objective of the PSNI stop search strategy and will be explored further during 2022.” They reported that:

PSNI continue to work in partnership with Education Authority Youth Services (EA) to develop opportunities for young people to give us their opinion of policing and the issues they face in regards to policing in their local communities. It is our aim to be able to call upon the EA Youth Service to consult with young people on a regular basis but also to be a mechanism that we can utilise to be responsive to dynamic emerging issues, ensuring that we are meeting the needs of our local young people and that their voices are helping to form our strategic reaction. Unfortunately, recruitment for the YIAG has been difficult to date. Given the obstacles that we have encountered, EA have drafted a new proposal on how to build trust and confidence among young people as part of a three step plan that will result in the formation of a YIAG at the final stages. This is to be discussed further in January 2022 prior to implementation.

Given the undertaking given to HMICFRS back in 2020, and the reference to four regional YIAGs apparently already in existence on the PSNI Youth Strategy, **I recommend that the PSNI implement the plan to establish one or more regional young people’s independent advisory groups (YIAG) without any further delay.**

6.18 **I recommend that the minutes and other records of the meetings of the YIAG be routinely sent to the Northern Ireland Policing Board and NICCY and posted on the PSNI website.**

6.19 **I repeat the recommendation of the 13th report (at 7.9) that “*when established, the IAG should review specific stop and searches and advise the PSNI on community impact*”. In addition, I recommend that the advice of the YIAG should also be sent to the NIPB.**

## Information cards for young people

6.20 The judgment in *Ní Mhurchú* [2021] NICA paragraph 16 refers to The JSA Code of Practice paragraph 6.11.

“Section 21(5) provides that the power to stop a person includes the power to stop a vehicle...If children or young people are present officers will have due regard for their protection (reference to Policy Directive 13/06 “Policing with Children and Young People”). The PSNI also carry information cards which they may give to children or young people who are stopped and searched.”

6.21 The reference to Policing Directive 13/06 and information cards for children were inserted as a result of the consultation exercise conducted in June 2013 in which those protections in respect of children were raised by the Northern Ireland Human Rights Commission.”

6.22 I asked to see the information cards referred to in this Judgement. In January 2022, the PSNI informed me that:

“Stop and search information cards (designed for young people) have not yet been created although this is an objective of the PSNI stop and search strategy. The design of such a card is also one of the objectives of the stop and search working group regarding children and young people. Now that the working group has been updated on the online survey results and we have a more informed idea of what the knowledge gaps are (regarding young people), the working group will be meeting to progress this objective, informed by the feedback gathered from the online survey. I have attached a copy of the current information card (which is issued to both adults and children) for your information.” (See Annex O)

6.23 **I recommend that a stop and search card designed for young people be developed and adopted by the PSNI without any further delay.** A competition open to young people to design such a card could both expedite the development of a suitable card and afford opportunities for positive interactions between the PSNI and young people and their organisations and the PSNI.

## **Community impact assessments on the stop and search of a child**

6.24 As noted at 5.29 above, in *Ní Mhurchú* the judgement recorded the requirement in Service Policy 1316 that “A Community Impact Assessment must be completed for every search where a child, young person or vulnerable person is believed to be present.”

6.25 I have been unable to find such a requirement in a PSNI Service Instruction nor do the PSNI conduct Community Impact Assessments (CIAs) in respect of each child stopped and I think it is unnecessary to do so. Since SCIAs are internal reviews without the benefit of external scrutiny, they are perhaps less valuable than a review of stop and search BVW footage by the YIAG or by a supervisor as part of routine performance management.

6.26 **I recommend that my next report for parliament should include a review of a structured sample of BWV footage of JSA stops and searches of children and young people be drawn, viewed and analysed in consultation with the working group and/or the YIAG. The sample should include stops and searches in both CRN and PUL communities, of both genders, a range of ages and include areas where stops and searches are concentrated. The analysis should include an examination of police behaviour and attitudes during stops and searches, their deployment of BVWs, information cards, verbal briefings on rights and any other matter which can inform improved practice.**

6.27 It is of paramount importance that all serving officers who have contact with children and young people have a good level of competence in the specialist skills required in all encounters with children and young people and be competent in the use of age-appropriate language. The results from the PSNI’s own online survey would suggest that this is not the case. The power differential that already exists between adults and children is greatly multiplied in encounters between (adult) police officers and children and young people.

6.28 I am informed by the PSNI that the Education Authority have drafted a new proposal on how to build trust and confidence among young people that will result in the

formation of a YIAG at the final stages. This Action Plan is at an early stage, although its interim recommendations are welcome. These are:

A pilot exercise to assess how much impact there would be on **front line supervisors to review the BWV footage of all stop searches involving people under the age of 18** (current guidance is that supervisors strongly consider a 100% supervision check regarding these searches)

6.29 **A checklist/guidance document for supervisors to refer to whilst dip sampling stop searches, which highlight these concerns as areas to focus on for learning/further investigation if serious wrongdoing is suspected**

6.30 Instructions to **ensure that BWV cameras are activated prior to interactions with young people, so that the entire encounter (potentially leading to grounds for) is captured and can be reviewed (along with any ensuing stop and search activity)** by a supervisor. This may help to capture items required for the purposes of learning/feedback to policy and training.

6.31 An update to the stop and search guidance point pages conveying the thoughts and feelings of young people regarding stop and search (to increase officer awareness around these issues)

6.32 This training, focused at district level, should also have a procedural element to include items such as informing young people why they are being stopped and searched/informing them what they are looking for.

6.33 The production of a stop and search information card designed specifically for children/young people and for this card to specifically outline information on rights and procedure.

6.34 Corporate communications department to electronically publish **the information card via social media** and promote Y-stop.org, an information and rights app for young people.

6.35 **Focus groups with police officers to discuss the survey findings and explore their perspectives. The focus groups could be used for further qualitative analysis.**

6.36 In line with the HMICFRS report 'Disproportionate use of police powers: A spotlight on stop & search and the use of force', ***"Provide external scrutiny panel members with access to samples of body-worn video footage showing stop and search encounters and use of force incidents."***

6.37 The PSNI is not a specialised agency working with children and young people, nor should all police officers be expected to have deep expertise in this field. Yet the PSNI urgently need to improve its relationship with young people. Fortunately, there are expert agencies such as Include Youth, the Children's Law Centre, NICCY, NSPCC, Barnardo's, the Youth Service and others, many of whom have expressed their concerns about PSNI's use of JSA stop and search with children and young people. Some are already working with the PSNI, and most, if not all, are willing - indeed keen - to work with the PSNI to improve relationships between the police and young people. They are a valuable resource available to the PSNI to assist in evaluating existing practice, developing strategy and training officers. **I recommend that:**

**Planning and implementation of any plan, advice and feedback is sought from specialist agencies working with children, and their advice carefully considered and used to improve strategy;**

**That any new initiative is developed in cognisance of the existing PSNI Youth Strategy, "Engagement with Young People", "Youth Diversion" and "Youth Volunteer Academy" strategies in order to ensure a coherent strategic approach.**

6.38 The NI Court of Appeal in *Ní Mhurchú* [2021] whilst noting the absence of guidance in relation to children from the PSNI Code of Practice in relation to stop and search, pointed to the helpfulness of the detailed guidance contained within the Scottish code of practice for stop and search in relation to stopping children. The Court recommended that "consideration should be given to formally incorporating similar

guidance to PSNI officers.” [43] In the light of this judgment, and the concerns about the PSNI’s relationship with children and young people raised by the findings of their own survey of young people (discussed elsewhere in this report) **I recommend that the PSNI incorporate the kind of guidance found in the Scottish code in dealing with children into their own Code.**

### **Complaints to PONI**

6.39 I met with Mrs Marie Anderson, Police Ombudsman for Northern Ireland to discuss the use of JSA powers and her role in relation to these. She confirmed that since the last reporting period, complaints have remained low. She is particularly concerned with the very low levels of complaints from children and young people, given their primacy as targets of stop and search activity and the well-known difficulties in relationships between police and young people. In recognition of the difficulties, she has appointed a Head of Communication whose role will be to reach out to underserved populations, including children and young people. This appointment is particularly welcome.

6.40 According to PONI, between 1 August 2020 and 31 July 2021 they received 2,759 complaints in total, of which 11 complaints related to JSA powers, representing 0.40% of all complaints. Complaints concerned searches in 7 different Policing districts: Belfast City; Armagh City, Banbridge & Craigavon; Mid Ulster; Fermanagh & Omagh; Derry City & Strabane; Causeway Coast & Glens; Mid & East Antrim; with no more than two complaints in each district.

6.41 Ten of these were complaints from members of the public and one was a notification from the PSNI. Unfortunately it was not possible to get an age breakdown of complaints, although PONI is reviewing this for the coming period. Of a total of 190 complaints following a search under all laws, 11 complaints were about JSA searches, accounting for 5.8% of the total complaints about stop and search.

6.42 Within the 10 complaints from members of the public, there were 23 allegations. Of these 23 allegations, 12 related to the Search, eight to oppressive behaviour and three allegations related to Unlawful or Unnecessary Arrest or Detention. In terms of

outcomes, six of the 10 public complaints have now been closed, five of these as unsubstantiated and one as a result of non-cooperation from the complainant.

#### **Access to stop and search records**

6.43 Those stopped and searched by the PSNI are informed of the powers under which they are being stopped and are given a reference number to a police station in order to obtain a record of their stop and search, in compliance with 6.12 of the JSA Code of Practice.

6.44 I have been informed of a number of instances in which the person stopped says they were not told which power they were stopped under, nor were they given the requisite information so that they could, if they wished, retrieve their record. These reports have come from areas where the use of JSA stop and search is frequent and concentrated, in both PUL and CRN communities. These stops may have been conducted under JSA powers.

6.45 **I recommend that the PSNI ensure that in all instances, persons stopped under JSA powers are informed of, and understand, which powers are being used and I recommend that the PSNI ensure that they issue each person stopped with the information necessary to retrieve their records.**

6.46 Even without these problems, the 13th report noted that very few people retrieved their records. It reported that perhaps this was due to reluctance of those stopped to go into a police station and that the PSNI have agreed that this lack of access is not acceptable.

6.47 The current system is that people can attend a police station with their unique reference number/date and time of search, at which point they will be provided with a copy of their search record.

6.48 The 13th report recorded that work was in progress to improve this situation and options being considered included a printer in the police vehicle, or providing access to the record via a secure web portal. There does not appear to have been any progress

on this situation, since, I am informed that these same solutions are still under consideration and no decisions have yet been made on which, if any of the proposed options, to implement.

**6.49 I recommend that, since these options have been under consideration for two years, the PSNI select one and proceed to implement it without further delay, before 31 July 2022.**

### **Seizure and return of property**

6.50 Schedule 3, paragraph 5 of the JSA gives police the power to seize and retain munitions or wireless apparatus that are being **used only lawfully** in the course of a search<sup>37</sup>. Where these are used unlawfully, the Act empowers the PSNI to retain and where appropriate to destroy munitions seized.

6.51 In the course of a stop and search operation, police may seize personal possessions such as mobile phones, computers, clothing and money if they suspect that such items may assist with their investigation into a crime. For many of us, a mobile phone contains important information, such as phone numbers of family members and services on which we rely for daily living. Laptop computers may be relied upon by children to do homework or perform other daily living tasks. At a recent conference in Northern Ireland, Conal McFeely from the Rath Mór Centre in Creggan reported ‘the regular confiscation of a family’s electronic devices’. Some of those who have had property seized in this manner report that this property has never been returned, some families have had multiple devices seized including those belonging to children who use them for homework, one family have experienced repeated seizures of equipment

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<sup>37</sup> JSA Schedule 3; para 5....

(2) The officer may—

- (a) seize any munitions found in the course of the search (unless it appears to him that the munitions are being, have been and will be used only lawfully), and
- (b) retain and, if necessary, destroy them.

(3) The officer may

- (a) seize any wireless apparatus found in the course of the search (unless it appears to him that the apparatus is being, has been and will be used only lawfully), and
- (b) retain it.



within a space of several months and, in some instances, receipts for the seizures have not been issued by police officers conducting the seizures.

6.52 It may only become clear that an item has evidential value in an investigation once it has been seized and examined. This may take some time, particularly when a number of items are seized. Items such as mobile phones or laptop computers may have been used for both legal and illegal purposes. Where the item has been used for illegal purposes and this is established in court, then a punitive measure such as the retention and destruction of the item may be deemed appropriate. Where it is not clear that it has been illegally used, or where scrutiny of an electronic item is delayed, an electronic copy of the contents of the item can be uploaded and the item returned to its owner until a determination is made of its value in a criminal case. If no determination of criminality has been made and the item has been used only for legitimate purposes, then it should be returned, since the retention and/or destruction of such items would be unjustly punitive.

6.53 **I recommend that the PSNI review their policies and practices in relation to the seizure of property to ensure that:**

- **in all cases they provide a full receipt to the person from whom the property is seized. This should contain the officer number of officer making the seizure, the date of the seizure, any case number or identifying codes that will enable the property to be located and returned should it be found that it is not evidentially relevant;**
- **where no criminality is found, that seized property is returned to its legal owner in a timely manner<sup>38</sup>;**
- **where an item is in daily use by an innocent party, especially a child, that the contents of the item is uploaded for scrutiny and the item returned and the upload deleted if no criminality is found;**

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<sup>38</sup> provided it is not needed in any other proceedings such as an inquest.

- that due care and attention is paid to the rights of innocent individuals to enjoy their legally held and used property;
- where damage or loss is occasioned by the PSNI that accessible and appropriate compensation is provided.

**6.54 I recommend that the JSA Code of Practice be amended to include provisions that address the issues raised by recommendation 6.53 above.**

### **Impact on individuals and communities**

**6.55** In her report of February 2021, Wendy Williams CBE, HM Inspector of Constabulary reported that:

“Through our most recent inspection work, we know that forces still do not fully understand the impact on individuals and communities of the use of police powers, despite stop and search data being available since the mid-1980s. We have been urging the police to improve their understanding in this area for years now.<sup>39</sup>”

The report points out that the public rightly expect “the police to protect them by using their powers in an effective and fair manner” and notes the suspicion caused when police powers are focused on particular communities.

The report concludes that this can undermine police legitimacy, which “in the eyes of the public is inextricably linked to the way the police use their powers – whether the police are fair and reasonable in the use of their powers, respectful during encounters and open in their decision making.”

The consequence of community disaffection is that it may “lead[s] people to feel they have no obligation to comply with the law.”

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<sup>39</sup> Disproportionate use of police powers: A spotlight on stop and search and the use of force February 2021 <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

6.56 A House of Commons Briefing Paper<sup>40</sup> pointed out that:

“Poorly targeted and conducted stop and search is widely acknowledged to damage police community relations, whilst evidence regarding the impact of stop and search on crime is mixed. “

6.57 These comments relate to England and Wales. In Northern Ireland, comparatively, the rates of stop and search are higher and the outcomes of stop and search in terms of finds and prosecutions are even lower.

6.58 Additional and enormous challenges face good policing practice in Northern Ireland, where paramilitary activity is concentrated in particular housing estates and when police officers who enter these particular estates are regarded by some paramilitaries there as targets for lethal attack. Policing such estates in a calm, orderly, respectful and courteous manner, even in the face of hostility (and potential lethal attack) is not only enormously difficult but also of paramount importance. For a police officer faced with insults and expletives and potential lethal force to explain calmly the reasons for police actions and to remind those under police scrutiny of their rights and the powers being exercised requires a high degree of professionalism, skill and self-discipline. This is the level of professionalism, skill and discipline required of the PSNI when policing communities in which these dangers are located. The police officers who work successfully to these standards are deserving of the highest respect and recognition.

6.59 Seen from the viewpoint of those in the community, the legacy of pre-1998 experience of policing in nationalist communities faced the PSNI with the challenge of winning the confidence of those communities following Patten reforms. The highest calibre of PSNI policing has been of pivotal importance in winning this confidence. Tragically, during this year, community workers in some nationalist areas have reported to me that any confidence that the PSNI had won in certain nationalist areas is now at a very low ebb indeed.

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<sup>40</sup>Number 3878, 10 March 2021

<https://researchbriefings.files.parliament.uk/documents/SN03878/SN03878.pdf>

6.60 JSA stop and search activities were consistently characterised by community workers as counterproductive, due to the alienation that they cause and the damage to police community relations that has resulted. Whilst this might be seen as predictable in communities where dissident republican activity is focused, these reports have emanated from both CRN and PUL communities. In both communities, complaints focus on two features of stop and search practices:

- the **widening of the focus** of police attention to include families, neighbours and relatives of suspects; and on
- **repeated stops and searches** of the same people over long periods, up to several years, without outcomes in terms of prosecutions or convictions.

### **Widening of focus**

6.61 Fresh in the minds of some community workers I met were the September 2019 remarks of the Chief Constable<sup>41</sup> who warned those involved in paramilitarism that they could have their children taken from them. His remarks led the Children's Commissioner to clarify that removing children from their homes should not be used as a "deterrent or threat" against those involved in paramilitary activity.

6.62 Of particular concern to community workers is the extension of stop and search to family members of suspects. Section 5.28 of this report addresses the concerns raised in Ní Mhurchú No: [2021] NICA 17 where children are accompanying an adult who is stopped and searched. In communities where bonds of family and neighbourhood are strong, any incursion by the police, particularly into family homes, will be experienced as invasive even when the rationale and justification for these are clear. Where other family members are present during a stop, and especially during a search of a family home, they may or may not know of, or be involved in, any illegal activity in which the

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<sup>41</sup> "PSNI chief constable suggests children of paramilitaries be taken into care" <https://www.irishtimes.com/news/ireland/irish-news/psni-chief-constable-suggests-children-of-paramilitaries-be-taken-into-care-1.4007647>

police are interested. It is not a crime to be related to someone who is suspected of, or who has committed, a crime.

6.63 The challenge for police is to distinguish between, on the one hand, the bonds of natural affection and loyalty between family members, friends and neighbours and on the other criminal association with suspects and activities which support criminality. Such distinctions are difficult at the best of times but, when faced with distrust and community resentment, they are exceptionally challenging. They will be more easily made when the police enjoy the support of the community they are operating in, where there is mutual respect and police are trusted to act in the common good in the delivery of fair and effective policing.

6.64 I have received reports of unacknowledged damage to property in the course of stop and search. Where damage to property occurs, this should always be acknowledged and a written record of it given to the property owner by the police, so that appropriate reparation can be made.

6.65 There is much work to be done in repairing the existing harm and preventing future damage to police-community relations. This will require ongoing and consistent efforts on the part of the police and those working at community level. An overarching policing strategy that supports those efforts is also required. The deployment and finessing by the police of de-escalation skills that are appropriate to particular communities will form an important part of this work.

6.66 Noting the observation that police services still do not fully understand the impact on individuals and communities of the use of police powers, despite the availability of stop and search data, **I recommend that the PSNI:**

- **identify a list of communities where JSA stop and search activity is particularly concentrated;**

- **conduct periodic Full Community Impact Assessments (FCIAs) that include regular external inputs from local teachers, clergy, councillors, youth and community workers;**
- **devise a strategy for improving mutual understanding and opening effective channels of communication between police and communities where stop and search activity is concentrated;**
- **use the findings from these FCIAs and the views of the community to appropriately modify police operations, and improve communication with people in particularly affected communities.**

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

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

## **Repeated stop and search and allegations of harassment**

6.68 Several individuals from PUL communities have provided me with accounts of being frequently and repeatedly subject to large numbers of JSA stops and searches over a period of years without any charges being brought. A number of individuals report being stopped regularly on the same route at the same time of day by the same officers. Some report police vehicles parked outside their homes and being stopped when they leave the house. No arrests, charges or other outcomes resulted in the examples given to me. Some of these individuals have had previous paramilitary connections, some have been previously arrested, one individual served time in prison on remand several years previously but was released without charge. These examples were passed to the PSNI who have responded:

“I appreciate the concerns you are raising around outcomes (arrests/charges/convictions) but unfortunately it’s not that simple. Like every other police service, we receive information from a variety of sources on a minute-by-minute basis. Our intelligence branch takes all of this information (whether it comes from members of the public, covert human intelligence sources, officers or information which is already in the public domain) and turns it into actionable intelligence. Officers are briefed on this intelligence and it drives operational activity including stop and search, arrest, etc. I can understand how some members of the public may assume that they are being regularly “targeted” however officers on the ground will continue to act whilst the intelligence remains on our briefing system.”

6.69 Similar experiences have been reported anecdotally in some CRN communities, although no detailed accounts were provided from these communities, for reasons detailed at 6.91. I raised this with the Committee on the Administration of Justice (CAJ), who explained that “Those who feel they have the most cause to complain about the police say they don't trust the channels for complaint and so their complaints are not investigated. It has the potential to become a vicious circle where no-one is held accountable.” (by email)

6.70 Individuals who are repeatedly and continuously subject to stop and search have described the impact on them, their families and businesses as damaging and

oppressive. It is regarded by them as a form of punishment without the right to a trial or the determination of guilt or innocence. It is beyond question that this leads to a deep sense of grievance and alienation from the police in particular and authorities in general. The danger of a broader use of repeated stop and search to disrupt or monitor individuals with past paramilitary connections is that those who are intent in distancing themselves from past paramilitary associations may be driven in the opposite direction.

**A clear, visible and accessible pathway to a law-abiding life for those who remain in paramilitary groups must form a central role, alongside law enforcement, in contemporary efforts to end paramilitarism.**

6.71 In discussions with the PSNI, some officers see this persistent use of JSA stop and search as a tool for the disruption or deterrence of terrorist activity. They say that repeated stops and searches of targeted individuals remind them that they are under close scrutiny and hinder or inhibit any plans they might have to engage in illegal activity. However, in 2017 the College of Policing published a study exploring the relationship stop and search had with crime at a borough level in the Metropolitan Police over a 10-year period. Overall it found *“only limited evidence of stop and search having had a deterrent effect on crime”* and advised that *“it is important not to overstate the benefits of stop and search and present it as a panacea to crime reduction...”*<sup>42</sup>

6.72 The PSNI point out that it is difficult to quantify successful preventative work in terms of outcomes, since they cannot record what didn't happen. These difficulties do not prevent an attempt to better document the “soft outcomes” of JSA stop and search that fall short of arrest, conviction or the disruption of illegal activity. Evidence of the benefits accruing from the PSNI's use of JSA powers to stop and search will greatly assist those with oversight to appreciate their value. Such evidence can then be weighed against the negative effect that JSA stop and search powers have on police community relations. I **recommend that the PSNI should take a series of representative samples of those stopped and searched under JSA powers, track them through the system and document any beneficial outcomes in terms of crime detection or prevention.**

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<sup>42</sup> Paul Quinton, College of Policing, Ben Bradford, University of Oxford, Matteo Tiratelli, University of Manchester ‘Does more stop and search mean less crime? Analysis of Metropolitan Police Service panel data, 2004–14’ [https://whatworks.college.police.uk/Research/Documents/SS\\_and\\_crime\\_report.pdf](https://whatworks.college.police.uk/Research/Documents/SS_and_crime_report.pdf)<sup>[1]</sup><sub>SEP</sub>



## **Stop and search, intelligence and paramilitaries**

6.73 The NI Court of Appeal in *Ramsey* [2020] citing David Seymour's report, recorded that there is "no real dispute that the proper exercise of the power having regard to paragraph 8.61 of the Code was set out by the Independent Reviewer in his eighth report as follows:

"7.9 So the power should not be exercised wholly at random **but on the basis of intelligence or other factors that might indicate the presence of munitions or wireless apparatus**. The power should be targeted at the threat based on informed considerations (which can include the officer's training, briefing and experience). If the power is properly exercised therefore it will be used against known DRs and others otherwise involved in munitions.

7.10 However –

(a) the power to stop and search without reasonable suspicion under section 24/Schedule 3 **does not give the police an unfettered discretion to stop a known DR at any time or place. There needs to be a basis for the use of the power and the purpose must always be to search for munitions or wireless apparatus – so where there is no basis a person cannot be stopped and searched simply because of his known DR profile;**

(b) **the purpose of the search can never be to put pressure on an individual, to remind him that the police are monitoring him, to disrupt his activities or to get intelligence** – the sole statutory purpose is to search for munitions etc. If as a result of a legitimate search these collateral benefits accrue then that does not render the use of the power unlawful"; (my emphasis)

6.74 *Ramsey* at [48] and [49] goes on to set out "two broad circumstances in which the power to stop and search without reasonable suspicion may be exercised. The first is where **the officer considers that there is something about the conduct of the individual which gives rise to a suspicion that the individual may have munitions or wireless apparatus...**[48] and "The second broad circumstance is where **the officer has**

**been briefed with information as a result of which he exercises the power.** The obvious circumstance in which this arises is where there is **some basis for thinking that there might be a terrorist attack such as a bombing but there is no information as to the vehicle that may be involved or the means by which it may be carried out.** In those circumstances in this jurisdiction checkpoints may be set up which will randomly stop vehicles to carry out checks with a view to disrupting the terrorist activity.” And at [50] “The Independent Reviewer is the principal check on the prevention of any abuse of the briefing power...”

- 6.75 It is clear from Ramsey that an association with a proscribed organisation alone is not sufficient intelligence grounds to justify a JSA stop and search. Rather, the individual’s behaviour must lead an officer to suspect that they are in possession of munitions or a wireless device for an illegal purpose. Alternatively, the officer must have specific intelligence that an attack or some illegal operation such as the movement of weapons is about to take place about which there is not sufficient information on who is involved or where the operation is to take place.
- 6.76 The danger of a broader use of repeated stop and search to disrupt or monitor individuals with past paramilitary connections is that those who are intent in distancing themselves from past paramilitary associations may be driven in the opposite direction. Many people in Northern Ireland have successfully made the transition from paramilitarism to law-abiding citizenship and we have been well served by former combatants who have successfully led their communities forward in positive directions. The TPP report that there are over 80 projects throughout Northern Ireland which aim to provide alternative pathways and support, although the visibility of these pathways is increasing but has been a challenge. They see visibility as crucial and use a mix of methods of intervention in order to try and make it as accessible as possible because many vulnerable people will present with other issues and will not flag paramilitarism. This emphasis on clear, visible and accessible pathways to a law-abiding life for those who remain in paramilitary groups is crucial and must form a central role, alongside law enforcement, in contemporary efforts to end paramilitarism.

6.77 In May 2016, The Fresh Start Panel report on the Disbandment of Paramilitary Groups in Northern Ireland set out the elements of disbandment<sup>43</sup> of a paramilitary organisation. “If a group has credibly taken the steps outlined above, it would seem reasonable to conclude that it has effectively transformed or disbanded its paramilitary structures. Groups may then be in a position to apply via an intermediary to be removed from Schedule 2 of the Terrorism Act, which lists proscribed organisations. This would not preclude some or all members continuing to associate in new organisations for exclusively peaceful and democratic purposes.” (paragraph 3.3)<sup>44</sup>. Although the Fresh Start Panel addressed the issue of group transition, no provisions for this were included in the Executive Action Plan. Thus the TPP does not address the issue of group transition – it is purely focused on supporting individual and community transition. I support and reiterate the position of the IRC 2021 report in emphasising the importance of the availability of a Group Transition process, and join with the IRC in urging further consideration of it by the two Governments, the Executive and civic society.

6.78 Only one organisation, the Red Hand Commando (RHC) has commenced the process of de-proscription, but did not complete it due to their fear, however unfounded, of those nominated being prosecuted for membership of a proscribed organisation. The official statement on this matter noted that the application did not meet the criteria.

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<sup>43</sup> Understanding of Disbandment

3.2 While there may be some dispute over the term ‘disbandment’, there is a path for groups, and individuals within the groups, to effectively bring paramilitary activity to an end if they wish to do so. In our view, the process involves a number of clear steps:

- Ending recruitment into the group;
- Giving up paramilitary structures, weapons, training and activity;
- Ceasing paramilitary-style attacks and all other forms of violence, threat of violence or intimidation;
- Ceasing to exercise coercive power and control in communities;
- Committing to democracy and the rule of law, including by encouraging law-abiding responses to criminality; and
- Successor organisations must not benefit from or be associated with criminal

6.79 Increased contact between the various authorities and those within proscribed organisations who show an interest in transition and/or de-proscription can reduce the mutual suspicion and increase the success of the transition process.

6.80 The Northern Ireland Executive's TPP has allocated funding for three years for community-based activity supported by the Communities in Transition project (CiT). As outlined earlier, this project aims to support communities where there has been a history of paramilitary activity and coercive control to transition into a position where paramilitary activity no longer plays a role. CiT is designed to build the capacity of individuals and community groups in those areas. Eight areas described at 4.14 have been selected for participation in the project. Law enforcement responses in communities that fall outside of these areas are not always accompanied by the same level or consistency or support for transition. The importance of clear and visible signposts to an accessible path to transition in all areas where paramilitarism exists cannot be overemphasised. As we know all too well and to our cost in Northern Ireland, law enforcement alone cannot solve the problem of paramilitarism, indeed it risks further radicalisation and community alienation.

6.81 In speaking to those in communities who work on the issue of paramilitarism, it is important that the **signposts to an accessible path to transition are clearly visible to all those with continuing paramilitary involvement**. I have been assured by the TPP that there are initiatives in place throughout Northern Ireland, but in meetings in some communities, I have been told that these are not visible or accessible in some areas.

6.82 **Clear signposts to an accessible path to transition must be visible to all those with continuing paramilitary involvement.**

#### **The use of JSA (and TACT) versus PACE or other criminal law**

6.83 MI5 took on responsibility for national security intelligence work in Northern Ireland in 2007, bringing national security arrangements in Northern Ireland in line with the rest of the UK. MI5 sees the political and security situations in Northern Ireland as linked and that the threat from terrorism has changed significantly since the peace process. The

Provisional Irish Republican Army (PIRA) and the main loyalist groups have ceased their terrorist campaigns and engaged with the political process.

6.84 The National Security Intelligence assessment is currently that “... dissident republican groups reject the political process and the institutions created by the Good Friday Agreement, and continue to carry out terrorist attacks. They seek to destabilise Northern Ireland through the tactical use of violence, targeting members of the Police Service of Northern Ireland (PSNI) and other security personnel as well as seeking to cause disruption and economic damage.<sup>45</sup>”

6.85 Policing the paramilitary organisations - both those deemed to be a threat to national security and those whose threat is assessed as primarily to the local community - involves the enforcement of both counter-terrorism legislation and criminal law. Paramilitary organisations that focus their attacks on agents of the state (primarily the PSNI) or pose a threat to democracy are subject to the attentions of the secret intelligence services, MI5 working with the PSNI Terrorism Investigation Unit (TIU).

6.86 In September 2017, the Paramilitary Crime Task Force (PCTF), a Law Enforcement Task Force composed of the Police Service of Northern Ireland (PSNI), The National Crime Agency (NCA) and Her Majesty’s Revenue and Customs (HMRC) was launched with the aim to jointly work to “frustrate, disrupt and dismantle paramilitary organised crime groups using robust law enforcement.”

6.87 Much of the activity of paramilitary groups falls outside the category of acts of direct violence or illegal activities associated with the pursuit of a political goal. The PCTF focus on targeting crimes such as money laundering, racketeering and drug dealing, using sanctions such as the seizure of assets.

6.88 The PSNI point to the operation of the PCTF as their primary method of tackling paramilitary-related criminality in the PUL community, although they have also devoted significant effort against the Irish National Liberation Army (INLA). It would

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<sup>45</sup> National Security Intelligence Work in Northern Ireland available at <https://www.mi5.gov.uk/northern-ireland>

logically follow that loyalist paramilitaries would be investigated and prosecuted primarily under criminal law whereas dissident republican organisations who are deemed to pose a threat to national security are investigated and prosecuted under counter terrorism measures, including the JSA. This division of responsibility is not well understood outside of those who are connected in some way to the legal system and policing.

6.89 Those I have met in the PUL community report the frequent use of JSA powers in their areas and increasing levels of alienation from the police as a result. This increased level of policing in certain PUL areas, coupled with the controversy surrounding the perceived lack of police intervention at the funeral of Republican Bobby Storey during the COVID 19 pandemic restrictions, has led to the allegation of ‘two tier policing.’ In July 2021, Sir Jeffrey Donaldson said:

“Within unionist and loyalist communities’ concerns about two-tier policing are not only legitimate but widespread. I made it clear to Simon Byrne that the PSNI must meaningfully re-engage those who have become disillusioned over recent months.”<sup>46</sup>

6.90 In January 2018, Unionist Voice’s Andrew Smyth reported that the PSNI’s Bobby Singleton who headed up the Task Force identified their main targets as: East Belfast UVF; West Belfast UDA; INLA; and AAD. Mr Smyth commented that “[n]owhere on the PSNI’s priority list, let slip by Mr Singleton, was any of the most active republican crime gangs such as ONH, the New IRA or the CIRA. Instead a fig leaf of bi-partisan policing is provided by throwing in the INLA and AAD.”<sup>47</sup>

6.91 Mike Nesbitt MLA, who represents the Ulster Unionist Party on the Policing Board, supported explanations for the division of responsibilities between MI5 and the PSNI but commented:

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<sup>46</sup> <https://www.newsletter.co.uk/news/crime/two-tier-policing-concerns-raised-with-chief-constable-by-dup-3301263>

<sup>47</sup> Available at <https://unionistvoice.com/policingandjustice/news-partisan-nature-of-paramilitary-crime-task-force-revealed/>

“To state the PCTF does not investigate the IRA - as the PSNI did in its FoI answer - is factually accurate but limited... It would have been preferable if the response had gone on to fully explain that the PSNI is monitoring all terrorist groups with a presence in Northern Ireland and works with other agencies - including MI5 - rather than create the impression that because the PCTF is not investigating, nothing is being done.<sup>48</sup>”

6.92 In spite of attempts in both Belfast and Derry/Londonderry, I was unable to engage directly at local community level in CRN areas where JSA stop and search activities were concentrated. Local workers in these communities explained that this was due to high levels of distrust of authorities, especially those, including me, seen to be connected to the police or the system of law and order. This localised distrust extends to the Police Ombudsman and other avenues that could potentially be used to address grievances even though a 2019 survey<sup>49</sup> found that generally, awareness of and confidence in the independence of the Police Ombudsman’s Office was reported by over 80% of respondents.

**In order to offer clarity to members of the public and other stakeholders, I recommend that the PSNI publish their policies in relation to:**

**Policing all paramilitary groups and the allocation of responsibility between the various security agencies, interagency task forces and sections of the PSNI, and  
Their policy on proceeding against particular organisations or categories of organisation using counter-terrorism law including the JSA, as opposed to the use of the ordinary criminal law.**

#### **Press statements by PSNI**

6.93 In meetings in PUL communities, several complaints were made about the manner in which the PSNI issues press notices about arrests and other operations in local communities. When arrests are made the named PSNI Division may tweet the gender and age of the person or persons arrested stating the powers used, perhaps naming a paramilitary organisation or the alleged offence. In small communities, where such

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<sup>48</sup> <https://www.newsletter.co.uk/news/crime/psni-reveals-why-terror-taskforce-ignores-the-ira-3532674>

<sup>49</sup> <https://www.policeombudsman.org/PONI/files/8b/8b28538f-32e9-4697-8a35-83e5266665df.pdf>

arrests may be highly visible, the person arrested may be easily identifiable yet may be released later without charge. Reputational damage is caused by linking the person to a proscribed organisation or a crime and making this information public, when the person arrested has the right to the presumption of innocence until proven guilty. In cases where no charges are brought, the reputational damage is still sustained without the person having the opportunity to redeem their reputation. Making public the arrest in this way through the use of social media may lead people in the community to suspect that, even when the person is innocent, that there is ‘no smoke without fire’. I would point to the Supreme Court judgment in *Bloomberg LP* which ruled that “in general, a person under criminal investigation has, prior to being charged, a reasonable expectation of privacy in respect of information relating to that investigation.”<sup>50</sup>

6.94 I urge the PSNI, particularly when using ‘suspicionless powers’ in the JSA to remember that Northern Ireland is a small place and the presumption of innocence when preparing press material. **I recommend that the PSNI are mindful of the Law Enforcement Directive, the Data Protection Act (DPA) 2018 and of the General Data Protection Regulation (GDPR) definition of personal data and the Information Commissioner’s guidance on law enforcement processing when preparing press statements about stops and arrests under the JSA, namely:**

**“Any information relating to an identified or identifiable living individual. An identifying characteristic could include a name, ID number or location data. You should treat such information as personal data even if it can only be potentially linked to a living individual.” (ICO guidance)**

**It is important to ensure that due cognisance is taken of an individual’s right to the presumption of innocence and of their right to privacy.**

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<sup>50</sup> Press summary <https://www.supremecourt.uk/press-summary/uksc-2020-0122.html>



## **Community background monitoring**

6.95 The first recommendations that the PSNI monitor the community background of JSA stop and search subjects date back to 2008. Six successive reports by the Independent Reviewer have each repeated this recommendation. In the 13th report, David Seymour CB reported that on 24 November 2020 the PSNI wrote to him reporting that, in response to the Ramsey 2020 judgement they had established a working group:

“to consider various methodologies and explore practical ways of capturing community background information which also respect individuals’ privacy and data protection rights and builds on previous learning.”

This working group’s objectives included demonstrating “a commitment to both the Policing Board and to the courts that PSNI are taking the recommendation forward.” David Seymour commented that, although the group had done a good deal of work: “given the lack of progress on this subject over the past 7 years, a sceptical observer might view this programme of work as an attempt to “kick the can down the road”. Indeed, it could be argued that this programme of work is unnecessary.”

6.96 In the intervening year, there has been little discernible progress and community background monitoring of JSA stop and search subjects has yet to be implemented. I have held multiple meetings and correspondence with the PSNI throughout the year, and perused the advice they have obtained from various authorities and from Counsel. Currently, the PSNI consider that a series of obstacles stand in the path of implementation of community background monitoring of JSA powers. These are:

1. lack of clarity about the meaning of ‘community background’;
2. the method of monitoring to be used;
3. data protection issues; and
4. the legal basis for monitoring.

6.97 I will take each in turn.

### **1. Lack of clarity about the meaning of ‘community background’**

There has been surprising confusion expressed in a meeting with the PSNI about the meaning of ‘community background.’ I undertook to clarify the meaning in this report, and I am indebted to the Equality Commission for advice on this. They point to the references to that term made by the Court of Appeal in *Ramsey* as set out below:

“The context in which the term “community background” was used by the Court of Appeal in the Ramsey judicial review was that one of the legal grounds of challenge was that the PSNI was failing to monitor its use of its stop and search powers under the 2007 Act on the basis of perceived religious belief or political opinion in Northern Ireland. In addition, the Court noted at paragraph 31 that the initial trial judge considered: “...that in light of the nature of the threat from [Dissent Republicans], it would come as no surprise to anyone in Northern Ireland that the impact on exercise of this power was more likely to be felt by the perceived catholic and/or nationalist community.” The Court further noted at paragraph 54: “...The second issue in dispute is the requirement to monitor community background. Paragraphs 5.6 to 5.8 of the Code are entitled “Avoiding Discrimination”. Those paragraphs incorporate by reference the types of discrimination set out in sections 75 and 76 of the Northern Ireland Act 1998. There is a particular focus on the risk of profiling people from certain ethnicities or religious backgrounds and consequently losing the confidence of communities.”

Thus, the Court’s reference to “community background” was seemingly a reference to communities as defined in terms of ethnicity and religious belief and, possibly, political opinion: points confirmed by the allegations in the case itself and in the Court’s highlighting of paragraphs 5.6 to 5.8 of the Code of Practice which emphasised the dangers of “racial or religious profiling”.

In terms of equality law provisions in NI, the only statutory definition of the term “community” derives from an **employment** context and the duties imposed on employers, including PSNI, by *Part VII of the Fair Employment & Treatment (NI) Order 1998* [FETO] which include a duty to monitor the “community” of job applicants and employees. For the purpose of these employment duties, the term is defined in article 52(11) as: “**community**” means the Protestant community, or the Roman Catholic

***community, in Northern Ireland.***” In this context, the concept is defined in terms of two main religious communities in Northern Ireland.”

In relation to the references in *Ramsey* (paragraph 54) to section 75 and section 76 of the Northern Ireland Act 1998, it is noted that neither of those statutory provisions make any express reference to “community” or “community background”; instead referring, amongst other things, to people of different racial group, religious belief and political opinion”(Equality Commission, by email).

The PSNI Section 75 Equality Scheme contains the arrangements for ensuring that any policies being developed or reviewed by the PSNI are subject to the PSNI Section 75 duties and ensuring that the appropriate level of regard is paid to promoting equality and/or good relations. Equality assessments (screenings and/or EQIAs) should identify appropriate monitoring arrangements for the reviewed policy. Equality Commission guidance, Section 75 Monitoring Guidance [2007] (especially pages 77-83)<sup>51</sup> includes guidance on potential monitoring methodologies and sample equality classifications for the Section 75 equality grounds. Unlike the Fair Employment and Treatment (Northern Ireland) Order (FETO) employment monitoring provisions, these are not prescriptive and should be appropriate to the policy being monitored for potential equality impacts. There are, for example, contexts where proxies may be appropriate for Section 75 monitoring, such as monitoring community background as a proxy for the Section 75 ground of religious belief and/or political opinion.

## **2. Method of monitoring**

The PSNI have not yet settled on a methodology to deploy in community monitoring of JSA stop and search subjects. The methods they have been considering are:

- a) analysis by cross referencing subject’s home post code and census data;
- b) direct questioning of the subject by the searching officer;
- c) assignment of community background based on officer perception, and

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<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75MonitoringGuidance2007.pdf>

- d) new legislative powers for PSNI (an option which still does not specify a methodology).

I will take each method in turn.

**a) Analysis by cross referencing subject's home post code and census data**

The PSNI carried out a pilot exercise in 2015 using the postcode of the home address of the person stopped and tallied that with census data on religious composition of that postcode. (Census data is also available on a small area basis, potentially giving even more precision.) Religion was then attributed according to the religious composition of the area in which the person lived. This method provided indicative statistics of the community background of those subject to JSA stop and search powers.

Furthermore, the PSNI's Niche system currently contains records of the community background of individuals entering custody or to whom a Community Resolution Notice is issued. Since I am told that the targeting of JSA stop and search is intelligence-led, there is a high likelihood that this data could be used to determine the community background of the majority of those subjected to JSA stop and search. Using this data will circumvent many of the legal obstacles identified by the PSNI since such use would be both lawful and proportionate. Whilst this constitutes processing beyond the purposes for which the data was originally collected, this repurposing the data is aimed at ensuring proper monitoring of JSA powers, and this has a lawful basis. This method does not entail new procedures nor compliance with additional regulations. **I recommend that, whilst the PSNI resolve their other concerns about community monitoring, the PSNI conduct an analysis of a census of the use of JSA powers using either one of these two methods, or some combination of them. This will provide some indication, albeit only as complete as the data will allow, of the community background of those subject to these powers.**

**b) Direct questioning of the subject by the searching officer**

It is noted that In *Ramsey*, the Lord Chief Justice points out that "The Code does not impose any requirement on a member of the public to indicate anything about community background. It is not, therefore, possible to establish such background by

means of questioning.” This does not, however, mean that the officer cannot ask the question and some of those asked will respond.

Subject to advice from the Information Commissioner direct questioning of the subject by the searching officer is one method that the PSNI should consider of collecting data on community background.

### **c) Assignment of community background based on officer perception**

In his 13th report, David Seymour advocated a residuary method, based on **intelligence combined with officer perception**, of community monitoring of JSA stop and search subjects. He commented:

“This should not be difficult because –

(a) the PSNI stress that the powers are used, almost exclusively, on an intelligence led basis, against those who present the greatest threat;

(b) it would be anonymised and use generic data – an overarching set of percentages indicating broad categories;

(c) it would be similar to the information referred to by the Lord Chief Justice in paragraph 26 of his judgment [Ramsey] which referred to statistics for the 2013/2014 period in relation to repeat stop and searches - 81% DRs, 7% criminal associations, 3% loyalist associations, 1% interface disorder and 8% unspecified;

(d) the PSNI’s own security statistics are broken down in this way into republican/loyalist categories.”

A recent Freedom of Information request revealed, for example that the PSNI collect and hold data on community background on those they arrest<sup>52</sup>. Like David Seymour, I am perplexed as to “why it would be so difficult to do something similar in relation to those stopped and searched under the JSA”. In *Ramsey*, the Court concludes that:

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<sup>52</sup> <https://www.thedetail.tv/articles/almost-twice-the-number-of-catholics-than-protestants-arrested-and-charged-by-psni>

“the best option may be assessment by the individual police officers of community background. We understand that such an option has not yet been implemented but we are satisfied that the requirements of the Code are that some proportionate measure is put in place in order to ensure that there can be adequate monitoring and supervision of the community background of those being stopped and searched.”

The use of officer perception is not a popular option with some within the PSNI, due to worries about accuracy of results and officer comfort in asking the question. This discomfort was not shared by the (albeit small number) of front-line PSNI officers I have spoken to about this option. The accuracy of officer perceptions of community background is also cited as a fatal limitation of this option. Provided the usual cautions about the origins of the data and its resultant accuracy are provided, data derived from this method are likely to be accurate enough to meet the requirements of community background monitoring. Those using that data can read and note the caution.

As for concerns about stereotyping, we all rely on it in daily life and its use can also be benign and time-saving. Officers routinely decide the gender of JSA stop and search subjects without asking. Officers from Northern Ireland have a similar range of cues that are routinely used in Northern Ireland daily life to assess community background. Whilst the skill in reading these cues can be used for discriminatory or negative purposes, the skill itself is neutral. **In this instance, officer perception could be used, perhaps in combination with other data, to fulfil the lawful obligation to monitor community background.**

### **3. Data protection issues**

The PSNI have also taken advice on how the GDPR, as explained at 6.93 above, relate to community monitoring. They have also sought legal advice on this and any methodology they devise will have to comply with these regulations. Since the PSNI already monitor community background in relation to the exercise of other powers, and presumably comply with GDPR and other data protection regulations in doing so, the lessons from these other schemes can inform their compliance with GDPR in community background monitoring.

#### **4. Legal basis for monitoring**

In the last year, the PSNI have written to the DOJ and then to the NIO seeking new legislation. I have a number of concerns about this as a way forward for community monitoring of JSA stop and search.

First, whilst this may be seen as a next step, seeking new legislation brings the PSNI no closer to specifying a methodology by which they plan to proceed with community monitoring.

Second, community monitoring was first recommended in 2008, some fourteen years ago, and in six successive reports by the Independent Reviewer. Awaiting the passing of new legislation will further delay the implementation of community monitoring of JSA. The pursuit of new legislation could be seen as kicking Mr Seymour's can even further down that same road.

Third, and most significantly, is my concern about the basis for this request. I asked the PSNI, to explain their reason for seeking such legislation. They informed me that:

“With regards to community background monitoring the position of the PSNI, as communicated to the DOJ, is that such a basis is required in order to provide legal certainty to all parties involved.”

6.98 There may be a need for legislation in relation to the community monitoring of stop and search subjects who are stopped under Article 3 of PACE, Schedule 7 of TACT, and sections 23 and 23A of the Misuse of Drugs Act 1971. However, there is an apparent legal duty for the PSNI to monitor JSA stop and search subjects. This is set out in several places, which separately or jointly provide a legal basis for the implementation of community monitoring of JSA powers. The significant difference between the JSA and these other stop and search powers is that the Code of Practice applies to the JSA. The Court of Appeal has accepted the PSNI reliance upon this Code as part of the legal framework governing the exercise of JSA powers, so the Code can be used as part of the framework which ensures that the exercise of JSA powers are lawful. The JSA is unique amongst the other stop and search powers listed above in this regard. This sets

the legal basis for the PSNI duty to proceed with JSA community monitoring apart from any intention to monitor other stop and search powers.

6.99 In *Ramsey* 2020, Lord Chief Justice Morgan accepts “that the monitoring and supervision requirements of the Code establish a duty on the part of the PSNI to devise a methodology of enabling such monitoring and supervision.”[56]

6.100 The Code of Practice for the Exercise of Powers in the JSA states that:

“At all times the PSNI should have regard to its obligations under section 75 and section 76 of the Northern Ireland Act 1998: namely the duty to promote equality of opportunity and good relations and not to discriminate, in the circumstances prescribed. Whenever the powers are used, it must be without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, disability or whether or not a person has dependents.”

6.101 The Code sets out the PSNI’s duty to avoid discrimination, specifying at 5.7 that “Officers should take care to avoid any form of racial or religious profiling when selecting people to search under section 24/schedule 3 powers.” The Code also sets out the duty of the PSNI to monitor and supervise the use of stop and search powers:

“Senior officers with area or service-wide responsibilities must also monitor the general use of stop and search powers and should take action if they do not feel the powers are being used appropriately.”

Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches at service, area and local level. Any apparently disproportionate use of the powers by particular officers or groups of officers or in relation to specific sections of the community should be identified and investigated.

The duty under section 76 of NIA states that it is unlawful for PSNI in carrying out its functions ‘to discriminate... against a person or class of person on the ground of religious belief or political opinion’. Community background monitoring is the obvious method whereby the PSNI can demonstrate its compliance with that legal requirement



with reference to religious belief or political opinion in their exercise of JSA stop and search powers.

Over the past six years that the PSNI have considered a range of methodologies for monitoring of JSA, stop and search subjects and in this review period have indicated that they wish to seek new legislative powers.

I have concluded that the PSNI is required to monitor the impact of its policy on JSA stop and search powers as a result of the Court of Appeal judgement, the repeated recommendations of the Independent Reviewer and the PSNI's Section 75 duties. While the Section 75 duties require the PSNI to have in place monitoring arrangements covering each of the equality grounds, my recommendation is that priority is focused on the relevant grounds, as set out by the Court of Appeal in the Ramsey Judicial Review and as set out above. **I recommend that the PSNI should seek advice from the Equality Commission regarding the monitoring information to be collected (e.g. whether a proxy of community background is used or whether racial group, religious belief and political opinion are monitored separately). The PSNI should also seek advice from the Information Commissioner's Office in relation to the monitoring methodologies.**

**The PSNI wish to obtain legal certainty and any amendments to existing codes or new legislation remains a matter for Government. The pursuit of new legislation should not prevent the PSNI from implementing a form of community monitoring in the interim without any further delay.**

#### **Perceptions of the delay in implementation of community background monitoring**

6.102 I am assured by the PSNI that they are committed to implementing community background monitoring of JSA stop and search powers. Such assurances would appear more credible to observers if there was a solid prospect of implementation in the coming year.

6.103 I set out to understand the reasons behind the delay in implementing community background monitoring of JSA stop and search and clarify the difficulty that the PSNI

have experienced in this matter. That they clearly operationalise such monitoring in relation to other powers raises doubts about the willingness of the PSNI to comply with this duty in relation to JSA powers. Indeed, there are those who have concluded, after this lengthy delay, that the PSNI is simply unwilling to implement such monitoring.

6.104 Anticipation of any political fall-out following the publishing of the outcome of such monitoring does not seem to explain this. Following their 2015 pilot of community background monitoring which found ‘a significant preponderance of those stopped came from a perceived Catholic background’ *Ramsey* commented “but that was not necessarily surprising since the DRs constitute the principal threat and are most active in those communities.” [57] Nor was there any substantial outcry following the publication of the FOI containing the community breakdown of arrests by community background, showing that ‘almost twice the number of Catholics than Protestants are arrested and charged<sup>53</sup>’.

6.105 This is in the broader context of a declining number of Catholic officers and disaffection in both CRN and PUL communities at local level, persistent difficulties in community consultation and the lack of a systemic strategy for engagement with both PUL and CRN communities<sup>54</sup>. Concerns about disproportionality also extend to the high rate of stop and search experienced by Travellers and Black and Ethnic Minorities in Northern Ireland. Wendy Williams, HM Inspector of Constabulary commented in February 2021:

“Forces must do more to ensure they identify disproportionality, understand the reasons for it, take action to reduce it where required, and explain those reasons and actions to the public. Without a proper explanation, members of the public may see the disproportionate use of powers as a sign of discrimination, and so police legitimacy may be undermined.<sup>55</sup>”

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<sup>53</sup> <https://www.thedetail.tv/articles/almost-twice-the-number-of-catholics-than-protestants-arrested-and-charged-by-psni>

<sup>54</sup> <https://www.psni.police.uk/globalassets/inside-the-psni/our-departments/human-resources/documents/research-project---final-report-v1-0-15-dec-2016.pdf>

<sup>55</sup> <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/disproportionate-use-of-police-powers-spotlight-on-stop-search-and-use-of-force.pdf>

6.106 Disproportionality does not necessarily mean illegal discrimination but that discussion cannot take place in relation to JSA stop and search until community background monitoring is implemented. Until then, no transparent discussion is possible.

#### **Working group on JSA stop and search**

6.107 Of all the matters contained in this review, the powers available to the PSNI in sections 21-28 of the JSA have been those that required the most detailed scrutiny and, have the greatest impact on local communities in Northern Ireland. These powers afford the police the widest discretionary power and also have the greatest potential to damage public trust and confidence in the PSNI, especially if their use is perceived by the members of the public as unjustified. Recent positive experience of using a working group to pool resources and bring focused attention onto NJTs suggests that a similar exercise in relation to Section 21-28 powers would be beneficial.

**6.108 I recommend that a working group is convened to focus on the PSNI use of JSA Section 21-28 powers. Such a group could include representatives from the Policing Board including their Human Rights Advisor, NISRA, and where appropriate the Equality Commission, NIHRC, CAJ, OPNI, academics in the field, independent organisations and those with an expertise or interest in all or some of these matters.**

Within the framework of the JSA, in agreeing its terms of reference, such a group could, *inter alia*, review:

- The culture of stop and search within the PSNI, how it is used and perceived;
- The proportionality of the comparatively high levels of use of JSA stop and search by the PSNI, taking account of the high threat levels in Northern Ireland compared to the rest of the UK;

- The effectiveness and outcomes in terms of law enforcement and public safety, the high proportion of stops with no cause to arrest; (see recommendation at 6.73<sup>56</sup>);
- Investigating any evidence that the JSA stop and search activities have a deterrence effect;
- The interplay between all stop and search powers in areas where JSA powers are frequently used;
- Methods used by the PSNI to assess the community impact of stop and search, particularly in communities where this activity is concentrated;
- The importance of complaint mechanisms available in relation to the PSNI's use of these JSA powers;
- Disproportionality in the use of JSA stop and search powers in relation to section 75 and section 76 categories.

**6.109 In order to inform the work of the Group, I recommend that the PSNI provide group members who have the requisite clearance access to samples of body-worn video footage showing JSA stop and search encounters taking account of the safeguards in the College of Policing's Authorised Professional Practice.**

**6.110 The findings of such a working group together with the PSNI response to their findings will form the basis for my next report on these issues.**

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<sup>56</sup> I recommend that the PSNI should take a series of representative samples of those stopped and searched under JSA powers, track them through the system and document any beneficial outcomes in terms of crime detection or prevention.

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

- 7.1 Sections 29 to 32 of the JSA empower the Secretary of State to requisition land (s29) and close roads (s30 and 32) for “the preservation of the peace or the maintenance of order” (s29). In line with Agency Agreements agreed between the Secretary of State and the DOJ (see paragraph 238 onward of the fourth report) the requisition power in section 29 and the road closure power in section 32, can be exercised by the DOJ in respect of devolved matters. With Coronavirus (COVID 19) restrictions then in place there were no parades in the previous reporting period, and consequently no need to requisition land to facilitate re-routing of parades. In 2021 smaller, local parades were held to take account of ongoing public health restrictions. In 2021, there only was one land requisition using s29 provisions. The PSNI made a request to DOJ in June 2021 for land owned by Invest NI at Forthriver Business Park (the former Mackie’s factory site), Springfield Road, Belfast, to be requisitioned under the JSA. This was to facilitate an effective policing operation for the purpose of enforcing the Parades Commission determination on the 26 June 2021 Whiterock Orange Order parade and any counter protest that might take place. The parade was deemed contentious by the Parades Commission and a determination had been issued by the PCNI in respect of the 2021 event.
- 7.2 Under the Agency Arrangements notification was given to the Secretary of State of the intention to use the powers under s29 of the JSA. The Justice Minister also informed the Justice Committee and Economy Minister given Invest NI’s ownership of the site.

### **Road closures**

- 7.3 According to MOD and DOJ - there were no new road closures in the reporting period 2020-21.

## **8. THE ARMY**

8.1 In his first report covering the period 1 August 2007- 31 July 2008, Robert Whalley CB, as Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007, cited the Hansard reports of debates in the UK Parliament on the introduction of the JSA. The Secretary of State outlined the security background against which the powers were being sought and the specific reasoning for seeking them, namely the evolution towards a condition of peace:

*“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...”*

8.2 Some twelve years later, in his 13th report on the JSA, covering the period 1 August 2019 – 31 July 2020, my predecessor David Seymour recorded that the role of the Army in Northern Ireland remains unchanged and as described in previous reports. This remains the case for this current period.

8.3 I will report on two aspects of Army operations in this report:

- Explosive Ordnance Disposal (EOD activity) where the Army support the PSNI in dealing with explosive material; and
- the operation of the Army complaints procedure.

### **EOD activity**

8.4 Table 8.1 shows the EOD activity for the period from 1 August 2020 - 31 July 2021. There were 199 EOD incidents. That figure is broken down as follows (with the figures for the previous years in brackets):

Table 8.1: Explosive Ordnance Disposal (EOD) Activity in support of PSNI: 1 August 2020 - 31 July 2021									
DATE	IED	EXPLOSION	HOAX	FALSE	INCENDIARY	FINDS	TOTAL	FIND X-Ray	TOTALS 20-21 (19-20)
August 20	4	1	9	5	0	2	21	8	29 (13)
Sept 20	1	1	3	0	0	0	5	8	13 (25)
Oct 20	3	0	1	3	0	0	7	5	12 (14)
Nov 20	3	1	6	2	0	2	14	6	20 (16)
Dec 20	1	1	4	1	0	3	10	12	22 (14)
Jan 21	1	1	3	1	0	3	9	7	16 (25)
Feb 21	1	0	2	1	0	2	6	7	13 (14)
Mar 21	2	2	2	3	0	8	17	7	24 (24)
Apr 21	1	0	4	0	0	1	6	7	13 (10)
May 21	4	1	5	1	0	0	11	11	22 (26)
Jun 21	2	1	1	1	0	1	6	2	8 (28)
Jul 21	0	0	1	0	0	1	2	5	7 (17)
<b>TOTAL</b>	23 (18)	9 (8)	41 (25)	18 (32)	0 (0)	23 (28)	<b>114 (184)</b>	85 (73)	<b>199 (226)</b>

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

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

Explosion – A confirmed explosion

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

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

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

Finds – Objects recovered, usually during a search

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

Source: MOD 2021.

- on 23 (18) occasions to deal with an IED – typically an active device such as a pipe bomb;
- on nine (11) occasions to deal with an explosion;
- on 41 (25) occasions to deal with a hoax – where an object is deliberately made to look like an IED and sometimes accompanied by a telephone warning confirmed by the police the purpose of which could potentially be a prelude to a “come on” attack;
- on 18 (32) occasions to deal with a false alarm i.e. a member of the public may genuinely have reported a suspect object giving rise to a legitimate concern but there was no telephone call or attribution;
- on no occasion was the Army called out to deal with an incendiary device i.e. a device which is programmed to ignite and cause a building to burn, nor were there any such devices in the previous year;
- on 23 (28) occasions the Army had to deal with the discovery of munitions;
- on 85 (73) occasions the Army had to deal with an object x-rayed by EOD and declared safe before being entered into police evidence.

8.5 This total of 199 EOD incidents where the Army were called out is a reduction from the 226 occasions in the last reporting period. This reduction is accounted for by a change in the pattern of demands on the Army, as follows:

- a fall in the numbers of explosions (nine compared with 11 previously),
- the numbers of false alarms (18 compared with 32 in the previous period) and
- a reduction in the number of occasions when the Army had to deal with the discovery of munitions (23 compared with 101 occasions previously).

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



8.7 However, there was a small increase in:

- the occasions when the Army were called out to deal with an IED (23 compared with 18 previously)
- a marked increase in the number of hoaxes dealt with by the Army (41 compared with 25 previously).
- The biggest increase was in the number of times the Army dealt with x-rayed objects (85 compared with 73 previously), more than twice the number in the previous period.

### **Processing and handling of complaints**

8.8 There were eight cases contained in the Military Complaints File for the period 1 August 2020 - 31 July 2021, compared with only one complaint about Army activity during the previous reporting period. All eight cases referred to overhead aircraft.

In the 13th report, David Seymour noted that “the issue of low flying military aircraft is a sensitive issue in Northern Ireland and Sinn Féin have previously called for such activity to stop.” This was following an intervention by Ms Emma Sheerin, the Sinn Féin MLA for Mid-Ulster, acting on behalf of a constituent. David Seymour noted that this incident reinforced the continuing sensitivity about low level flying by the Army and the need to respond appropriately to those concerns.

8.9 The increase from one case to eight cases in the current period is worthy of note. However, closer scrutiny revealed that of these eight:

- two were ‘plane-spotters’ wishing to confirm their identification of an aircraft;
- one individual wished to be reassured that overhead aircraft were ‘friendly’ (it was, - a United States Air Force (USAF) aircraft); and
- in two cases, the aircraft referred to in the correspondence were not military aircraft and the individuals were referred on to the PSNI;

- in one case, the aircraft complained about was not a military aircraft and the complainant was asked to refer to the Civil Aviation Authority.

8.10 In one of the two remaining cases, the complaint was about low-flying aircraft scaring primary school children. In this case, the Civil Representative responded directly to the person complaining and resolved the case satisfactorily. In the second case, the complainant reported that low-flying aircraft were spooking her horses. Again, the Civil Representative visited the complainant, who expressed gratitude for the way the complaint was handled. In both these last cases, low-flying USAF aircraft were involved.

8.11 The documentation of all of these cases was thorough and complete. The average response time across all eight cases was just over four days, and those contacting the Army were treated with respect and courtesy. Their concerns were taken seriously and the responses were timely and appropriate.

## **PART 2 – NON JURY TRIALS (NJT)**

### **Background**

- 9.1 In the normal course of events, most criminal trials are summary trials without a jury. In Crown Court cases, an application can be made to try a defendant without a jury prior to arraignment under certain circumstances. The decision is taken by the Director of Public Prosecutions (DPP) in Northern Ireland under the provisions of section 1 of the Justice and Security (Northern Ireland) Act 2007 (JSA 2007). Where a Certificate is issued, it must be lodged with the Court in advance of arraignment, before the defendant enters a plea. The full guidance used in determining that a trial should be tried without a jury is included at Annex G. The current system in Northern Ireland is not to be confused with that which went before under Northern Ireland (Emergency Provisions) Act 1973. Under this Act, courts which were commonly referred to as Diplock Courts operated without a jury. They tried defendants for offences that were “scheduled” unless the Attorney-General “de-scheduled” them (on the basis that the offences were not connected to the Troubles). Offences are no longer ‘scheduled’ in this way.
- 9.2 The current special statutory provisions for Non-Jury Trials (NJT) in Northern Ireland were established to replace the Diplock system and to take account of the special circumstances facing jury trials in Northern Ireland. These specific measures which apply to a small number of cases only, are set out in Sections 1 to 9 of the JSA 2007 and are at Annex F. Decisions to institute a NJT in Northern Ireland can be based on information that does not rise to the evidential standard referred to in *In J, S, M v R* [2010] EWCA Crim 1755, at the Court of Appeal.
- 9.3 Statutory provisions for NJTs under the Criminal Justice Act (CJA) 2003 (CJA) apply in England, Wales and Northern Ireland and are the only provisions in operation in England and Wales. The CJA provisions require evidence to be produced and are contained in Sections 44-46 of 2003 Act. They can be found at the end of Annex F of this report. NJTs are rare in the rest of the UK. The 2010 trial of Glen Cameron and John Twomey, accused of a £1.75m robbery in 2004 at Heathrow airport, was described in

the press at the time as the first such trial in four hundred years<sup>57</sup>. Trial by jury is held as a central democratic right. In *J, S, M v R* [2010] at the Court of Appeal the Lord Chief Justice emphasised in the judgment that:

*"The trial of a serious criminal offence without a jury ... remains and must remain the decision of last resort, only to be ordered when the Court is sure (not that it entertains doubts, suspicions or reservations) that the statutory conditions are fulfilled."*

9.4 The difference between the CJA 2003 and JSA 2007 provisions are laid out in more detail in Table 9.8.

### **Renewal of sections 1-9**

9.5 Section 9 of the JSA 2007 provides for the expiry after two years of NJT provisions unless the Secretary of State extends that period by order, for a further two years. Such an order has to be approved by both Houses of Parliament. There are no limits on the number of times NJT provisions may be extended, although they were designed to be a temporary measure. The JSA provisions for NJTs have been extended by successive orders since 2007.

9.6 Mindful of the Government's commitment to bring NJTs under the JSA 2007 to an end 'when the time is right', the Northern Ireland Office (NIO) conducts a consultation on NJTs every two years in advance of the renewal of the provisions. On 23 November 2020, the NIO launched a 12-week public consultation<sup>58</sup> seeking views on whether the NJT provisions within the JSA 2007 should be extended for a further two years. The consultation closed on 15 February 2021<sup>59</sup>.

9.7 The majority of respondents to the consultation supported the current need to extend NJT provisions under the JSA 2007, albeit reluctantly, a reluctance shared by the

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<sup>57</sup> <https://www.theguardian.com/uk/2010/jan/12/court-legal-history-juryless-trial>

<sup>58</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/937343/201120\\_2020\\_NJT\\_Consultation\\_pdf.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/937343/201120_2020_NJT_Consultation_pdf.pdf)

<sup>59</sup> This Consultation Response, published online at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/980235/NJT\\_Consultation\\_Response\\_Doc\\_.docx.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/980235/NJT_Consultation_Response_Doc_.docx.pdf) contains an analysis of the responses received.

Secretary of State for Northern Ireland. The consultation found persuasive the argument that the potential risks to the administration of justice and to individuals should the NJT provisions expire.

9.8 A consensus of respondents to the 2021 consultation were in favour of the recommendation of the Independent Reviewer in his 12th report (16.1a) to establish a working group to examine ways to further reduce the number of NJTs under the 2007 Act. In addition, the group was asked to identify indicators of when it would be safe and compatible with the interests of justice to allow the provisions to expire. A commentary on the work of that group can be found at paragraph 9.36.

9.9 Subsequent to the consultation, the Secretary of State for Northern Ireland decided to extend the NJT provisions until 31 July 2023 and Parliament passed the Justice and Security (Northern Ireland) Act 2007 (Extension of Duration of Non-Jury Trial Provisions) Order 2021.

9.10 On the occasion of its renewal, The Minister for State, Northern Ireland, Mr Robin Walker told Parliament:

“In Northern Ireland today, there is a presumption of jury trial in all cases. In 2020, only 1% of all Crown court cases in Northern Ireland were conducted without a jury. I must make it clear that this is in stark contrast to the old Diplock system, in which the default was a NJT for certain offences. NJTs are now the exception, and there is a presumption of jury trial in all cases before the Crown court. NJTs are not Diplock courts... Although we are confident that the decision to extend for two years is necessary at this time, the Government remain committed to ensuring that the Northern Ireland-specific provisions are brought to an end when the time is right.” Hansard: Wednesday July 7, 2021<sup>60</sup>.

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<sup>60</sup> [https://hansard.parliament.uk/commons/2021-07-07/debates/b590851d-77d9-4a3b-b32f-897e25a5d86b/DraftJusticeAndSecurity\(NorthernIreland\)Act2007\(ExtensionOfDurationOfNon-JuryTrialProvisions\)Order2021](https://hansard.parliament.uk/commons/2021-07-07/debates/b590851d-77d9-4a3b-b32f-897e25a5d86b/DraftJusticeAndSecurity(NorthernIreland)Act2007(ExtensionOfDurationOfNon-JuryTrialProvisions)Order2021)

- 9.11 In December 2021, the Secretary of State for Justice Rt Hon Dominic Raab MP published his “Human Rights Act Reform: A Modern Bill Of Rights consultation on proposals to reform the Human Rights Act 1998.” In this, it is envisaged that the right to trial by jury be included in the proposed Bill of Rights.
- 9.12 The Government believes that there may be scope to recognise trial by jury in the Bill of Rights, given its significant historical place in our legal traditions, and the role it plays in securing the fairness of certain trials. The right could apply insofar as trial by jury is prescribed by law in each jurisdiction, under the control of Parliament for England and Wales, and of the Scottish Parliament and the Northern Ireland Assembly for Scotland and Northern Ireland respectively. (Human Rights Act Reform: A Modern Bill Of Rights. A consultation to reform the Human Rights Act 1998. December 2021, CP 558, para.209)
- 9.13 The outcome of this consultation process is not yet complete and it is not clear how it will interact with both the CJA 2003 and JSA 2007 provisions for NJTs. This aspect of the White Paper appears to favour the furtherance of human rights and is particularly welcome, in the light of ongoing commitment to ‘normalisation’ (Belfast Agreement, Cm.3883, 1998, Security para.2) in which it is clear that NJTs do not represent normality. In a context in which a NJT is increasingly exceptional, a defendant who has faced a NJT may well be viewed in a certain light, since the state is indicating to the world that to try this person conveys a strong element of risk. The trial itself may be fair (see *Arthurs JR NIQB 75*<sup>61</sup>) yet even acquitted defendants may face attitudes in the community that there is ‘no smoke without fire’.

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<sup>61</sup> <https://www.bailii.org/nie/cases/NIHC/QB/2010/75.html>

## **Terms of reference for this review**

9.14 Para 14.2 of the tenth report by my predecessor David Seymour CB sets out the terms of reference for the Independent Reviewer's review of NJTs. It should be:

"...limited to a high level engagement with the key stakeholders in this process, to better understand the overall effectiveness of the procedures currently in place to issue a NJT certificate. Broadly therefore, the review could examine:

- a) a small, retrospective sample of information which has led to a NJT certificate being issued, to understand some of the risks that make the system necessary;
- b) instances where a NJT certificate may be deemed necessary (and whether the use of alternative juror protection measures are routinely considered as part of this);
- c) other relevant indicators that could provide an insight into how the system is being used, for example, whether there are any noticeable trends in the type of defendants who, or indeed offences, which, routinely receive NJT certificates; the views of external parties (for example think tanks, academics, human rights organisations) on the use of NJTs and;
- d) whether any improvements could be made to existing processes". (14.2 of tenth report)

## **Process of determination**

9.15 The process of determining whether or not a NJT certificate is to be granted is described in detail in the judgement of Girvan L J in the Court of Appeal in the case of *Arthurs* [2010] NIQB 75 in 2010 (see 19.1-19.5 of David Seymour's tenth report). In summary, the process begins when the file is compiled and received by the Public Prosecution Service (PPS). The file contains a summary of the case based on the views of the investigating officer, circumstances of the accused, the offence and/or the motivation for the offence and an indication as to whether any of the four conditions for NJT may be applicable in this case. This will result in the Prosecutor writing to senior police to

seek their views on whether any of the conditions in section 1 of JSA may be met. A Prosecutor may also write independently to seek the views of senior police in this regard where it appears appropriate to do so on the facts and circumstances of the case. Once a reply is received from senior police, and any relevant intelligence material reviewed, an application is compiled by the Prosecutor and submitted to the Assistant Director, who adds a covering note in marginal cases or cases with an unusual element. This is forwarded to the Director of Public Prosecutions (DPP) (via the Deputy DPP) who makes the final determination. A certificate is issued, or not, in advance of arraignment. The full guidance used in determining that a trial should be tried without a jury is included at Annex G.

## **Conditions**

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

- **Condition 1** – the defendant is, or is an associate of, a person who is a member of a proscribed organisation, or has at any time been a member of an organisation that was, at that time, a proscribed organisation.
- **Condition 2** – the offence or any of the offences was committed on behalf of the proscribed organisation, or a proscribed organisation was otherwise involved with, or assisted in, the carrying out of the offence or any of the offences.
- **Condition 3** – an attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and the attempt was made on behalf of a proscribed organisation or a proscribed organisation was otherwise involved with, or assisted in, the attempt.
- **Condition 4** – the offence or any of the offences was committed to any extent (whether directly or indirectly) as a result of, in connection with or in response to religious or political hostility of one group of persons towards another person or group of persons.



<b>Table 9.1 Conditions met in NJT cases 2007-2020</b>					
<b>Year</b>	<b>Number of Cases in which Condition Met</b>				<b>Certificates Issued</b>
	<b>Condition 1</b>	<b>Condition 2</b>	<b>Condition 3</b>	<b>Condition 4</b>	
<b>2007</b>	12	6	3	4	<b>12</b>
<b>2008</b>	24	16	3	4	<b>25</b>
<b>2009</b>	11	7	0	2	<b>11</b>
<b>2010</b>	13	9	2	3	<b>14</b>
<b>2011</b>	27	23	4	8	<b>28</b>
<b>2012</b>	21	16	1	10	<b>25</b>
<b>2013</b>	22	16	3	21	<b>23</b>
<b>2014</b>	18	12	0	16	<b>18</b>
<b>2015</b>	14	13	0	7	<b>15</b>
<b>2016</b>	10	11	0	7	<b>11</b>
<b>2017</b>	9	6	0	8	<b>9</b>
<b>2018</b>	16	12	0	14	<b>17</b>
<b>2019</b>	10	9	0	8	<b>13</b>
<b>2020</b>	10	7	2	4	<b>11</b>
	217	163	18	116	<b>514 (total grounds)</b>
	42%	32%	4%	23%	<b>% of conditions used</b>

When one or more of four conditions is met, the Director must be satisfied that in view of this there is a risk to the administration of justice for a Certificate to be issued. This two stage test is set out in Table 9.8.

9.17 Table 9.1 shows Conditions used as a basis for issuing certificates from 2007 onward.

- The overlap between conditions indicates that multiple Conditions are deemed to be met in many cases
- Condition 3 is the least relied upon, although Ground 3 arguably represents the most direct and compelling case.
- Condition 1, that the defendant is believed to have paramilitary links, and the second part of the test results in the assessment that these links will jeopardise

the administration of justice in a jury trial. This is assessed on a case by case basis.

- Condition 2 is the second most frequently relied on condition, where there is a paramilitary link and the second part of the test results in the assessment that these links will jeopardise the administration of justice in a jury trial.
- Condition 4 relies on the presence of political or religious hostility and is most often deployed alongside Condition 1, although it was the sole condition relied on in *Hutchings* [2019] UKSC 26. Further commentary on Condition 4 can be found at 9.53 and 9.57.

### NJT trends over time

9.18 Table 9.2 shows the numbers of NJT certificates issued by year since the passing of the JSA in 2007. Figure 2A shows trends over the time.

Table 9.2: Certificates issued and refused for NJT by the DPP (2007-2021)		
YEAR	CERTIFICATES ISSUED	CERTIFICATES REFUSED
2007	12*	2
2008	25	2
2009	11	0
2010	14	0
2011	28	0
2012	25	3
2013	23	3
2014	14	1
2015	15	0
2016	19	1
2017	22	1
2018	17	1
2019	13	1
2020	11	2
**2021	16	1
<b>Source:</b> Northern Ireland Director of Public Prosecution's Office *Provisions under the 2007 Act were brought into effect on 1 August 2007 ** Figures are provisional, to be finalised in June 2022.		

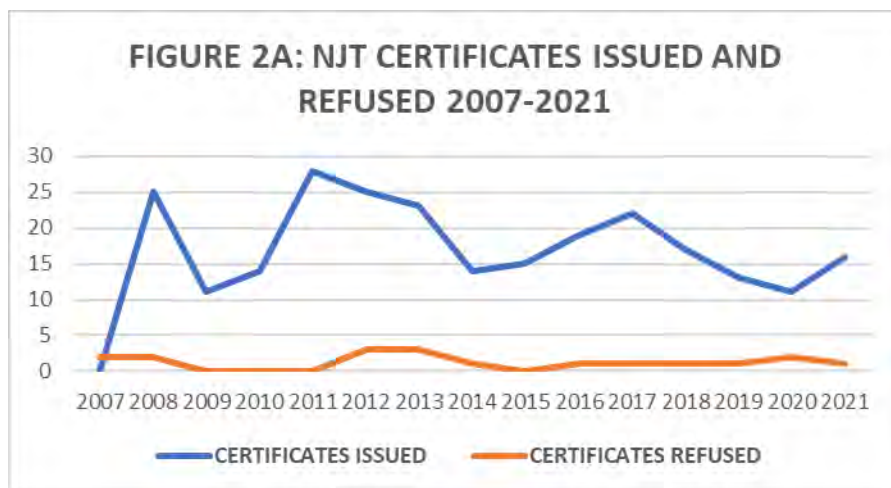
There is considerable variation (11-28) in the numbers of certificates issued each year, but it is noteworthy that the numbers of refusals remain consistently low. Indeed, the numbers of certificates are also low when compared to the period immediately prior to the passing of the JSA 2007 (see Table 9.3).

<b>Table 9.3 NJT certificates issued 2001-2008</b>	
Year	Number of certificates
2001	64
2002	118
2003	111
2004	79
2005	96
2006	91
2007	113
2008	35
Source: Walker, C.P., <i>The Anti-Terrorism Legislation</i> (Second edition, Oxford University Press, Oxford 2009) p.497 <sup>62</sup>	

9.19 Table 9.2, and Figure 2A show a downward trend if you consider the figures from 2001 onward, and any variation may be due to shifts in the security situation. What remains consistent is the very low share, below 2%, of total Crown Court cases accounted for by NJTs (see Table 9.4). The denial of jury trial warrants the closest scrutiny, since trial by jury is deemed a fundamental right, dating back to the Magna Carta.

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<sup>62</sup> Between 1 August 2020 and 31 July 2021 there were five appeals against conviction or sentence in non-jury trial cases under the Justice and Security (Northern Ireland) Act 2007. This was out of a total of 80 appeals in the Crown Court for that year – 5 non-jury tried under the Justice and Security Act and 68 jury trials (there were also 7 pre 2007 non-jury trials). One non-jury trial conviction was quashed, 2 appeals against sentence were dismissed and the sentence affirmed, one sentence was varied and one appeal against sentence was withdrawn (under Justice and Security Act). By comparison, the jury trial cases that were dismissed and the sentence affirmed between 1 August 2020 and 31 July 2021 equated to 29. This means that 43% of appeals against the findings of a jury were dismissed, as opposed to 40% of appeals against the findings of a judge sitting alone being dismissed (Justice and Security Act cases only).



YEAR	NJT CASES	OTHER	TOTAL	% NJT CASES
2013	36	1917	1953	1.80%
2014	28	1660	1688	1.70%
2015	17	1063	1080	1.60%
2016	12	1628	1640	0.70%
2017	9	1400	1409	0.60%
2018	18	1163	1181	1.50%
2019	14	1281	1295	1.08%
2020*	9	956	965	0.90%
<b>TOTAL</b>	<b>143</b>	<b>11068</b>	<b>11211</b>	<b>1.28%</b>

**Source:** NI Courts and Tribunals Service \*Provisional figures to be finalised in June 2022

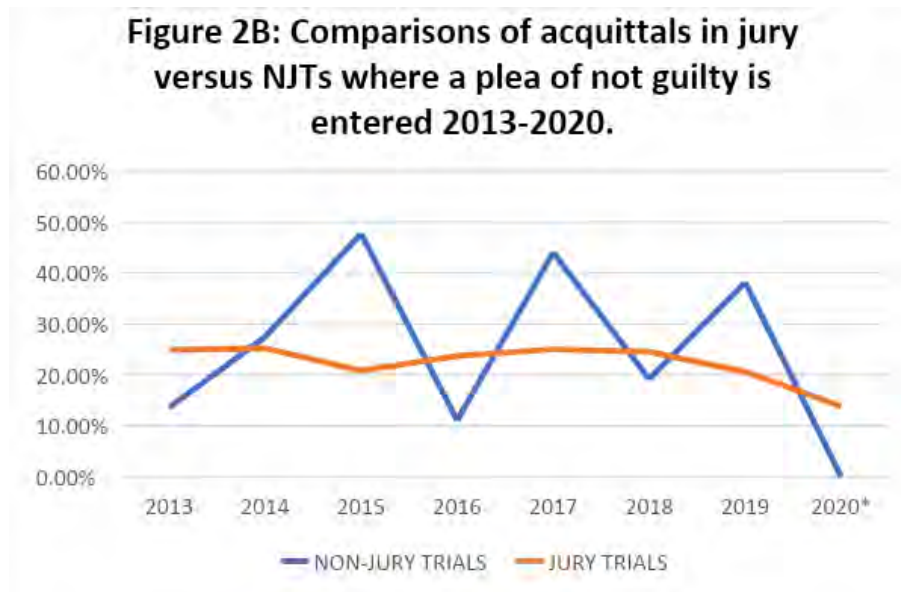
9.20 The implications for disposals are set out in Table 9.5 which compares acquittals in non-jury versus jury proceedings.

Table 9.5: Comparisons of acquittals in jury versus NJT where a plea of not guilty is entered 2013-2020		
YEAR	NJT	JURY TRIALS
2013	13.54%	24.87%
2014	27.45%	25.21%
2015	47.62%	20.80%
2016	11.10%	23.71%
2017	44.00%	25.00%
2018	19.20%	24.50%
2019	38.10%	20.60%
2020*	0%	13.80%
<b>Source:</b> NI Courts and Tribunals Service *Provisional figures		

9.21 There is an automatic right of appeal in a NJT (s.5(7)) which is stronger than the right of appeal to a jury conviction, for which leave must be sought. In 2019 out of a total of 97 appeals in the Crown Court, six were appeals against conviction or sentence in NJT cases under the JSA 2007, representing (42%) of the total of 14 NJT cases for that year. (The appeal rate for jury trials that year was 7.1%). One NJT conviction was quashed, three (50%) appeals against sentence were dismissed and the sentence affirmed, and two appeals against sentence were withdrawn. Of the total 91 jury trial appeals in 2019, 38 cases or 42% were dismissed and the sentence affirmed. In 2018, out of a total of 104 appeals in the Crown Court there were four (22% of the total) NJT appeals, of which three (75%) were dismissed and one was quashed. The rate of appeal in Jury trials was 8.5%, or 100 appeals, of which 30 (30%) were dismissed. From this cursory glance at the statistics, it would appear that, not surprisingly, appeals are much more frequent in NJTs. **I recommend that the NICS make available data for a retrospective longitudinal comparison of the outcomes of jury trials and NJTs for inclusion in my next report.**

9.22 These data are shown in Figure 2B where the differences between disposals can be more clearly seen. The acquittal rate for jury trials appears to be more consistently within the range of 20-25% whereas NJT acquittal rates show greater variation from year to year, falling within a much greater range of 11- 47%. This must be treated with

extreme caution, however, since the numbers of NJTs are very low in comparison to numbers of jury trials.



### Analysis of cases

9.23 I looked at applications for NJT certificates in the period 1 August 2020 to 31 July 2021.

I looked for evidence that each case was carefully and robustly considered, to understand some of the risks that make the system necessary and I examined whether the use of alternative juror protection measures are being routinely considered.

9.24 There were 17 certificates considered by the DPP between 1 August 2020 and 31 July 2021, resulting in 16 certificates being issued and one being refused. The cases are listed in Table 9.6 together with the DPP's decision and the date of that decision.

Table 9.6: SUMMARY OF NJT CASES August 1 2020- July 31 2021			
CASE	DATE	OUTCOME	CONDITIONS MET
R v Ledh	9 September 2020	certificate granted	1, 2 & 4
R v Tosh & Ruberry	18 September 2020	certificate granted	1 & 2
R v Lagan	10 October 2020	certificate granted	1, 2 & 3
R v Murtagh	10 October 2020	certificate granted	1
R v Brown and others	9 November 2020	certificate granted	1 & 2
R v Butler	9 November 2020	certificate granted	1, 2 & 4

R v Granahan	20 November 2020	certificate granted	1, 2 & 4
R v Drummond	17 December 2020	certificate granted	1
R v McClean	7 January 2021	certificate granted	1, 2 & 4
R v Barr	7 January 2021	certificate granted	1
R v Bryson, O'Hara & McKay	8 April 2021	certificate granted	1 & 4
R v Templeton	9 April 2021	certificate refused	
R v Farrell and Maguire	29 April 2021	certificate granted	1, 2 & 4
R v McGrath	10 May 2021	certificate granted	4
R v Sherrin	24 May 2021	certificate granted	1, 2 & 4
R v McIntyre and Gillen	3 June 2021	certificate granted	1, 2 & 4

9.25 I examined in detail a sample of cases to extract information about charges, affiliations and determinations in relation to certification for NJT. I examined in detail:

- all the papers in eight of the 17 cases;
- all four cases where only one of the four conditions were met; and
- all four cases where two of the conditions were met.

9.26 In the remaining cases, three of the four conditions were met. In no case were all four conditions met (see Table 9.6.)

### **Nature of the cases**

9.27 These cases involved a range of offences:

- riot, possession and throwing of petrol bombs;
- robbery and arson murder;
- possession of an imitation firearm in suspicious circumstances, possession of a magazine, possession of a knife;
- possession of a firearm without a certificate and ammunition in suspicious circumstances;
- distributing or showing indecent photographs of children;
- conspiracy to commit an offence of misconduct in a public office;

- attempted murder, possession of explosives;
- possession of firearms;
- preparing acts of terrorism;
- possession of explosives;
- collecting information likely to be useful to a terrorist;
- supply of drugs and membership of a proscribed organisation;
- murder and related offences;
- possession of a weapon and ammunition with intent;
- acting to pervert the course of justice;
- possession of ammunition;
- attempt to convert an item into a firearm;
- importing a weapon;
- possession of a weapon;
- possession of explosive substances;
- possession of information likely to be of use to terrorists;
- possession of documents likely to be of use to terrorists, making and possession of explosives with intent, attempted murder;
- murder and related offences.

In all of the cases there were paramilitary links of some kind, with the exception of R v Templeton, where a certificate was refused.

### **Cases and outcomes 2020-2021**

9.28 The numbers of non-jury cases and defendants received and disposed between 1 August 2020 – 31 July 2021 are:

Non-Jury cases received – 14

Non-Jury defendants received – 17

Non-Jury cases disposed – 10

Non-jury defendants disposed – 18



Table 9.7 shows the outcomes of disposed cases for this reporting period (All figures are provisional). From Table 9.7, again, the numbers of NJTs are small so it is not possible to definitively identify a trend. However, the shares of accused making both 'guilty on all charges' pleas and 'not guilty' pleas on at least one charge but who are convicted, are roughly similar. There does appear to be some difference between jury trials and NJTs on the share of those pleading 'not guilty' and acquitted on all charges. In these cases, the acquittal rate appears to be higher for those tried without a jury.

<b>Table 9.7: Outcome of Crown Court Defendants Disposed 1 August 2020 – 31 July 2021 (Provisional Figures)</b>					
	<b>Outcome</b>				<b>Total</b>
	<b>Plea of guilty on all charges</b>	<b>Plea of not guilty on at least one charge - found guilty on at least one charge</b>	<b>Plea not guilty - acquitted on all charges</b>	<b>All charges withdrawn</b>	
<b>Non-jury defendants</b>	5 (27.7%)	10 (55.5%)	3 (16.6%)	0	18 (100%)
<b>All other defendants</b>	424 (30.3%)	818 (58.59%)	151 (10.8%)	3 (0.2%)	1396(100%)
<b>Total</b>	<b>429 (30.3%)</b>	<b>828 (58.5%)</b>	<b>154 (10.9%)</b>	<b>3 (0.2%)</b>	<b>1414 (100%)</b>
<b>Source: NI Court Service</b>					

### **Robustness of the process of determination**

9.29 From my scrutiny of the files, there was substantial documentation in each case. The PSNI provide a full analysis and intelligence in order to satisfy the correct tests. I am informed by the PPS that they seek some hardening of the intelligence material where the material provided merits further scrutiny. In general, the intelligence and other information supports the PSNI assessment that one or more of the conditions is met.

9.30 I noted that some of the intelligence material was of unspecified age and in many cases states that the police "hold credible intelligence" that X is a member of such-and-such paramilitary organisation, or is a close associate of a person on whom such intelligence is held. Whilst appreciating that under the JSA 2007, there is no requirement for the PSNI to provide evidence in order to support an application for a NJT, if we are to move towards normalisation, then cognisance might be taken of the requirement under the CJA 2003, that hard evidence of such links would have to be produced. Some hardening

of the intelligence material supporting the case for the issuance of an NJT certificate would be valuable preparatory work for such a move. Recalling remarks by the Learned Judge in *R v Thomas Ashe Mellon* [2015] NICC 14:

‘The often quoted phrase that the proverbial dogs on the street may have reached certain conclusions in relation to matters is of no relevance. This court does not rely on canine intuition, but rather on hard evidence.’

On the other hand, the PPS have pointed to Supreme Court judgement in *Hutchings* in demonstrating the differences between the provisions in both jurisdictions and the wide discretion afforded under the JSA, in particular, paragraph 13 of *Hutchings*:

“13. The breadth of the power to direct that a trial be before a judge without a jury is immediately apparent from these provisions. The Director need only suspect that one of the stipulated conditions (in this case condition 4) is met and that there is a risk that the administration of justice might be impaired if there was a jury trial. The circumstances in which such a risk might materialise and the specific nature of the risk or the impairment to the administration of justice which might be occasioned are not specified. It can only be supposed that these matters were deliberately left open-ended. The type of decision which the Director must take can be of the instinctual, impressionistic kind. Whilst the Director must of course be able to point to reasons for his decision, one can readily envisage that it may frequently not be based on hard evidence but on unverified intelligence or suspicions, or on general experience. It may partake of supposition and prediction of a possible outcome, rather than a firm conclusion drawn from established facts”.

- 9.31 In the case of asserting paramilitary association, although the test does not require it, some hardening of the intelligence material would begin to close the gap between the JSA 2007 and the CJA 2003 and improve confidence. **I recommend that, where possible, an indication of the age of the intelligence information is given.** Paragraphs 9 to 10 of the internal PPS guidance on NJTs deals with cases where the defendant is an “associate” of a member of the proscribed organisation and requires that that member and the organisation be identified and a strict interpretation is placed on the

definition of “associate”. I saw evidence that this guidance was followed carefully. **Where intelligence relies on a ‘close association’ I recommend that the PSNI indicate whether this association is criminal rather than familial or social and the recency of any connections between the accused associate and paramilitary organisations or their members is stated.**

9.32 In the majority of cases, intelligence indicated that the accused is a member or a close associate of a paramilitary organisation, so the case meets Condition 1 and may qualify for a NJT certificate, although other conditions may also be met and the second part of the test must be satisfied, namely that in the view of the DPP there is a risk to the administration of justice that cannot be sufficiently mitigated by the available jury measures. **In cases where Condition 1 is the sole condition met, I recommend that the nature of the offence is taken into account, viz whether or not the paramilitary organisation will benefit from or approve of the offence and whether, as a result, that organisation is likely to defend the accused by means of jury intimidation, tampering or bias. Where the offence is unrelated to paramilitary membership and unlikely to benefit that organisation, and where the risks of jury tampering or bias are very low, I recommend the DPP seriously considers going to jury trial. However, I note the view of the PPS that, in the absence of legislative change, it would not be appropriate for them to interpret the provisions of the JSA in this manner. They are of the view that the Arthurs and Hutchings rulings have brought clarity to the scope of their discretion and have assisted in informing their approach to considering non-jury trial applications. Pending the outcome of the working group on NJTs, I recommend that this issue is explored further in the next review period.**

9.33 In all cases I examined, the submissions by the directing officer were substantial and addressed all the conditions in section 1. A commentary set out the reasons he/she agrees or disagrees with the PSNI assessment. In marginal or unusual cases there were additional notes and I saw evidence of internal challenges within the process. In one case, the Director refused to issue a NJT certificate despite the initial views expressed in the file. In all cases, the DPP considers all juror protection measures before issuing a certificate, although these tended to assume a routine basis in some instances. For

example, the size of Northern Ireland and the tight-knit nature of the community, a factor in ruling out the effectiveness of jury sequestration, is considered in each case. These factors are unlikely to change from case to case. It would appear that only a reduction in assessments of paramilitary threat, rather than a change in the nature of the community, is likely to effect change in the feasibility of protective measures for juries.

### **PSNI response times**

9.34 The Community Safety Department of the PSNI has advised average response time by the PSNI to requests for further information by the PPS in relation to NJT cases in the period 1 August 2020 – 31 July 2021 was 78.8 days or 11 weeks. Regrettably, this is a marked increase from ‘around one month’, the response time reported in the previous period, and is also greater than the 7 week response time in the 12th report (2018-19). It would be unfortunate indeed to lose the improvements made in previous years, and so **I recommend that the PSNI examine the reasons for the increased delay in response times and take steps where possible to recover the slippage.**

9.35 I have concluded that the process of consideration of each case involves the degree of scrutiny and care that befits the gravity of the determination to institute a NJT. Nonetheless, it remains a concern that the basis for the decision to issue a certificate for a NJT remains undiscoverable under the JSA 2007 provisions for NJTs. This lack of transparency has been raised as a concern and it has been suggested that this could be mitigated by some form of Closed Material Procedure where a Special Advocate reviews evidence and acts on behalf of the accused so far as possible. This procedure has been found to be within the ECHR article 6 notably in *A. and Others v. United Kingdom*, Application no. 3455/05, 19 February 2009. **Should the NJT system under the JSA 2007 remain in use for longer than its current two year extension, I recommend that the benefits of a Closed Material Procedure be evaluated by the working group and I will report on this in my next report.**

### **Views of stakeholders**

9.36 The 12th report made two main recommendations in relation to NJTs, the first of which was “the NIO could, in addition to conducting their Consultation with interested parties

every two years, consider setting up a working party to look at the feasibility of using existing juror protection measures to reduce still further the number of NJTs.” (12<sup>th</sup> report).

9.37 The NIO has now implemented this recommendation, and the working group has been established. It is composed of representatives from: The Bar of NI; the Department of Justice NI; The Law Society of Northern Ireland; the NI Executive Tackling Paramilitarism, Criminality and Organised Crime Programme NI; NI Courts and Tribunals Service; NI Human Rights Commission; Northern Ireland Office; Police Service of Northern Ireland; Public Prosecution Service; Victim Support NI; together with the NI Policing Board Human Rights Advisor, John Wadham, Dr Johnny Byrne, University of Ulster, Dr Mark Coen, University College Dublin, Seamus Mulholland and Dr Kevin Brown, Queen’s University Belfast and Professor Clive Walker, Professor Emeritus University of Leeds. The working group held their inaugural meeting on 27 July 2021 and continued to meet monthly from July-December 2021, with further meetings planned for 2022.

9.38 The requirement for the working group is to:

- Identify practical measures and legal measures that could be taken to reduce the number of NJTs taking place.
- Identify the indicators that members would look to in order to be satisfied that the NJT provisions were no longer necessary.

9.39 The group was tasked with producing an interim briefing paper on requirement one for submission to me, which I have received. On completion of its proceedings, the working group will produce at least two briefing documents, one on each of their requirements and undertaken any further deliberations necessary to fulfil their brief.

9.40 I met with the working group in December 2021, had a useful discussion with them and was impressed with their range of expertise and the earnestness with which they

engaged with their tasks. I offer the remarks in this report for their consideration and look forward to their final reports and recommendations in due course.

- 9.41 The working group has been briefed on the measures, such as screening or sequestering juries and moving trials that are considered by the DPP in the course of their determination, discussed at paragraph 9.33.

### **Risks to jurors**

- 9.42 I note the Director of Liberty's remarks in his response to the 2017 consultation on the renewal of the NJT provisions within the JSA 2007. Whilst agreeing that "the state must take steps to protect the neutrality and safety of jurors, the Government has not adduced sufficient evidence to demonstrate that the threat to jurors in Northern Ireland is real, present and significant, nor did [they] believe it shown that there is a difference between Northern Ireland and other parts of the United Kingdom."

- 9.43 Also pertinent here are the (England and Wales) Lord Chief Justice's remarks in *KS v R* [2010] EWCA Crim 1756, where he overturned a decision to go to trial without a jury.

He stated:

*"The proposed protective measures must be proportionate to the threat." On the facts of the case the Court found that: "A fairly limited level of jury protection could reasonably be provided which would sufficiently outweigh the potential threat of jury tampering."*

- 9.44 Notwithstanding Liberty's 2017 remarks, at my meeting with the working group, I particularly noted the concerns of the PSNI concerning the risk involved in jury trials for defendants with, for example, known paramilitary links, and their wish to avoid 'creating more victims.' It is beyond question that the various armed groups in Northern Ireland have the capacity to threaten and do harm to juries. However, capacity alone does not indicate that such threats will be made. The DPP do not keep records of actual jury intimidation and I found only one case, (in 2021) of a juror facing threat Northern Ireland. Noting the value of having an independent body with the relevant expertise to assess the risks posed by Proscribed Organisations in this

jurisdiction, I recommend that the working group, or a person or persons with a suitable security clearance on behalf of the Group, obtain a contemporary and focused security risk assessment of the specific level of risk to juries, taking into account the capacity, goals and focus of contemporary active paramilitary organisations whose members routinely face jury trials.

#### **Level and extent of evidence required**

9.45 The anxiety expressed by PSNI personnel about placing jurors in potential harm's way must be taken very seriously. On the other hand, the risks to juries in Northern Ireland have greatly diminished since the 'bad old days' of the Troubles and the security situation has been transformed, and this, too, must be borne in mind. The key differences between the processes under the JSA 2007 and the CJA 2003 in establishing a NJT are shown in Table 9.6.

The first notable difference is in the standard of evidence required (see Table 9.8: 2) required under the CJA, namely, 1) evidence of risk is to the administration of justice (which may or may not include a risk of jury tampering) ; and 2) despite attempts to mitigate such risks, it is likely that the administration of justice may still be compromised.

This is in contrast to the procedure under the JSA 2007 set out above, which does not require admissible evidence, rather a perception of risk, based on the presence of one or more of the four Conditions, and the determination by the DPP that there might be a risk to the administration of justice.

A further difference between the JSA 2007 and the CJA 2003, noted at paragraphs 9.52 and 9.57 (f), is the grounds for challenge. One can only challenge the issue of a certificate under the JSA (Section 7) on grounds of dishonesty, bad faith, exceptional circumstances or breaches of law, whereas the CJA grounds allow a case to proceed without a jury and for appeal on a much wider range of grounds such unfairness or the interests of justice (see (R v Guthrie [2011] EWCA Crim 133 and R v Manaman [2016] EWCA Crim 3

Table 9.8: Comparison: CJA 2003 and JSA 2007 NJTs		
	Criminal Justice Act 2003	Justice and Security (Northern Ireland) Act 2007
<b>Jurisdiction</b>	England, Wales and Northern Ireland	Northern Ireland only
<b>Reason for a non-jury trial</b>	There is: 1) <u>evidence</u> of real and present danger of jury tampering; <u>and</u> 2) despite attempts to prevent jury tampering, it is <u>likely</u> that it would still occur. Under section 44(3) of the JSA, a Judge may discharge a jury where jury tampering appears to have taken place and may order that the trial is to continue without a jury if he is satisfied that the conditions of s.45(3) have been met.	There is a <u>risk</u> to the administration of justice (which may or may not include a risk of jury tampering). 1) The DPP <u>suspects</u> one of four conditions from a statutory test is met <u>and</u> 2) the DPP is satisfied that in view of this there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.
<b>Who requests?</b>	Prosecution makes a request to a judge of the Crown Court or a trial Judge (see above).	The Police Service of Northern Ireland (PSNI), or the Public Prosecution Service (PPS) make a request to the Director of Public Prosecutions (DPP),
<b>Who decides?</b>	Judge of the Crown Court	The DPP by following a statutory test
<b>How is the decision made?</b>	Two conditions must be fulfilled: 1) <u>evidence</u> of real and present danger of jury tampering; <u>and</u> 2) despite attempts to prevent jury tampering, it is <u>likely</u> that it would still occur.	DPP must conduct a statutory test set out in the JSA under which he must consider whether one (or more) of four key conditions is met and whether, in view of this, there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.
Original Source: Northern Ireland Office, but amended to expand certain points		

9.46 The Public Prosecution Service, who have provided the following clarification:

“1. A Certificate for non-jury trial in pursuance of section 1 of the JSA must be issued and served on the court in advance of arraignment. Arraignment usually takes place within four weeks of the case being committed for trial from the Magistrates Court to the Crown Court and at which the accused will be asked to enter a plea. Thus the Certificate must be presented at this relatively early stage in proceedings and before the defendant is required to enter a plea in the Crown Court.”



The PPS goes on to say that the provisions for NJTs under the CJA 2003 are quite different in that s. 44(4) states that: '(4) The first condition is that there is evidence of a real and present danger that jury tampering would take place.'

"2. The process is by application to the Crown Court Judge and the prosecution must prove by **admissible evidence** that either there is a real danger of jury tampering or it **has already taken place** in that case. **The standard of proof is beyond a reasonable doubt**. Section 44(6) CJA 2003 sets out the following non-exhaustive list of examples where there may be evidence of a real and present danger that jury tampering would take place:

- The trial is a retrial and the jury in the previous trial were discharged because jury tampering had taken place
- Jury tampering has taken place in previous criminal proceedings involving any Defendant
- There has been intimidation, or attempted intimidation, of any person who is likely to be a witness at the trial

9.47 The Crown Prosecution Service presentation to the working group demonstrated that such applications are extremely rare in England and Wales and those that were referred to related to the first limb above i.e. where jury tampering had already taken place in the case and application is made for the retrial to be heard by a judge alone. That particular example of evidence of a real and present danger of jury tampering, and the other examples to a lesser extent, inherently carry the risk of exposing relevant persons to acts of intimidation etc." (By email, December 2021)

### **Pre-emption versus reaction**

9.48 Whereas the NJT provisions under the JSA 2007 provide for the **pre-emption** of actual threat to juries, the CJA 2003 has rarely been used pre-emptively, presumably because of the requirement that evidence of threat or the threat must already have taken place. So in theory at least, the CJA 2003 could be used pre-emptively if the evidential tests can be met. I have already recommended the 'hardening' of at least some of

intelligence assessments contained in the NJT files in the PPS. It might be a useful exercise for those in the working group with the requisite clearance **to take one or more hypothetical or a concluded cases through the process of both the JSA 2007 and the CJA 2003 to:**

- a) **consider the information presented to the DPP to justify the need for a NJT and whether any of it could meet the standard required under the CJA 2003: and**
- b) **to highlight the difference in sequencing of decisions within the trial process might be and where the risk points might arise in terms of jeopardy to a potential jury. In this, I follow my predecessor's recommendation to proceed with a low risk case using the CJA 2003. In cognisance of**
- c) **the concerns about using a real case, even if completed, I recommend a walk-through of the process in a hypothetical but realistic case to highlight such risks.**

#### **Use of discretion not to issue a certificate**

9.49 The recommendation to use a hypothetical rather than a real case follows the second of the two recommendations in the 12th report that apply to NJTs. The second of these was that the DPP might use discretion not to issue a certificate where the statutory threshold is barely met (perhaps in conjunction with jury protection measures) and that any subsequent evidence of jury tampering could be addressed through the CJA 2003. In addition to those reservations expressed at paragraphs 9.44 and 9.45 by the PSNI, I am grateful to the PPS for their response to this idea. The PPS see several difficulties in going to jury trial with a 'low risk' case. Crucially, the DPP regard it as a matter for the legislature to determine the test that they ought to apply and consider that any alteration to this test would require legislative amendment, rather than a change of approach or policy by the DPP. If the DPP deems a case to have met the statutory test for an NJT under the JSA 2007, then they consider that they are legally obliged to proceed on that basis. Consideration of possible legal amendments are explored at paragraph 9.57 c).

9.50 The working group may wish to consider whether, as a step towards moving to the use of the CJA provisions for NJTs, allocating the responsibility of review of the NJT decision to a trial judge after the DPP's deliberations. Such a move might provide an interim stage in the direction of travel towards the adoption of the CJA 2003 provisions for NJTs. This would require legislation (see paragraph 9.51) but it could provide a useful preparatory stage, since judges are likely to seek intelligence that is closer to the evidential standard demanded by the CJA, even if the greater flexibility of the JSA 2007 is still available to them in the interim.

### **Changes to the law**

9.51 Faced with the (proper) reluctance of the DPP to depart from the written provision and guidance associated with the JSA 2007 on the one hand, and on the other with the arduous, complicated and lengthy process of legislative amendment, I will merely note that some or all of these difficulties might be resolved by amendments to the law as it stands.

### **Grounds for challenge a NJT certificate**

9.52 I met with the Chief Executive of the Bar, but it was not possible to meet with interested Members of the Bar of Northern Ireland on the issue of NJTs. Nonetheless, I note the Chief Executive's concerns also outlined in the response to the 2017 consultation, concerns which the working group may wish to consider:

"The Bar is also concerned that the ability to challenge the issue of certificates by the DPP is subject to very stringent limitations. The right to legal challenge, particularly by way of judicial review, is an important basic right. However the inclusion of Section 7 within the 2007 Act allows for a legal challenge "only on the grounds of dishonesty, bad faith or other exceptional circumstances, such as lack of jurisdiction or error of law. The Bar takes the view that these grounds are too narrowly defined at present."  
(CONSULTATION RESPONSE PAPER: Outcome of the public consultation on non-jury trial provisions Justice and Security (Northern Ireland) Act 2007)

In the light of this concern, the test for judicial re-consideration of the DPP's decision could be broadened to make it closer to an appeal. Again, this would require legislation (see paragraph 9.56 onwards).

### **Jury Bias specific to Northern Ireland**

9.53 In the Supreme Court judgment in the case of *Hutchings* [2019] UKSC 26 the Court held that the DPP was correct in law to base his decision on Condition 4, namely that the offence “was committed to any extent (whether directly or indirectly) as a result of, or in connection with or in response to religious or political hostility of one person or group of persons towards another person or group of persons”. Notwithstanding the unusual nature of that case, it has long been considered that religious or political hostility in Northern Ireland exists at exceptionally high levels and thus provides grounds for satisfying the fourth Condition for issuing a NJT certificate. The reference to *Jordan* [2014] NICA 76 in *Hutchings* (para 32) refers to the particular problems in Northern Ireland posed by “[w]hat were described by that court as “tribal loyalties”. Deepening political polarisation elsewhere in the UK and beyond may mean that Northern Ireland is perhaps not as exceptional as commonly thought. For example, research by The Policy Institute in 2019 concluded that: “It is difficult to avoid the conclusion that Britain is dividing, but ... not into two monolithic blocs around Brexit. It has been longer in the making than that, with more dimensions.”<sup>63</sup> Historic divisions in Northern Ireland show marked signs of change. For example, the 2020 Northern Ireland Life and Times Survey (NILT) found that 42% of respondents considered themselves neither unionist nor nationalist, including people who would have considered themselves unionist or nationalist five years ago. **In considering matters of jury bias in future, I recommend that those making these assessments take particular account of more recent societal changes in Northern Ireland and satisfy themselves that the conditions are sufficiently different to those elsewhere.**

### **Managing change**

9.54 In discussions with the various stakeholders I have discerned a certain resistance to ceasing the current arrangements for NJT and reverting to sole reliance on the

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<sup>63</sup> The Policy Institute, 2019: *Divided Britain: Polarisation and fragmentation trends in the UK*. King’s College, London.

provisions for NJTs under the CJA 2003. Whilst much of this is undoubtedly founded in concerns about placing members of the public on jury service at risk, a previous report noted “an inbuilt bias against any more “normalization” and the repeal of the NJT provisions” (12th report paras 15.6-15.7) There, the rationale for wishing to maintain the 2007 JSA status quo was summarised:

*(a) the current system is efficient, works well and delivers fair trials;*

*(b) nothing should change until the conditions for change are absolutely right (“the perfect being the enemy of the good” in the words of one commentator);*

*(c) the current arrangements for NJTs is the easier and safer option – removing NJTs would be a bold step.*

*15.7 If there is to be a move away from NJTs ... then some proactive measures – not without risk – will have to be taken”.*

I do not wish to minimise the concerns of those who favour a retention of the current status quo in relation to NJTs in Northern Ireland. When the JSA was enacted in 2007, it was seen as a ‘bridging’ measure which would help the transition of the Northern Ireland system towards the system pertaining in England and Wales. Yet fifteen years later, there is little evidence of that East-West transition in the case of NJTs. Worry about the level of risk to jurors may perhaps be reinforced by worries about the process of change itself.

### **Jury protective measures**

9.55 Section 10-13 of the JSA 2007 set out mitigations to the risk to juries, namely restrictions on disclosure of juror information, (s10), Chief Electoral Officer to provide additional information to Juries Officer (s11), Jurors found to be disqualified before being summoned, (s12), and Abolition of peremptory challenge in criminal cases (s13). **I recommend that a review of the effectiveness of these measures be conducted within which consideration be given to further improvements or amendments that would increase the viability of jury trial. The review should also consider additional, new measures that could take account of the specific conditions in Northern Ireland.**

9.56 The task facing the working group is complex and demanding and we owe them our gratitude for their professionalism and expertise. At my meeting with them in December, I suggested that, rather than listing proposed changes to the NJT system as it currently operates, they might **consider a roadmap with a number of way-stations en route (perhaps each requiring some legislative change) to the final destination of reducing the numbers of NJTs in Northern Ireland and ultimately of reverting to NJTs under the CJA 2003. At each way-station where legislative change is called for, this could be drafted and added to the Act itself, but implemented by secondary legislation.**

9.57 The precise drawing of such a road map would require a detailed examination of the current legal provisions, designing and drafting provisions that would interlock with those currently in place, anticipating the choreography of the extent and timing of implementation and consulting key stakeholders. The overall task would be to incrementally adopt more of the CJA 2003 provisions, whilst recognising that small legal tailoring of the UK legislation will permit Northern Ireland and other places that face similar risks to operate under the mainstream UK legislation. Amongst the measures and issues that might be considered are:

- a) Adding a provision to the JSA 2007 giving power to the Secretary of State to use secondary legislation to add or remove parts of the Act as the staging posts are agreed.
- b) This would require the details of each of the parts to be added or removed to be precisely drafted, perhaps in a new schedule to the Act.
- c) These parts might include:
  - i. JSA 2007 ss 10-13 becoming re-enacted elsewhere;
  - ii. an added statement in the guidance of the JSA 2007 of a presumption in favour of jury trial, which would insert a clearer burden of proof;
  - iii. amend section 1(2) of the JSA 2007 so that the DDP 'believes' or 'reasonably suspects' the ground(s) and/or that there is a 'real and present risk' to the administration of justice and a substantial likelihood of it taking place

despite any mitigation. These phrases draw upon the CJA 2003, section 44(4) and (5), and could replace the phrase in section 1(2)(b)).

- iv. insert into the JSA 2007, section 1, a requirement to consider the viability of the CJA 2003 as a further formal test, as in the DPP's Guidance (para.30) but elevating it to a legal test rather than just an administrative consideration
- v. restrict or remove some of the Conditions in the JSA 2007, moving towards a reliance on Conditions 2 and 3, thus moving closer to the provisions of the CJA 2003.

- d) Review by working group of samples of real cases (see paragraph 9.48).
- e) Removing or amending one or more of the Conditions. Condition 4 may prove a worthy candidate.
- f) Building in to the process of instituting a NJT the provision that 'special advocate' with DV clearance may review the material on behalf of the Defendant in order to challenge the issuance of a NJT certificate. The 'special advocate' would report directly to the judge not the defendant.
- g) Relocating the issuance of NJT certificates in whole or in part to a judge.
- h) Providing wider grounds for a substantive appeal to the defendant.
- i) Begin to move from the current assessment's basis on intelligence to 'on the balance of probabilities' en route to 'beyond reasonable doubt.

9.58 The working group may wish to consider the details over the coming period. They may require access to independent legal expertise who can be tasked to undertake the research and drafting, as well as analysing how the JSA 2007 might function in relation to each proposed change.

9.59 Such an incremental approach may seem slow and painstaking. However, the current review process does not appear to have moved us much closer to the UK status quo over the last 15 years. The legislation has not changed in 15 years yet the conditions on the ground and practice have. There are comparatively few cases, suggesting that the time is ripe for change.

9.60 Legislative change is slow and costly, and there may be little appetite for making a series of amendments to the JSA 2007, which would need to be made in the UK Parliament. Yet it may be necessary to consider such a step in the long run in order to achieve some harmonisation of practice in the matter of NJTs, given the persistent differences in the level of threat in Northern Ireland and the rest of the UK. Parliament is sometimes reluctant to allow a government to change the statute law by secondary legislation but in this case, the prize of moving towards re-establishing the status quo on jury trial might prove persuasive. The conclusions to the 13th report, recommends that:

‘if there were a decision not to renew these provisions it should be accompanied by legislation permitting their immediate reintroduction by order (approved by both Houses). This should give some comfort to those who are nervous of change and think that it would be premature – and, of course they may in due course be proved right. However, after 14 years, a robust examination of the need for these provisions is now required.’ (13.8 of 13th report)

Were additional legislation, whether of this nature or some amendment to the CJA 2003 to address the issue of pre-emption set out above, a roadmap that describes the way in increments to some small amendment to the CJA 2003 or other legislative change may smooth the path to change. I look forward to the outcome of the working groups’ deliberations, however and in no way wish to pre-empt their conclusions.

### **Views of external parties**

9.61 Throughout the year, I met with a wide range of individuals and groups and discussed inter alia NJTs. In general, the human rights organisations such as the Committee for the Administration of Justice and the Northern Ireland Human Rights Commission (NIHRC) expressed concern for the human rights consequences of the continuing use of small but significant numbers of non-jury proceedings.

9.62 It is notable that in October 2021, Sinn Féin supported, albeit equivocally, the use of NJTs in the Republic of Ireland under special circumstances, although their use is opposed by others such as Irish Human Rights and Equality Commission and the Irish



Law Society. The outcome of the Independent Review Group formed in February 2021 and chaired by Mr Justice Michael Peart which is examining the Offences Against the State Act has yet to be announced.

- 9.63 In its response to the NIO's consultation on NJTs, the NIHRC welcomed the Government's commitment to ending NJTs in Northern Ireland when "safe and compatible" with the interests of justice, but noted with concern that the JSA 2007 measures were being extended for the seventh time. They criticised the lack of clear guidance from the NIO on the conditions for the "safe and compatible test" - a lack that may well be met at least in part by the outputs of the working group.
- 9.64 The NIHRC worried that the JSA 2007 was becoming 'normalised' as a semi-permanent arrangement when it was designed as a temporary measure and cited the Committee against Torture's 2013 recommendation to "continue moving towards security normalisation in Northern Ireland and envisage alternative juror protection measures" whilst pointing to "the lack of progress to date in considering the development of alternative measures, which would avoid the necessity of the NJT provisions."
- 9.65 In their 2021 Annual Statement, the NIHRC stated that they respected the decision to continue provision for NJTs only if and when absolutely necessary and recommended the implementation of measures to ensure the principles of necessity and proportionality are reflected within any authorisation. Welcoming the working group, they recommended practical measures to determine the conditions whereby the use of NJTs will be discontinued.

## **PART 3 – CONCLUSIONS**

### **10. Conclusions relating to exercise of powers and NJTs**

10.1 Whilst the powers are still needed, further and careful monitoring to ensure effective and fair targeting of the exercise of stop and search powers is required.

10.2 Powers under the JSA are intrusive and can easily alienate sections of the community if not carefully targeted and their use is not seen to be justified. Where certain powers are targeted at particular communities, such alienation has unfortunately arisen. The 13th report concluded by noting three other factors which lower confidence in policing in Northern Ireland, and unfortunately still persist:

- a) the perceived failure by the PSNI to deal quickly and effectively with drugs and low level anti- social behaviour;
- b) the loss of neighbourhood policing (and the frequent relocation of officers which impedes the development of trusting relationships at community level); and
- c) apparent inconsistencies in public order policing and a failure to explain them adequately.

10.3 The PSNI have had some success this year in policing violent paramilitary groups and although there is continued unrest surrounding the BREXIT Protocol, the security situation has stabilised.

10.4 This year, allegations of two tier policing from PUL communities and the release of figures showing much higher arrest rates for those from the CRN community is a reminder of the need not only for policing to be fair and proportionate but to be seen to be so. Those various agencies and bodies charged with responsibility for oversight of police practice play a key role in demonstrating the accountability of the police and assisting them to achieve the highest standards of probity. This report, and the intent of the establishment of this Independent Review role is likewise to assist and support the police in achieving these high goals.

## **The JSA safeguards need to be kept under review**

10.5 The 13th report cited Treacy LJ's conclusions in the Court of Appeal in **Ramsey**:

***"The identification by these review processes of improvement and the willingness to identify and implement such is a measure of how effective such safeguards can be".***

Thus, the implementation of outstanding recommendations from previous reports alongside any additional recommendations contained in this report form part of safeguard mechanisms in the eyes of the Court.

## **Outstanding issues which remain to be addressed**

10.6 There are four areas where further action by the PSNI is needed. From previous reports:

- i. progress is long overdue on the issue of community monitoring. The 13th report found that there was then "no reason for not doing it - indeed there is a legal duty to do it" (see paragraph 5.6 of 13th report).
- ii. the problem of not being able to obtain a copy of the search record without having to visit a police station referred to in paragraph 7.20 of the 13th report remains unresolved;
- iii. there is continued concern about the impact of the use of stop and search on children i.e. people under 18, and the way in which such stops and searches are conducted.
- iv. the PSNI's use of the media to publicise operations involving the arrest of individuals may contain sufficient identifying information to allow individuals to be identified. The PSNI may wish to consider their duties to protect the identities of those not yet convicted of a crime.

10.7 My recommendations are listed in the executive summary at section two of this report.

## **ANNEX A      ACRONYMS**

AAD	Action Against Drugs
AEP	Attenuating Energy Projectiles
BWV	Body Worn Video
CAJ	Committee for the Administration of Justice
CIA	Community Impact Assessment
CIRA	Continuity IRA
CiT	Communities in Transition
CJINI	Criminal Justice Inspection Northern Ireland
CRN	Catholic National Republican
CRN	Community Resolution Notice
DOJ	Department of Justice
DPIA	Data Protection Impact Assessment
DPP	Director of Public Prosecutions
DR	Dissident Republican
DUP	Democratic Unionist Party
DV	Developed Vetting
EA	Education Authority
ECHR	European Convention of Human Rights
EOD	Explosive Ordnance Disposal
EU	European Union
EWCA	England and Wales Court of Appeal
FETO	Fair Employment and Treatment (Northern Ireland) Order
FCIA	Full Community Impact Assessment
FOI	Freedom of Information
GDPR	General Data Protection Regulation
HMIC	Her Majesty's Inspectorate of Constabulary
HMP	Her Majesty's Prison
IAG	Independent Advisory Group
ICO	Information Commissioner's Office
IED	Improvised Explosive Device
IOPC	Independent Office for Police Conduct

IRA	Irish Republican Army
IRTL	Independent Reviewer of Terrorism Legislation
JSA	Justice and Security (Northern Ireland) Act 2007
LCC	Loyalist Community Council
MOD	Ministry of Defence
NCA	National Crime Agency
NIA	Northern Ireland Act
NICA	NI Court of Appeal
NICCY	NI Commissioner for Children and Young People
NICS	NI Court Service
NIHRC	Northern Ireland Human Rights Commission
NIO	Northern Ireland Office
NIPB	Northern Ireland Policing Board
NIQB	NI Queen's Bench
nIRA	New Irish Republican Army
NIRT	Northern Ireland Related Terrorism
NJT	Non-Jury Trial
NISRA	NI Statistics and Research Agency
ONH	Oglaigh na hEireann
PACE	Police and Criminal Evidence (Northern Ireland) Order 1989
PCTF	Paramilitary Crime Task Force
POFA	Protection of Freedoms Act 2012
PONI	Police Ombudsman for Northern Ireland
PPS	Public Prosecution Service
PPDG	Police Powers Development Group
PSA	Paramilitary Style Attack
PSNI	Police Service of Northern Ireland
PPS	Public Prosecution Service
PUL	Protestant Unionist Loyalist
QC	Queen's Counsel
TACT	Terrorism Act 2000
TPP	Tackling Paramilitarism, Criminality and Organised Crime Programme
TSG	Tactical Support Group

UKSC United Kingdom Supreme Court

YIAG Young People's Independent Advisory Group

VBIED Vehicle Borne Improvised Explosive Device

## **ANNEX B      ORGANISATIONS AND INDIVIDUALS CONSULTED**

### **Government**

Madeleine Alessandri, Permanent Secretary, Northern Ireland Office

Mark Larmour, Political and Security Director, Northern Ireland Office

Officials from the Political Affairs and Security and Protection Group

Peter May, Permanent Secretary, Department of Justice

Julie Harrison, Director, Safer Communities, Department of Justice

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

### **Policing/Security**

Simon Byrne, Chief Constable, Police Service of Northern Ireland and members of the senior management team

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

Officers from Strand Road PSNI Station, Derry/Londonderry

Ewan Anderson, President, and other representatives, The Superintendents' Association of Northern Ireland

Mark Lindsay, Chairman, Police Federation for Northern Ireland

Brigadier James Senior CBE, Commander 38 (Irish) Brigade and NI Garrison (and Joint Military Commander, Northern Ireland) and staff from his Headquarters  
Director V, MI5

John Wadham, Human Rights Advisor, Northern Ireland Policing Board

Adrian McNamee, Director of Performance, Northern Ireland Policing Board  
Performance Committee, Northern Ireland Policing Board

Matt Parr, Her Majesty's Inspector of Constabulary (HMIC) Marie Anderson, The Police Ombudsman

Paul Holmes, Senior Director of Investigations, The Police Ombudsman's Office

### **Legal**

Lord Chief Justice, Sir Declan Morgan PC QC (retired)

Lady Chief Justice, The Right Honourable, Dame Siobhan Keegan

Stephen Herron, Director of Public Prosecutions, The Public Prosecution Service for



Northern Ireland

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

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

David Mulholland, Chief Executive, The Bar of Northern Ireland

Jacqui Durkin, Chief Inspector, Criminal Justice Inspection Northern Ireland

James Corrigan Deputy Chief Inspector, Criminal Justice Inspection Northern Ireland

### **Independents**

David Seymour, Independent Reviewer (NI) JSA from 2014- 2020

Jonathan Hall QC, Independent Reviewer of Terrorism Legislation

Alyson Kilpatrick, Barrister and Former Policing Board Advisor (now NIHRC Chief Commissioner)

### **Political**

Doug Beattie, Ulster Unionist Party

John Blair, Alliance Party of Northern Ireland

Sinéad Bradley, Social Democratic and Labour Party

Sir Jeffrey Donaldson, Democratic Unionist Party

Dr John Kyle, Progressive Unionist Party (at that time)

Billy Hutchinson, Progressive Unionist Party

Gerry Kelly, Sinn Féin

Colin Halliday, South Belfast Ulster Political Research Group

Jackie McDonald, South Belfast Ulster Political Research Group

### **Statutory Bodies**

Les Allamby, Chief Commissioner Northern Ireland Human Rights Commission (at that time)

Dr Evelyn Collins, Chief Executive, Equality Commission for Northern Ireland

John McBurney, Independent Reporting Commission

Professor Monica McWilliams, Independent Reporting Commission

Tim O'Connor, Independent Reporting Commission

Mitchell Reiss, Independent Reporting Commission

## **Youth Sector**

Koulla Yiasouma, Northern Ireland Commissioner for Children and Young People

Mairead McCafferty, Chief Executive, Northern Ireland Commissioner for Children and Young People

Paddy Kelly, Director Children's Law Centre

Claire Kemp, Policy Officer Children's Law Centre

Dr Paula Rogers, Policy Coordinator, Include Youth

Chris Quinn, Director, Northern Ireland Youth Forum

Peter Nixon, Senior Youth Worker, Engage

## **Community and Voluntary Sector**

Brian Gormally, Director, Committee on the Administration of Justice Northern Ireland

Winston Irvine, Ex-Prisoners Interpretative Centre

Gerry McConville, Director, Falls Community Council

Betty Carlisle and Colleagues, Shankill Women's Centre

Fr Gary Donegan, Tobar Mhuire retreat Crossgar and the Passionist Peace and Reconciliation Office, Belfast

Michael Culbert, Director, Coiste

Reverend Mervyn Gibson, Grand Secretary, Orange Order

Debbie Watters, Co-Director, Northern Ireland Alternatives

Jim Auld, Director, Conflict Resolution Services, Ireland

Harry Maguire, Director, Community Restorative Justice Ireland, Belfast

Jim Roddy, City Centre Manager, City Centre Initiative, Derry/Londonderry

Martin Connolly, Co-ordinator, Community Restorative Justice Ireland

Martin Anderson and others, Community Restorative Justice Ireland

Noel McCartney, Retired Co-Ordinator, Community Restorative Justice Ireland

Ann-Marie McKee, Traveller Project, Community Restorative Justice Ireland

Patrick Mongan, Member of the Travelling Community

Leanne Abernethy, Restorative Practitioner, AIMS Project, Ballymoney

Kenny Blair, AIMS Project, Ballymoney

Ballymacash Women's Group

Community Meeting, Harpur's Hill Community Centre, Coleraine

Community Meeting, Limavady (Radisson Park Hotel)

Conal McFeely, Development Executive, Rath Mór Centre, Creggan

Paul O'Connor, Director, Pat Finucane Centre

John O'Doherty, Director, The Rainbow Project

Alexa Moore, Transgender NI

Cara McCann, Director, HEReNI

Steve Williamson, Director, Carafriend

### **Charities**

Peter Sheridan, Chief Executive Co-operation Ireland

Anne Molloy, Head of Office Regional Delegation for the UK and Ireland, International Committee of the Red Cross (ICRC)

Joanna Wronka, ICRC

### **Academics**

Professor Chris McCrudden, The Queen's University of Belfast

Professor Clive Walker, University of Leeds

Professor Duncan Morrow, Ulster University

Dr John Topping, The Queen's University of Belfast

Dr Jonny Byrne, Ulster University

### **Group Meetings**

Round table meeting at The White House, Newtownabbey

Non-Jury Trials Working Group, Northern Ireland Office

Sean Feenan, The Reference Group

Avila Kilmurray, The Reference Group

## ANNEX C      SUMMARY OF POWERS IN THE JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007 AND TERRORISM ACT 2000

### Part 1

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

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

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

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

## Part 2

This summary sets out the powers in the Terrorism Act 2000 (TACT 2000) which are used by the PSNI and which are covered in the Code of Practice. For a full description of the powers reference should be made to the relevant section of TACT 2000. More details on how the powers should be exercised are set out at the relevant sections of the Code.

Section	Power	Overview	Records
43	A constable may stop and search a person whom he reasonably suspects to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.	A “terrorist” is defined in section 40 as a person who has committed one of a number of specified terrorist offences or a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism. And the definition of “terrorism” is found in section 1 of TACT 2000. A constable may seize and retain anything which he discovers in the course of a search of a person under subsection (1) or (2) and which he reasonably suspects may constitute evidence that the person is a terrorist.	A written record of each stop and search must be made, preferably at the time. The officer should provide the written record to the person searched or, if this is wholly impracticable, provide the person with a unique reference number stating how the full record of the search can be accessed. The person may request a copy of the record within 12 months of the search. The record is to set out all the information listed at paragraph 10.4 of the Code, including the person’s name, the date, time and place of the search, the purpose, grounds and outcome of the search and the officer’s warrant or other identification number and the police station to which the officer is attached.
43(2)	A constable may search a person arrested under section 41 of TACT 2000 to discover whether he has in their possession anything which may constitute evidence that he is a terrorist.	A constable may seize and retain anything which he discovers in the course of a search of a person under subsection (1) or (2) and which he reasonably suspects may constitute evidence that the person is a terrorist.	A written record of each stop and search must be made, preferably at the time. The officer should provide the written record to the person searched or, if this is wholly impracticable, provide the person with a unique reference number stating how the full record of the search can be accessed. The person may request a copy of the record within 12 months of the search. The record is to set out all the information listed at paragraph 10.4 of the Code, including the person’s name, the date, time and place of the search, the purpose, grounds and outcome of the search and the officer’s warrant or other identification number and the police station to which the officer is attached.

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



Section	Power	Overview	Records
43A	<p>A constable may, if he reasonably suspects that a vehicle is being used for the purposes of terrorism, stop and search (a) vehicle, (b) the driver of the vehicle, (c) a passenger in the vehicle, (d) anything in or on the vehicle or carried by the driver or a passenger to discover whether there is anything which may constitute evidence that the vehicle is being used for the purposes of terrorism.</p>	<p>The definition of “terrorism” is found in section 1 of TACT 2000. A constable may seize and retain anything which he discovers in the course of a search under this section, and reasonably suspects may constitute evidence that the vehicle is being used for the purposes of terrorism. A constable may, if necessary, use reasonable force to exercise this power.</p>	<p>A written record of each stop and search must be made, preferably at the time. The officer should provide the written record to the person searched or, if this is wholly impracticable, provide the person with a unique reference number stating how the full record of the search can be accessed. The person may request a copy of the record within 12 months of the search. The record is to set out all the information listed at paragraph 10.4 of the Code, including the person’s name, the registration number of the vehicle, the date, time and place of the search, the purpose, grounds and outcome of the search and the officer’s warrant or other identification number and the police station to which the officer is attached.</p>

## Corporate Policy

## SERVICE INSTRUCTION

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<b>SI Identification Number</b>	SI0321
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<b>Policy Ownership</b>	Operational Support Department
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<b>Issue Date</b>	02/09/2021
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<b>Review Date</b>	5 years from issue date
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<b>Last Updated</b>	
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<b>Governing Service Policy</b>	Police Search
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<b>Cancellation of</b>	
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<b>Classification</b>	<b>OFFICIAL [PUBLIC]</b>
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**SI0321****Stop and Search**

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



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## 1. Introduction

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

Personnel involved in stop and search should, where applicable:

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

## 2. Aims

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

## 3. Fair and Effective Stop and Search

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

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

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

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

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

**A stop and search is most likely to be fair and effective when:**

- The search is justified, lawful and stands up to public scrutiny;
- The officer has genuine and objectively reasonable suspicion that s/he will find a prohibited article or item for use in crime;

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

**Four core elements underpin this definition:**

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

## 4. Powers of Search

### Powers requiring Reasonable Grounds for Suspicion

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

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

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

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

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

- **P**ower used;
- **D**etained for purpose of search;
- **G**rounds;
- **O**bject of the search;
- **W**arrant card if not in uniform;
- **I**dentification;
- **S**tation attached to; and
- **E**ntitlement to a copy of the record.

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

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

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

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

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

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

## 5. Recording

### Body Worn Video

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

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

### PACE 1/TA

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

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

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

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

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

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

## 6. Supervision and Monitoring

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

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

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

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

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

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

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

## 7. Children and Young People

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

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



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

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

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

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

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

## 8. Gender of searching officer

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

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

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

## 9. Transgender

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

## 10. Accountability

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

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

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

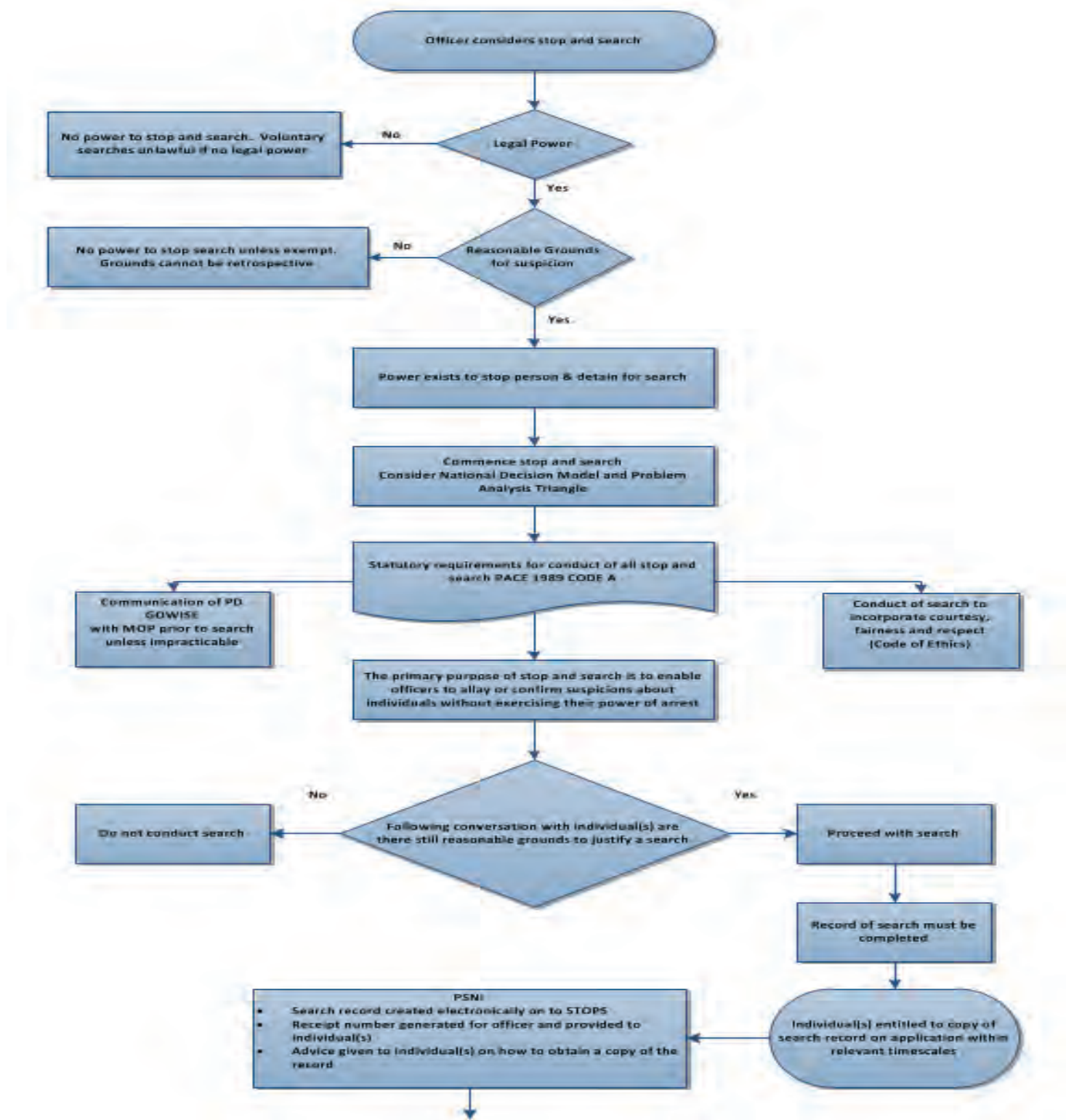
## 11. Human Rights

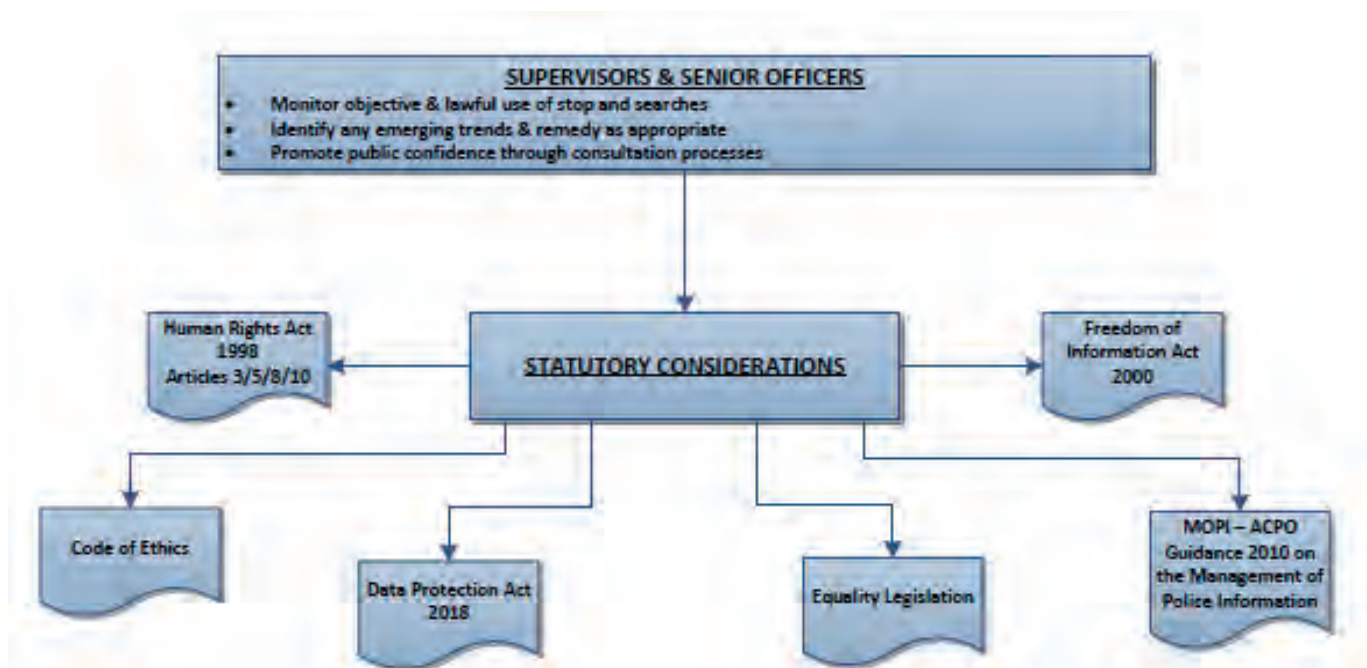
Officers should be mindful that the following articles of the [Human Rights Act 1998](#) could be engaged during stop and search:

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

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

## Appendix A Flowchart Process





## Appendix B Contact Us

**Service Instruction Author**

Inspector P021554

**Branch Email**

[zstopsearch@psni.police.uk](mailto:zstopsearch@psni.police.uk)

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

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

1) **Name of Applicant:**

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2) **Length of Authorisation:**

For the purposes of calculating a 14 day period (**the maximum period available**), the day on which an authorisation is given is deemed to constitute a full day, regardless of the time it is authorised. For example, an authorisation given at 08.00hrs on 1 November must end no later than 23.59hrs on 14 November. It cannot run until 07.59hrs on 15 November (Please see Explanatory Notes for details).

Please note that the duration of an authorisation should be “**no longer than is necessary**”.

Authorisations must not be for the full 14 day period unless this is necessary.

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

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

Entire Area of Northern Ireland	[ ]	Map Attached	[ ]
Specific Area	[ ]	Map Attached	[ ]

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

Authorising Officers should only use the power when they **reasonably suspect** that the safety of any person might be endangered by the use of munitions or wireless apparatus, and he / she reasonably considers the authorisation **necessary** to prevent such danger (Please see Explanatory Notes for more detail).

Para 4A, Schedule 3 is required:

- To prevent endangerment to persons by the use of munitions or wireless apparatus
- To prevent and detect further terrorist incidents
- To protect the life of Police personnel
- To protect the lives of the wider community

5) **Authorising Officer:**

Authorising Officers must hold **substantive or temporary ACPO rank**. Officers **acting** in ACPO ranks may **not** authorise the use of **Para 4A, Schedule 3 powers**.

Signature.....	Date/Time Of Oral Authorisation (If applicable)
Print Name/Rank.....	.....
Date Signed.....	Authorising Officer Of Oral Authorisation
Time Signed/Authorised from.....	.....

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

1) **Authorising Officers Rationale**

2) **Authorising Officer Contact and Telephone Number:**

3) **PSNI Human Rights Legal Advice**

The Authorising Officer has sought advice from the PSNI Human Rights Legal Adviser that the authorisation complies with the legislation and Code of Practice. A copy of the advice is set out below

**4) Assessment of the threat:**

Authorising Officers should provide a detailed account of the intelligence which has given rise to reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. This should include classified material where it exists (Please see Explanatory Notes for more details).



**5) Relevant Information and/or circumstances over recent period:**

If an authorisation is one that covers a similar geographical area to the one immediately preceding it, information should be provided as to how the current situation has changed, or if it has not changed that it has been reassessed and remains relevant (Please see Explanatory Notes for more details).

6) **The use of Para 4A, Schedule 3 powers of the Justice & security Act (Northern Ireland) 2007 rather than other powers of stop and search:**

Authorising Officers should explain how the use of **Para 4A, Schedule 3** powers is an appropriate response to the circumstances and why powers under S.43 and S.43A of the Terrorism Act 2000 or other PACE powers are not deemed sufficient (Please see Explanatory Notes for more details).

7) **Description of and reasons for geographical extent of authorisation:**

Authorising Officer should identify the geographical extent of the Authorisation and should outline the reasons why the powers are required in a particular area. A map is provided at Appendix D (Please see Explanatory Notes for more details).

The geographical extent of an authorisation should be “**no greater than necessary**”

8) **Description of and reasons for duration of authorisation:**

Authorising Officer should identify the duration of the Authorisation and should outline the reasons why the powers are required for this time.

The duration of an authorisation should be “**no greater than necessary**”

**9) Details of briefing and training provided to officers using the powers:**

Authorising Officers should demonstrate that all officers involved in exercising **Para 4A, Schedule 3** powers receive appropriate training and briefing in the use of the legislation and understand the limitations of these powers (Please see Explanatory Notes for more details).

**10) Practical Implementation of powers:**

The Authorising Officer should provide information about how the powers will be used and why. This may include the use of vehicle checkpoints, stops and searches of individuals operating in the area of the residences of security force members or security force establishments or other recognised targets of terrorist attack (depending on the nature of the threat). The authorising officer should indicate whether officers will be instructed to conduct stops and searches on the basis of particular indicators (e.g. behavioural indicators, types of items carried or clothes worn, types of vehicles etc), or whether the powers will be exercised on a random basis. If the powers are to be exercised on a random basis, the authorising officer should indicate why this is necessary and why searches based on particular indicators are not appropriate.

**11) Community engagement and accountability:**

The Authorising Officer should provide a detailed account on the steps that have been taken to engage those communities that will be affected by the authorisation. Where it has not been possible to carry out community engagement prior to authorisation, the Authorising Officer should carry out a retrospective review of the use of the powers (Please see Explanatory Notes for details).

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**12) Policing Board engagement:**

Authorising Officers making **Para 4A, Schedule 3** authorisations should notify and engage with the Policing Board (Please see Explanatory Notes for details).

Date Policing Board notified, engaged and review completed:	NIPB contact:
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**13) (If applicable) Senior Officer Cancellation / Amendment:**

If at any stage during an authorisation the authorising officer ceases to be satisfied that the test for making the authorisation is met, they must cancel the authorisation immediately and inform the Secretary of State.

A Senior Officer may also amend an authorisation by reducing the geographical extent of the authorisation or the duration or by changing the practical implementation of the powers. Where an authorisation is so amended, the Secretary of State must be informed.

Cancellation / Amendment	
Signature.....	Date signed.....
Print Name/Rank.....	Time signed.....
Details of cancellation / amendment:	

**A summary of use of these Powers during the most recent authorisation is attached at Appendix C for information.**

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

### JSA 1

<b><u>Point 2</u></b>	<p><b><u>Length of authorisation</u></b></p> <p>Start time is the time and date at which the authorising officer gives an oral authorisation or signs a written authorisation, whichever is earlier. The <b>maximum</b> period for an authorisation is <b>14 days</b>, and authorisations should <b>not</b> be made for the maximum period unless it is necessary to do so based on the intelligence about the particular threat. Authorisations should be for no longer than necessary. Justification should be provided for the length of an authorisation, setting out why the intelligence supports the amount of time authorised. If an authorisation is one which is similar to another immediately preceding it, information should be provided as to why a new authorisation is justified and why the period of the initial authorisation was not sufficient. Where different areas or places are specified within one authorisation, different time periods may be specified in relation to each of these areas or places – indeed the time period necessary for each will need to be considered and justified. For the purposes of calculating a 14 day period, the day on which an authorisation is given is deemed to constitute a full day, regardless of the time it is authorised. For example, an authorisation given at 08.00hrs on 1 November must end no later than 23.59hrs on 14 November. It cannot run until 07.59hrs on 15 November. Authorising officers <b>must</b> assure themselves that the Authority does <b>not</b> run for more than the statutory 14 day limit. In the case of a new authorisation, an authorisation can be given before the expiry of the previous one if necessary.</p> <p>PSNI may authorise the use of section Para 4A, Schedule 3 powers for less than forty-eight hours, however, <b>continuous use of 48 hour-long authorisations, whereby the powers could remain in force without Ministerial confirmation is not justifiable and would constitute an abuse of the provisions.</b></p>
<b><u>Point 4</u></b>	<p><b><u>Reason for exercising Para 4A, Schedule 3 powers</u></b></p> <p>The test for authorising JSA powers is that the person giving it: must reasonably suspect that the safety of any person might be endangered by the use of munitions or wireless apparatus and reasonably considers the authorisation necessary to prevent such an act and that the area(s) or place(s) specified in the authorisation are no greater than is necessary and the duration of the authorisation is no longer than is necessary to prevent such an act.</p>

### JSA 2

<b><u>Point 1</u></b>	<p>If an authorisation is one which covers a similar geographical area to one which immediately preceded it, information should be provided as to how the intelligence has changed since the previous authorisation was made, or if it has not changed, that it has been reassessed in the process of making the new authorisation, and that it remains relevant, and why.</p> <p><b>Whilst it is possible to issue successive authorisations for the same geographic areas, this will only be lawful if it is done on the basis of a fresh assessment of the intelligence, and if the authorising officer is satisfied that the authorisation is justified.</b></p>
<b><u>Point 4</u></b>	<p><b><u>Assessment of the threat</u></b></p> <p>The Authorising Officer should provide a detailed account of the intelligence which has given rise to reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. This should include classified material where it exists. Threat Assessments from International Terrorism and Dissident Irish Republican Terrorism are provided by JTAC and MI5. Assessments of the threat to various aspects of the UK infrastructure, such as aviation, transport, military establishments are available and if necessary should be sought. If reference is made to JTAC or MI5 assessments, Authorising Officers should ensure that these references are to current material. A high state of alert may seem enough in itself to justify an authorisation of powers; however it is important to set out in the detail the relationship between the threat assessment and the decision to authorise.</p> <p>Intelligence specific to particular dates may still be included, even if the relevant date has passed, if it is still believed to be current.</p>
<b><u>Point 5</u></b>	<p><b><u>Information and/or circumstances over the recent period</u></b></p> <p>Authorising Officers should provide information relating to recent events that are <b>specific</b> to the</p>

	authorisation. Under this section an Authorising Officer should identify any current situations where terrorist activity may have increased <b>and</b> there is evidence to suggest this.
<b><u>Point 6</u></b>	<p><b><u>The use of Para 4A, Schedule 3 of the Justice &amp; Security Act (Northern Ireland) 2007 rather than other powers of stop and search</u></b></p> <p>Given they require reasonable suspicion in order to be exercised, Authorising Officers should consider the powers under sections 43 and 43A of the Terrorism Act 2000 and PACE to stop and search individuals for the purposes of preventing or detecting an act of terrorism <b>before</b> the use of the no suspicion powers under Para 4A, Schedule 3 are considered.</p> <p>The powers authorised by Para 4A, Schedule 3 are only to be considered where it is not sufficient to use the powers in sections 43 or 43A or other PACE powers.</p>
<b><u>Point 7</u></b>	<p><b><u>Description of and Reasons for Geographical Extent of an Authorisation</u></b></p> <p>Authorisations which cover all of Northern Ireland should <b>not</b> be made unless they can be shown to be necessary. The wider a geographic area authorised, the more difficult it will be to demonstrate necessity. An authorisation should not provide for the powers to be used other than where they are considered necessary. This means authorisations must be as <b>limited</b> as possible and linked to addressing the suspected act of endangerment. In determining the area(s) or place(s) it is necessary to include in the authorisation it may be necessary to include consideration of the possibility that offenders may change their method or target of attack, and it will be necessary to consider what the appropriate operational response to the intelligence is (e.g. which areas would be necessary to authorise to intercept a suspect transporting a weapon). However, any authorisations must be as limited as possible and based on an assessment of the existing intelligence. New authorisations should be sought if there is a significant change in the nature of the particular threat or the Authorising Officer's understanding of it (and in such circumstances it will be appropriate to cancel the previous authorisation). Single authorisations may be given which cover a number of potential threats if that situation occurs. Authorisations should set out the nature of each threat and the operational response.</p>
<b><u>Point 8</u></b>	<p><b><u>Description of and Reasons for Duration of Authorisation</u></b></p> <p>Authorising Officer should identify the duration of the authorisation and should outline the reasons why the powers are required for this time. The duration of an authorisation should be <b>"No greater than necessary"</b></p>
<b><u>Point 9</u></b>	<p><b><u>Details of Briefing and Training provided to Officer using Para 4A, Schedule 3 Powers</u></b></p> <p>Information should be provided which demonstrates that all officers involved in exercising Para 4A, Schedule 3 powers receive appropriate briefing and training in the use of the powers, including the broad reason for the use of the powers on each relevant occasion.</p>
<b><u>Point 10</u></b>	<p><b><u>Practical Implementation of Powers</u></b></p> <p>The Authorising Officer should provide information about how the powers will be used and why. This may include the use of vehicle checkpoints, stops and searches of individuals operating in the area of the residences of security force members or security force establishments or other recognised targets of terrorist attack (depending on the nature of the threat). The authorising officer should indicate whether officers will be instructed to conduct stops and searches on the basis of particular indicators (e.g. behavioural indicators, types of items carried or clothes worn, types of vehicles etc), or whether the powers will be exercised on a random basis. If the powers are to be exercised on a random basis, the authorising officer should indicate why this is necessary and why searches based on particular indicators are not appropriate.</p>
<b><u>Point 11</u></b>	<p><b><u>Community engagement</u></b></p> <p>Authorising Officers should demonstrate that communities have been engaged as fully as possible throughout the authorisation process. When using the power, PSNI may use existing community engagement arrangements. However, where stop and search powers affect sections of the community with whom channels of communication are difficult or non existent, these should be identified and put in place.</p>
<b><u>Point 12</u></b>	<p><b><u>Policing Board engagement</u></b></p> <p>Authorising Officers should notify and engage with the Policing Board. The Policing Board has an essential role in working with the PSNI to build community confidence in the appropriate use of stop and search, and can provide practical advice and guidance to help raise awareness of stop and search.</p>

Justice and Security Act (Northern Ireland 2007)

***Trials on indictment without a jury***

**1 Issue of certificate**

(1) This section applies in relation to a person charged with one or more indictable offences (“the defendant”).

(2) The Director of Public Prosecutions for Northern Ireland may issue a certificate that any trial on indictment of the defendant (and of any person committed for trial with the defendant) is to be conducted without a jury if—

(a) he suspects that any of the following conditions is met, and

(b) he is satisfied that in view of this there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury.

(3) Condition 1 is that the defendant is, or is an associate (see subsection (9)) of, a person who—

(a) is a member of a proscribed organisation (see subsection (10)), or

(b) has at any time been a member of an organisation that was, at that time, a proscribed organisation.

(4) Condition 2 is that—

(a) the offence or any of the offences was committed on behalf of a proscribed organisation, or

(b) a proscribed organisation was otherwise involved with, or assisted in, the carrying out of the offence or any of the offences.

(5) Condition 3 is that an attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and—

(a) the attempt was made on behalf of a proscribed organisation, or

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

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

**[F1(6A)]** The Director of Public Prosecutions for Northern Ireland may not issue a certificate under subsection (2) if—

(a) the proceedings are taken in Northern Ireland only by virtue of section 28 of the Counter-Terrorism Act 2008, and

(b) it appears to the Director that the only condition that is met is condition 4. **]**

**F1(7)** In subsection (6) “religious or political hostility” means hostility based to any extent on—

(a) religious belief or political opinion,

(b) supposed religious belief or political opinion, or

(c) the absence or supposed absence of any, or any particular, religious belief or political opinion.

(8) In subsection (6) the references to persons and groups of persons need not include a reference to the defendant or to any victim of the offence or offences.

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

(a) A is the spouse or a former spouse of B,

- (b)A is the civil partner or a former civil partner of B,
- (c)A and B (whether of different sexes or the same sex) live as partners, or have lived as partners, in an enduring family relationship,
- (d)A is a friend of B, or
- (e)A is a relative of B.
- (10)For the purposes of this section an organisation is a proscribed organisation, in relation to any time, if at that time—
  - (a)it is (or was) proscribed (within the meaning given by section 11(4) of the Terrorism Act 2000 (c. 11)), and
  - (b)its activities are (or were) connected with the affairs of Northern Ireland.

#### **Textual Amendments**

**F1S. 1(6A)** inserted (18.6.2009) by Counter-[Terrorism Act 2008 \(c. 28\)](#), **ss. 28(6), 100(5)**, (with s. 101(2)); [S.I. 2009/1256, art. 2\(a\)](#)

#### **Modifications etc. (not altering text)**

**C1Ss. 1-8** (and Schedule 1) shall expire on 1.8.2009 by virtue of {s. 9(1)} of this Act; [S.I. 2007/2045, art. 2\(3\)\(a\)](#)

### **2 Certificates: supplementary**

- (1)If a certificate under section 1 is issued in relation to any trial on indictment of a person charged with one or more indictable offences (“the defendant”), it must be lodged with the court before the arraignment of—
  - (a)the defendant, or
  - (b)any person committed for trial on indictment with the defendant.
- (2)A certificate lodged under subsection (1) may be modified or withdrawn by giving notice to the court at any time before the arraignment of—
  - (a)the defendant, or
  - (b)any person committed for trial on indictment with the defendant.
- (3)In this section “the court” means—
  - (a)in relation to a time before the committal for trial on indictment of the defendant, the magistrates' court before which any proceedings for the offence or any of the offences mentioned in subsection (1) are being, or have been, conducted;
  - (b)otherwise, the Crown Court.

#### **Modifications etc. (not altering text)**

**C2Ss. 1-8** (and Schedule 1) shall expire on 1.8.2009 by virtue of {s. 9(1)} of this Act; [S.I. 2007/2045, art. 2\(3\)\(a\)](#)

### **3 Preliminary inquiry**

- (1)This section applies where a certificate under section 1 has been issued in relation to any trial on indictment of a person charged with one or more indictable offences.
- (2)In proceedings before a magistrates' court for the offence or any of the offences, if the prosecution requests the court to conduct a preliminary inquiry into the offence the court must grant the request.
- (3)In subsection (2) “preliminary inquiry” means a preliminary inquiry under the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).
- (4)Subsection (2)—
  - (a)applies notwithstanding anything in Article 31 of that Order,



- (b) does not apply in respect of an offence where the court considers that in the interests of justice a preliminary investigation should be conducted into the offence under that Order, and
- (c) does not apply in respect of an extra-territorial offence (as defined in section 1(3) of the Criminal Jurisdiction Act 1975 (c. 59)).

**Modifications etc. (not altering text)**

[C3Ss. 1-8](#) (and Schedule 1) shall expire on 1.8.2009 by virtue of {s. 9(1)} of this Act; [S.I. 2007/2045, art. 2\(3\)\(a\)](#)

**4 Court for trial**

(1) A trial on indictment in relation to which a certificate under section 1 has been issued is to be held only at the Crown Court sitting in Belfast, unless the Lord Chief Justice of Northern Ireland directs that—

- (a) the trial,
- (b) a part of the trial, or
- (c) a class of trials within which the trial falls,

is to be held at the Crown Court sitting elsewhere.

(2) The Lord Chief Justice of Northern Ireland may nominate any of the following to exercise his functions under subsection (1)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002 (c. 26);
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

(3) If a person is committed for trial on indictment and a certificate under section 1 has been issued in relation to the trial, the person must be committed—

- (a) to the Crown Court sitting in Belfast, or
- (b) where a direction has been given under subsection (1) which concerns the trial, to the Crown Court sitting at the place specified in the direction;

and section 48 of the Judicature (Northern Ireland) Act 1978 (c. 23) (committal for trial on indictment) has effect accordingly.

(4) Where—

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

(5) In subsection (4) “the relevant venue”, in relation to a trial, means—

- (a) if the trial falls within a class specified in a direction under subsection (1)(c) (or would fall within such a class had a certificate under section 1 been issued in relation to the trial), the place specified in the direction;
- (b) otherwise, Belfast.

(6) Where—

- (a) a person is committed for trial to the Crown Court sitting in Belfast in accordance with subsection (3) or by virtue of subsection (4), and
- (b) a direction is subsequently given under subsection (1), before the commencement of the trial, altering the place of trial,

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

**Modifications etc. (not altering text)**

**C4**[Ss. 1-8](#) (and Schedule 1) shall expire on 1.8.2009 by virtue of {s. 9(1)} of this Act; [S.I. 2007/2045, art. 2\(3\)\(a\)](#)

**5 Mode of trial on indictment**

(1)The effect of a certificate issued under section 1 is that the trial on indictment of—

- (a)the person to whom the certificate relates, and
- (b)any person committed for trial with that person,

is to be conducted without a jury.

(2)Where a trial is conducted without a jury under this section, the court is to have all the powers, authorities and jurisdiction which the court would have had if the trial had been conducted with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).

(3)Except where the context otherwise requires, any reference in an enactment (including a provision of Northern Ireland legislation) to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial conducted without a jury under this section, as a reference to the court, the verdict of the court or the finding of the court.

(4)No inference may be drawn by the court from the fact that the certificate has been issued in relation to the trial.

(5)Without prejudice to subsection (2), where the court conducting a trial under this section—

(a)is not satisfied that a defendant is guilty of an offence for which he is being tried (“the offence charged”), but

(b)is satisfied that he is guilty of another offence of which a jury could have found him guilty on a trial for the offence charged,

the court may convict him of the other offence.

(6)Where a trial is conducted without a jury under this section and the court convicts a defendant (whether or not by virtue of subsection (5)), the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction.

(7)A person convicted of an offence on a trial under this section may, notwithstanding anything in sections 1 and 10(1) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47), appeal to the Court of Appeal under Part 1 of that Act—

(a)against his conviction, on any ground, without the leave of the Court of Appeal or a certificate of the judge of the court of trial;

(b)against sentence passed on conviction, without that leave, unless the sentence is fixed by law.

(8)Where a person is convicted of an offence on a trial under this section, the time for giving notice of appeal under section 16(1) of that Act is to run from the date of judgment (if later than the date from which it would run under that subsection).

(9)Article 16(4) of the Criminal Justice (Northern Ireland) Order 2004 (S.I. 2004/1500 (N.I. 9)) (leave of judge or Court of Appeal required for prosecution appeal under Part IV of that Order) does not apply in relation to a trial conducted under this section.

**Modifications etc. (not altering text)**

[C5Ss. 1-8](#) (and Schedule 1) shall expire on 1.8.2009 by virtue of {s. 9(1)} of this Act; [S.I. 2007/2045, art. 2\(3\)\(a\)](#)

**6 Rules of court**

(1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of sections 1 to 5.

(2) Without limiting subsection (1), rules of court may in particular make provision for time limits which are to apply in connection with any provision of sections 1 to 5.

(3) Nothing in this section is to be taken as affecting the generality of any enactment (including a provision of Northern Ireland legislation) conferring powers to make rules of court.

**Modifications etc. (not altering text)**

[C6Ss. 1-8](#) (and Schedule 1) shall expire on 1.8.2009 by virtue of {s. 9(1)} of this Act; [S.I. 2007/2045, art. 2\(3\)\(a\)](#)

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

(1) No court may entertain proceedings for questioning (whether by way of judicial review or otherwise) any decision or purported decision of the Director of Public Prosecutions for Northern Ireland in relation to the issue of a certificate under section 1, except on the grounds of—

(a) dishonesty,

(b) bad faith, or

(c) other exceptional circumstances (including in particular exceptional circumstances relating to lack of jurisdiction or error of law).

(2) Subsection (1) is subject to section 7(1) of the Human Rights Act 1998 (c. 42) (claim that public authority has infringed Convention right).

**Modifications etc. (not altering text)**

[C7Ss. 1-8](#) (and Schedule 1) shall expire on 1.8.2009 by virtue of {s. 9(1)} of this Act; [S.I. 2007/2045, art. 2\(3\)\(a\)](#)

**8 Supplementary**

(1) Nothing in sections 1 to 6 affects—

(a) the requirement under Article 49 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) that a question of fitness to be tried be determined by a jury, or

(b) the requirement under Article 49A of that Order that any question, finding or verdict mentioned in that Article be determined, made or returned by a jury.

(2) Schedule 1 (minor and consequential amendments relating to trials on indictment without a jury) shall have effect.

(3) The provisions of sections 1 to 7 and this section (and Schedule 1) apply in relation to offences committed before, as well as after, the coming into force of those provisions, but subject to any provision made by virtue of—

(a) section 4 of the Terrorism (Northern Ireland) Act 2006 (c. 4) (transitional provision in connection with expiry etc of Part 7 of the Terrorism Act 2000 (c. 11)), or

(b) section 53(7) of this Act.

(4) An order under section 4 of the Terrorism (Northern Ireland) Act 2006 may make provision disregarding any of the amendments made by Schedule 1 to this Act for any purpose specified in the order.

**Modifications etc. (not altering text)**

C8Ss. 1-8 (and Schedule 1) shall expire on 1.8.2009 by virtue of {s. 9(1)} of this Act; [S.I. 2007/2045, art. 2\(3\)\(a\)](#)

**Commencement Information**

I1S. 8 wholly in force at 1.8.2007; [s. 8](#) not in force at Royal Assent see [s. 53\(4\)](#); [s. 8\(4\)](#) in force at 19.7.2007 and s. 8(1)-(3) in force at 1.8.2007 by [S.I. 2007/2045, art. 2\(1\){\(3\)\(h\)}](#)

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

(1)Sections 1 to 8 (and Schedule 1) (“the non-jury trial provisions”) shall expire at the end of the period of two years beginning with the day on which section 1 comes into force (“the effective period”).

(2)But the Secretary of State may by order extend, or (on one or more occasions) further extend, the effective period.

(3)An order under subsection (2)—

(a)must be made before the time when the effective period would end but for the making of the order, and

(b)shall have the effect of extending, or further extending, that period for the period of two years beginning with that time.

(4)The expiry of the non-jury trial provisions shall not affect their application to a trial on indictment in relation to which—

(a)a certificate under section 1 has been issued, and

(b)the indictment has been presented,

before their expiry.

(5)The expiry of section 4 shall not affect the committal of a person for trial in accordance with subsection (3) of that section, or by virtue of subsection (4) or (6) of that section, to the Crown Court sitting in Belfast or elsewhere in a case where the indictment has not been presented before its expiry.

(6)The Secretary of State may by order make any amendments of enactments (including provisions of Northern Ireland legislation) that appear to him to be necessary or expedient in consequence of the expiry of the non-jury trial provisions.

(7)An order under this section—

(a)shall be made by statutory instrument, and

(b)may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

**Criminal Justice Act 2003**

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

(1)This section applies where one or more defendants are to be tried on indictment for one or more offences.

(2)The prosecution may apply to a judge of the Crown Court for the trial to be conducted without a jury.

(3)If an application under subsection (2) is made and the judge is satisfied that both of the following two conditions are fulfilled, he must make an order that the trial is to be conducted without a jury; but if he is not so satisfied he must refuse the application.

(4)The first condition is that there is evidence of a real and present danger that jury tampering would take place.

(5)The second condition is that, notwithstanding any steps (including the provision of police protection) which might reasonably be taken to prevent jury tampering, the likelihood that it would take place would be so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury.

(6)The following are examples of cases where there may be evidence of a real and present danger that jury tampering would take place—

(a)a case where the trial is a retrial and the jury in the previous trial was discharged because jury tampering had taken place,

(b)a case where jury tampering has taken place in previous criminal proceedings involving the defendant or any of the defendants,

(c)a case where there has been intimidation, or attempted intimidation, of any person who is likely to be a witness in the trial.

#### **Commencement Information**

I1S. 44 wholly in force at 24.7.2006, see s. 336(3) and [S.I. 2006/1835](#), **art. 2** (subject to [art. 3](#))

**45 Procedure for applications under [F1sections 43 and ][F1section]44**

(1)This section applies—

(a)[F2to an application under section 43, and]

(b)to an application under section 44.

(2)An application to which this section applies must be determined at a preparatory hearing (within the meaning of the 1987 Act or Part 3 of the 1996 Act).

(3)The parties to a preparatory hearing at which an application to which this section applies is to be determined must be given an opportunity to make representations with respect to the application.

(4)In section 7(1) of the 1987 Act (which sets out the purposes of preparatory hearings) for paragraphs (a) to (c) there is substituted—

“(a)identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial,

(b)if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them,

(c)determining an application to which section 45 of the Criminal Justice Act 2003 applies,”.

(5)In section 9(11) of that Act (appeal to Court of Appeal) after “above,” there is inserted “ from the refusal by a judge of an application to which section 45 of the Criminal Justice Act 2003 applies or from an order of a judge under section [F343 or] 44 of that Act which is made on the determination of such an application, ”.

(6)In section 29 of the 1996 Act (power to order preparatory hearing) after subsection (1) there is inserted—

“(1A)A judge of the Crown Court may also order that a preparatory hearing shall be held if an application to which section 45 of the Criminal Justice Act 2003 applies (application for trial without jury) is made.”

(7)In subsection (2) of that section (which sets out the purposes of preparatory hearings) for paragraphs (a) to (c) there is substituted—

“(a)identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial,

(b)if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them,

(c)determining an application to which section 45 of the Criminal Justice Act 2003 applies,”.

(8)**F4** . . . . .

(9)In section 35(1) of that Act (appeal to Court of Appeal) after “31(3),” there is inserted “ from the refusal by a judge of an application to which section 45 of the Criminal Justice Act 2003 applies or from an order of a judge under section [F343 or] 44 of that Act which is made on the determination of such an application, ”.

(10)In this section—

“the 1987 Act” means the Criminal Justice Act 1987 (c. 38),

“the 1996 Act” means the Criminal Procedure and Investigations Act 1996 (c. 25).

#### Textual Amendments

**F1** Word in s. 45 substituted (E.W.) (1.5.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 148\(2\)\(a\)](#)

**F2** S. 45(1)(a) repealed (E.W.) (1.5.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 148\(2\)\(b\), Sch. 10 Pt. 10](#)

**F3** Words in s. 45(5)(9) repealed (E.W.) (1.5.2012) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 148\(2\)\(c\)](#) (with [s. 97](#))

**F4** S. 45(8) repealed (13.4.2006) by [Terrorism Act 2006 \(c. 11\), ss. 37\(5\), 39, Sch. 3; S.I. 2006/1013, art. 2](#)

#### Commencement Information

I1 S. 45 partly in force; s. 45 not in force at Royal Assent, see s. 336(3); s. 45 in force for certain purpose at 24.7.2006 by [S.I. 2006/1835, art. 2](#) (subject to [art. 3](#))

### 46 Discharge of jury because of jury tampering

(1) This section applies where—

- (a) a judge is minded during a trial on indictment to discharge the jury, and
- (b) he is so minded because jury tampering appears to have taken place.

(2) Before taking any steps to discharge the jury, the judge must—

- (a) inform the parties that he is minded to discharge the jury,
- (b) inform the parties of the grounds on which he is so minded, and
- (c) allow the parties an opportunity to make representations.

(3) Where the judge, after considering any such representations, discharges the jury, he may make an order that the trial is to continue without a jury if, but only if, he is satisfied—

- (a) that jury tampering has taken place, and
  - (b) that to continue the trial without a jury would be fair to the defendant or defendants;
- but this is subject to subsection (4).

(4) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he must terminate the trial.

(5) Where the judge terminates the trial under subsection (4), he may make an order that any new trial which is to take place must be conducted without a jury if he is satisfied in respect of the new trial that both of the conditions set out in section 44 are likely to be fulfilled.

(6) Subsection (5) is without prejudice to any other power that the judge may have on terminating the trial.

(7) Subject to subsection (5), nothing in this section affects the application of section **[F143 or]** 44 in relation to any new trial which takes place following the termination of the trial.

### Textual Amendments

**F1** Words in s. 46(7) repealed (E.W.) (1.5.2012) by [Protection of Freedoms Act 2012 \(c. 9\)](#), [s. 120](#), [Sch. 9 para. 148\(3\)](#), [Sch. 10 Pt. 10](#)

### Commencement Information

I1 S. 46 wholly in force at 24.7.2006, see s. 336(3) and [S.I. 2006/1835](#), [art. 2](#) (subject to [art. 3](#))





## Staff Instruction

No. 14 of 2019

### Applications for a Director's Certificate for Non-Jury Trial

#### Introduction

1. This Staff Instruction supersedes Law and Practice Notes 6/2007 and 7/2007, and Departmental Instructions 09/2007 and 15/2007. Its purpose is to provide updated practical guidance to prosecutors preparing an application for a certificate for non-jury trial and to reflect certain recommendations in relation to process that were made by the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007 in his 2018 Report.
2. The decision as to whether a trial should be conducted without a jury is taken by the Director under the provisions of [section 1 of the Justice and Security \(Northern Ireland\) Act 2007](#). The 2007 Act replaced the former arrangements whereby certain offences were 'scheduled' and trials on indictment proceeded without a jury unless the Attorney-General 'de-scheduled' them (on the basis that the offences were not connected to the emergency situation within Northern Ireland). Section 1 requires an examination of the circumstances potentially pertaining to the accused, the offence and / or the motivation for the offence. Whereas in the past the presumption was that a trial would be a non-jury trial unless the Attorney General certified otherwise, the presumption now is that a trial will be by jury unless the Director takes the positive step of issuing a certificate for a trial to proceed without a jury.
3. Section 1 of the 2007 Act provides for the Director to issue a certificate that any trial on indictment is to be conducted without a jury if he **suspects** that one or more of four statutory conditions are met and he is **satisfied** that, in view of this, there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury. The breadth of these powers was recognised by the Supreme Court in the case of *Hutchings* [2019] UKSC 26<sup>1</sup> which stated that the decision can be "...of the instinctual, impressionistic kind" and "...may frequently not be based on hard evidence but on unverified intelligence or suspicions, or on general experience."

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<sup>1</sup> See, in particular, paragraph 16.

4. In determining this issue the Director will have regard to the facts and information reported to him by police. He will also have regard to whether steps may be taken to sufficiently mitigate such a risk.
5. Where a Director's certificate has not been issued and there is *evidence* of a real and present danger that jury tampering will take place, application may be made to the court for a non-jury trial under [section 44 of the Criminal Justice Act 2003](#).
6. The decision to issue a certificate can be challenged by way of judicial review. By virtue of section 7 of the 2007 Act the scope of any such challenge is limited to grounds of dishonesty, bad faith, or other exceptional circumstances (including in particular exceptional circumstances relating to lack of jurisdiction or error of law). In *Hutchings* the Supreme Court observed that the 'other exceptional circumstances' are not specified, "...but they must take their flavour from the preceding provisions to the effect that challenges will be entertained on the grounds of bad faith and dishonesty and from the succeeding words of the sub-paragraph, which particularise lack of jurisdiction or error of law". The Court considered that these are clear indications that, what has been described as the 'full panoply of judicial review superintendence' is generally not available to challenge decisions by the Attorney General or the Director of Public Prosecutions as to the mode of trial for particular cases.

### **Statutory Conditions: Key Issues**

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

**CONDITION 1 is that the defendant is, or is an associate of, a person who –**

**(a) is a member of a proscribed organisation, or  
(b) has at any time been a member of an organisation that was, at that time, a proscribed organisation.**

8. An organisation is a proscribed organisation in relation to any time if at that time it is or was proscribed within the meaning given by Section 11(4) of the Terrorism Act 2000 and its activities are or were connected with the affairs of Northern Ireland.

9. It is important that the information from police makes it clear which sub-condition of Condition 1 is relied upon. On occasion it is not apparent whether police consider that the intelligence indicates that a defendant is a member of a proscribed organisation, or merely an associate. If reliance is placed upon the defendant's association with a member, or members, of a proscribed organisation then that other person should, if possible, be identified. It may be important, for example, to know whether a defendant is an associate of a senior member of a proscribed organisation as this may make it more likely that the proscribed organisation would seek to influence the outcome of the trial than if the defendant is only an associate of a low-ranking member. Police and prosecutors should also be cognisant of the definition of 'associate' provided for by section 1(9) of the 2007 Act:

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

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

10. Whilst the term 'associate' might normally be considered to include a broad range of persons including, for example, acquaintances, the definition in section 1(9) requires that the two individuals are in fact 'friends' or have one of the other specific relationships referred to therein.
11. If possible, the information provided by police should also identify the particular proscribed organisation involved, rather than simply refer, for example, to 'dissident republicans'.
12. It is important also that the application is clear as to whether a defendant is a current or past member of a proscribed organisation. In the case of historical membership it will be important to ascertain, to the fullest extent possible, when such membership ceased. Cases of historical membership can give rise to difficult issues in respect of whether a proscribed organisation is likely to seek to interfere with the administration of justice in respect of a past member. There have been cases in which condition 1(b) has been met but no risk to the administration of justice has been assessed as arising therefrom. This may be the case, for example, where the suspect is a former member of PIRA but has not subsequently associated himself with any organisation that is actively conducting a terrorist campaign. If these cases relate to overtly terrorist offences, it is often the position that Condition 4 is met; and it may be that, whilst no risk to

the administration of justice arises from a possibility of jury intimidation, it does arise from the possibility of a fearful or partial jury (see below).

**CONDITION 2 is that –**

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

13. There will be cases where there is specific intelligence that the offences were carried out on behalf of a proscribed organisation and this can obviously be relied upon. There will also be cases in which such specific intelligence does not exist. It should be noted that intelligence explicitly indicating the involvement of a proscribed organisation in the specific activity is not essential and the requisite suspicion relating to Condition 2 can arise from the inferences to be drawn from all the information and evidence available in the case. For example, if there is intelligence that D is a member of the 'New IRA' and he is caught in possession of explosives, there is likely to be a proper basis for the Director to suspect that the offence of possession of explosives was committed by, or on behalf, of the New IRA. However, care must be exercised in this regard and an automatic assumption should not be made.

**CONDITION 3 is that an attempt has been made to prejudice the investigation or prosecution of the offence or any of the offences and –**

- (a) the attempt was made on behalf of a proscribed organisation, or**
- (b) a proscribed organisation was otherwise involved with, or assisted in, the attempt.**

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

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

15. 'Religious or political hostility' means hostility based to any extent on religious belief or political opinion, supposed religious belief or political opinion or the absence or supposed absence of any, or any particular, religious belief or political opinion. References to persons and groups of persons need not include a reference to the defendant or to any victim of the offence or offences.
16. The scope of Condition 4 has been considered by the Divisional Court in the case of *Hutchings* [2017] NIQB 121 in which it was held that:
- (i) In principle there is a need to narrowly and strictly construe Section 1 of the 2007 Act in light of the strong presumption in favour of jury trial.
  - (ii) Nevertheless, it is important to remain faithful to the wording of the statute and its context notwithstanding the need to narrowly construe Section 1 of the Act and the statutory conditions are expressed in clear and unambiguous terms.
  - (iii) Condition 4 has to be read in its full context, set as it is in close juxtaposition to subsections (7) and (8).
  - (iv) In relation to the wording of Condition 4 itself the Court noted that:
    - (a) It is couched in wide terms;
    - (b) It is not confined to the circumstances of Conditions 1, 2 and 3. The wording moves beyond the confines of the accused person being within a paramilitary organisation. It clearly envisages looking at the circumstances leading up to the offence being considered;
    - (c) The significance of the wording that the offence "was committed to any extent (whether directly or indirectly)" cannot be underestimated. This clearly widens the bracket of connective circumstances that can be embraced between the offence itself and the religious or political hostility;
    - (d) Political hostility can apply to 'supposed' political opinion, again widening the reach of the section (see paragraph 38).
  - (v) The phrase 'political hostility' is in use daily in Northern Ireland and is easily understood. The most obvious examples of the situation arising out of Condition 4 may be incidents with a sectarian background, but the wording of the statute is manifestly wide enough to embrace the scenario of the British Army engaging with suspected members of the IRA.
  - (vi) The wording of Condition 4 is such that Parliament clearly intended to include a broad reach of circumstances whilst at the same time

recognising that any legislation removing jury trial needs to be tightly construed.

17. An appeal against the decision of the Divisional Court was refused by the Supreme Court which held that, on the facts of that case, the Director's conclusion that Condition 4 was met was "entirely unsurprising".
18. Advice was previously sought from Senior Counsel in relation to the scope of Condition 4 in the context of dissident republicans being prosecuted for possession of firearms or explosives. In relation to the dissident republican organisations (ONH, RIRA and CIRA) referred to in a number of examples considered by Senior Counsel, he noted that "...they all have, as one of their aims, the removal of the British presence in Northern Ireland. All have used, and continue to use, violent methods to further that aim and such methods have involved attacks on the security forces, i.e. members of the British Army and members of the PSNI. The use of such violent attacks has regularly and routinely involved the possession of firearms and explosive substances by members/associates of such organisations." In Senior Counsel's view, "such actions directed against members of the security forces, and the associated possession of prohibited items, are connected to political hostility."
19. It is often possible for the Director to be satisfied that Condition 4 is met in light of the nature of the offences, the evidence in the case and the information provided by police in relation to conditions 1 and 2. In terrorist cases it is usually more appropriate to rely upon the connection to political, rather than religious, hostility.

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

20. There are three main risks to the administration of justice that regularly arise as a result of one or more of the Conditions being met. They are:
- (i) The risk of a proscribed organisation intimidating the jury;
  - (ii) The risk of a fearful jury returning a perverse verdict;
  - (iii) The risk of a partial / hostile jury returning a perverse verdict.
21. In advising PPS in relation to risk (i) police should provide an assessment of the threat currently posed by the relevant proscribed organisation. Formerly this was done by reference to the reports of the Independent Monitoring Commission. For some time these have been recognised as outdated and police will provide their own assessment. It is often helpful if police refer to recent incidents for which the particular proscribed organisation is believed to be responsible.
22. Risk (ii) tends to arise from the nature of the charges and the evidence in the case. The jury will not, of course, be made aware of the intelligence that forms



the basis of the assessment in relation to any of the conditions. However, in many cases it will be apparent to the jury from the charges, the facts of the case and the evidence to be adduced that a proscribed organisation was, or may have been, involved. This is likely to generate fear for their personal safety and/or the safety of their families that may impact upon their verdict.

23. Risk (iii) also tends to arise from the nature of the charges and the facts of the case. It will often be the case that it will become apparent to the jury that the offences were committed by or on behalf of a republican or loyalist paramilitary organisation. There is a risk that certain members of the jury would be so influenced by hostility towards the defendant and/or his associates such that their ability to faithfully return a verdict based upon the evidence would be compromised. There may also be a risk that a juror would be biased in favour of the defendant and/or his associates given that the paramilitary organisation involved may have some support amongst certain communities. Such 'tribal loyalties' are, as the Supreme Court noted in *Hutchings*, often difficult to detect and may routinely be disavowed by most of the population. Experience has, however, shown that they can operate to bring about unexpected, partisan outcomes and they do present real dangers to the achievement of a fair trial.
24. The risk of jury bias can also arise in cases involving military shootings of suspected terrorists. In the *Hutchings* case referred to above, the Divisional Court found no reason to dispute the Director's conclusion that, where the context is of a soldier shooting an innocent bystander against the background of an IRA attack a short time before, this circumstance carries in its wake the risk of a partisan juror or jurors in at least parts of this Province with all the attendant dangers of impairment of the administration of justice if that trial were to be conducted with a jury. The Supreme Court noted that the difficulties in eliminating the risk of bias are particularly acute in cases which involve attacks on the security forces or where members of the security forces have fired on individuals; and that apprehension that jury trial in such cases might put the goal of a fair trial in peril is unavoidable.
25. It should always be remembered that there needs to be a link between the Condition(s) that is satisfied and the risk to the administration of justice before the Director can issue a certificate.

## **Jury Measures**

26. The Justice and Security (Northern Ireland) Act 2007 does not specifically refer to the potential for jury measures as a means of mitigating the risk posed to the administration of justice that arises from the circumstances in which the statutory conditions are met. However, it has been the practice of police and the Director to assess whether any such risk can be adequately mitigated by either (a)

transferring the trial, or (b) screening or (c) sequestering the jury. It is helpful to consider how each of the jury measures might assist in relation to the various risks identified above.

### *Risk of Jury Intimidation*

27. The transfer of the trial may be helpful if the proscribed organisation only has a very limited geographical reach. However, it is often the case that one is dealing with proscribed organisations with an ability to operate throughout the Province and the ability to transfer the trial may be of little assistance in mitigating this risk.
28. Police and prosecutors should also be aware that an application to transfer the trial can be made in the Magistrates' Court at the committal hearing, although the matters which can be considered by the Court at that stage are specified by section 48(1) of the Judicature (Northern Ireland) Act 1978 as: (a) the convenience of the defence, the prosecution and the witnesses; (b) the expediting of the trial; and (c) any directions given by the Lord Chief Justice. Pursuant to section 48(2) of the 1978 Act, the Crown Court has broader powers to give direction in relation to the place of trial and may have regard to considerations other than those contained in section 48(1): *R v Morgan & Morgan Fuels and Lubes Limited* [1998] NIJB 52. There is a strong presumption that a trial before a jury should be heard in the division in which the offence was committed, unless there is a statutory or other reason why this should not be the case: *R v Grew & Ors* [2008] NICC 6 at para 47 and *R v Lewis & Ors* [2008] NICC 16 at para 18. The onus will be on the prosecution to adduce evidence in support of an application to transfer. Furthermore, the courts may be reluctant to accept that any risk of intimidation can be materially alleviated by transferring the trial: *R v Grew & Ors* [2008] NICC 6 at para 50 referring to *R v Mackle & Ors* [2007] NIQB 105. Police and prosecutors therefore need to carefully consider the nature of any material that can be placed before a court in support of a potential application to transfer and the likelihood of a successful application.
29. Screening the jury prevents them from being seen by the public but does not prevent them from being seen by the defendant who could make a record of their appearance and pass that to his associates. Police have highlighted the further risk that jurors may be recognised by others called for jury service but not sworn on to the particular jury and there is a risk that these others could either deliberately or inadvertently pass on details of the jurors which would enable them to be targeted.
30. Sequestering the jury is a very draconian measure and police have often pointed out the potential for this to impact upon the jurors' lives and thereby impair their judgment, either in favour of or, more likely, against the defendant. In addition,



police have advised that the parochial nature of Northern Ireland would create a unique difficulty in the provision of anonymity and security of a jury.

### *Risk of a Perverse Verdict*

31. In general terms it is difficult to see how any risk of a perverse verdict arising from a fearful or hostile jury could be mitigated by any of the available jury measures. Transferring the trial would not address any issues of partiality unless, perhaps, the partiality arises from feelings confined to a local community. This possibility was noted by Stephens J in the context of inquests in *Jordan* [2014] NIQB 11 when he pointed out that the community divisions in our society are such that the exact nature of the danger of a perverse verdict is influenced by the geographic location of an inquest.
32. A transfer of the trial may also be unlikely to address any issue of fear, as the jury would most likely not consider themselves (or their families) to be safe from a proscribed organisation even if the offence happened in another part of the Province. Screening may provide some re-assurance, but this is imperfect for the reasons referred to above (they can be seen by the defendant and others called for jury service but not sworn). There is also a risk that the highly unusual measure of screening the jury would in fact exacerbate any disposition to be fearful or partial because it would be such an unusual measure and suggest that the defendant and / or his associates are dangerous people who would seek to intimidate the juror or his / her family. The same can be said, perhaps with even greater force, in relation to the sequestration of the jury.
33. In relation to this latter point prosecutors should note two judgments delivered in the context of the power to order non-jury trial under section 44 of the Criminal Justice Act 2003. The first is *R v Mackle and others* [2007] NICA 37. When considering whether to order a non-jury trial in a case of jury tampering a court is enjoined to consider what steps might *reasonably* be taken to prevent jury tampering before deciding whether the likelihood of it occurring is so great that the order should be made. The Court of Appeal held that a consideration of what was reasonable extends to an examination of the impact any proposed step would have upon the jury's fair and dispassionate disposal of the case. The Court held that the steps proposed in that case (round the clock protection of the jury or their being sequestered throughout its duration) would lead to *an incurable compromise of the jury's objectivity* which could not be dispelled by an admonition from the trial judge.
34. The decision in *Mackle & Ors* was subsequently approved by the English Court of Appeal in *R v Twomey & Ors* [2009] EWCA Crim 1035 where the court agreed that if a misguided perception is created in the minds of the jury by the provision of high level protection, then such a step would not be reasonable. It was also

relevant to consider the likely impact of measures on the ordinary lives of the jurors, performing their public responsibilities, and whether, in some cases at any rate, even the most intensive protective measures for individual jurors would be sufficient to prevent the improper exercise of pressure on them through members of their families who would not fall within the ambit of the protective measures.

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

#### *Part 7 of the Criminal Justice Act 2003*

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

### **Procedure**

#### *General*

37. In all cases where a certificate is issued, the certificate must be lodged with the court, and in accordance with Section 2 of the 2007 Act, ***this must take place before the arraignment.***

#### *File Submission from Police to PPS*

38. When submitting a file for a prosecution decision police are required to provide initial confirmation on the Prosecutor Information Form (PIF) whether the issue of non-jury trial falls to be considered and if so indicate which of the four conditions set out in the legislation may be met. It will be noted that the provisions of the 2007 Act only apply to trials on indictment. However police officers must be alert to the possibility that the prosecutor may consider it appropriate to prosecute a hybrid offence on indictment.

### *PPS Letter to Police*

39. In any case where it appears from the facts and information reported that the issue of non-jury trial should be brought to the attention of the Director, the Prosecutor shall write to the Chief Inspector, Criminal Justice Branch, PSNI<sup>2</sup>, to request a considered view on whether the conditions specified in Section 1 are satisfied, whether in light of that the administration of justice would be impaired if the trial were to be conducted with a jury, and whether any jury measures could be taken to mitigate the risk. A template letter is attached at **Annex A**.

40. Police have indicated that it assists if such requests include the following information:

- (i) Names and dates of birth for all defendants;
- (ii) A summary of the evidence in the case with particular emphasis on any evidence (including, where applicable, bad character evidence) pointing towards the involvement of a proscribed organisation;
- (iii) As much information as can be given at the time of the request in relation to the likely charges to be directed and any evidence to be relied upon that would be of particular note in the analysis to be conducted under section 1 of the JSA.

41. The prosecution should also arrange to review material relevant to the application. This should be arranged by way of a separate letter to the Detective Inspector, Sensitive Criminal Trial Disclosure.<sup>3</sup> A blank template is attached at **Annex B**.

### *Police Response to the PPS Letter*

42. It is the responsibility of the Chief Superintendent, Criminal Justice to ensure that the Director receives one considered and informed police view which encompasses both the views of the investigating officer and the Detective Superintendent Criminal Justice in relation to whether or not the conditions are met, and if, in view of this, there is a risk that the administration of justice might be impaired. This view will also have taken into account intelligence that can be used in support of the application. In order to allow time for the view to be formulated and considered, such correspondence should be sent to the Chief Inspector as soon as it appears likely that the prosecution will be directed on indictment.

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<sup>2</sup> The identity of the post-holder can be confirmed, if necessary, with the Assistant Director, Central Casework Section.

<sup>3</sup> As above.

43. It is anticipated that the Chief Inspector will work to a 4 – 6 week turnaround time frame from receipt of the PPS letter as he/she in turn shall require responses from Sensitive Criminal Trial Disclosure and from the investigating officer.

#### *The Prosecutor's Application to the Director / Deputy Director*

44. In every case where the Superintendent, Criminal Justice has indicated that in his view the conditions specified in sections 1(3) to 1(6) of the 2007 Act are met, and that, in view of this, there is a risk that the administration of justice might be impaired if the trial were to be conducted with a jury, the Prosecutor will prepare an application for a certificate for non-jury trial using the template at **Annex C**<sup>4</sup>. It is anticipated that the police response will have been structured under the same headings used in the template.

45. It is important that applications for a certificate are submitted to the Director in time to allow for the potential for queries to be raised and addressed; and also to allow for the service of the certificate on the Court and the Defence at least 7 days in advance of the arraignment.

46. Assistant Directors are therefore required to ensure that all applications for a certificate, with a draft certificate attached, are submitted to the Deputy Director (or Senior Assistant Director in regional cases) **no less than 14 days** in advance of arraignment. Where possible, applications should be made in advance of committal and the certificate should be lodged with the committal papers.

47. In cases where an application has been prepared in advance of committal, and committal is subsequently delayed significantly, it will be necessary to review the recommendations made to the Director prior to the arraignment in light of the evidence and information now available. The Directing Officer should, in these circumstances, write to the Chief Inspector, Criminal Justice to explain the situation and request an updated, addendum response from police.

#### *Form of Certificate*

48. A draft certificate for the Director is attached at **Annex D**. In circumstances where the Director is unavailable to consider the application it will be considered and, if appropriate, signed by the Deputy Director. A draft certificate for the Deputy Director is attached at **Annex E**.

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<sup>4</sup> This has been amended to include the PSNI reference number.

### *Service of the Certificate and Recording*

49. The Directing Officer shall ensure that the certificate is lodged with the court as soon as it is available and shall obtain and file the court receipt. A copy of the certificate will be attached by Case Preparation to the Crown Court brief.

### *Writing to the Defence to Advise of Issuance of Certificate*

50. Once the Certificate has issued, the defence should be notified in writing. A copy of the certificate should be attached to the correspondence.

### *Committal*

51. At the committal hearing, the Prosecutor will seek the return of the defendant for trial at Belfast Crown Court.

### *Post-application Notification to Police and Review*

52. Prosecutors shall notify the Chief Inspector, Criminal Justice Branch of the outcome of the application for non-jury trial and shall flag any particular issues that were raised in the consideration of the application. Police and PPS shall hold annual meetings to discuss the handling of these cases including any issues and trends in the applications.

### **Further Information**

If you require any further information, please contact the Policy and Information Unit.

**Policy and Information Unit**  
**September 2019**

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

**2013 No. 1128**

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

**2. Purpose of the instrument**

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

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

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

**4. Legislative Context**

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

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

5.1 This instrument applies to Northern Ireland.

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

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

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

## **7. Policy background**

### ***What is being done and why***

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

## **8. Consultation outcome**

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

## **9. Guidance**

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

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

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

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

## **10. Impact**

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

## **11. Regulating small business**

- 11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

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

## **13. Contact**

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



## Corporate Policy

## SERVICE INSTRUCTION

<b>SI Identification Number</b>	SI0521
<b>Policy Ownership</b>	Operational Support Department
<b>Issue Date</b>	02/12/2021
<b>Review Date</b>	3 years from issue date
<b>Governing Service Policy</b>	Investigations
<b>Cancellation of</b>	SP 10/2012 Critical Incident Management And Community Impact Assessments
<b>Classification</b>	<b>OFFICIAL [PSNI ONLY]</b>

## SI0521

# CRITICAL INCIDENT MANAGEMENT AND COMMUNITY IMPACT ASSESSMENTS

This Instruction relates to the management of Critical Incidents and the completion of a Community Impact Assessment. A Critical Incident can be internal or external to the Police Service of Northern Ireland.



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## 1. Introduction

This Service Instruction explains the definition of a Critical Incident for the Police Service of Northern Ireland (PSNI), and provides guidance on appropriate police responses to such incidents.

## 2. Definition of a Critical Incident

A Critical Incident is defined as:

Any incident, where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and / or the community .

Key terms in the definition are:

- **Effectiveness** - this is a measure of the professionalism, competence and integrity evident in the police response to an incident;
- **Significant impact** - 'significant' should be interpreted as being particular to each incident but overall relates to the severity of the 'negative' impact felt by the victim, family or community; and

- **Confidence** - This is a reference to long-term confidence in policing – of victims, families and communities.

A Critical Incident can be either:

- **External** - where the victims and / or impacted community is outside of the organisation; or
- **Internal** - the principal 'stakeholders' are employed by the Police Service.

### Police Response:

- **Assess** - Officers should assess if there are any key elements present that may impact on the way the police response is perceived;
- **Identify & Report** - Any concerns about the effectiveness of the police response should be identified and reported at the earliest opportunity;
- **Record** - It is imperative that the rationale behind decisions is carefully recorded for audit and review purposes;
- **Ensure** - Supervisors must ensure the Duty Officer is informed as soon as possible of any emerging *Critical Incidents*.

### 3. Major Incident

A 'Major Incident' is defined as:

'Any emergency that requires the implementation of special arrangements by one or more of the emergency services, and generally includes the involvement, either directly or indirectly, of large numbers of people.'

It should be recognised that 'Major' and 'Critical' are distinct issues. Major Incidents can be declared *Critical Incidents* but this is not automatic and depends on the circumstance.

For further guidance with respect to *Major Incidents* please contact [Emergency Planning Unit](#).

### 4. Characteristics of Critical Incidents

Any type of incident can become critical at any stage. Often it is the context within which the incident takes place which can elevate even the most routine incident to 'Critical', for example the vulnerability of the victim.

The following are risk factors or characteristics identified in a National Review of *Critical Incidents*:

#### Assumptions / Stereotyping

Personal assumptions, perceptions and stereotypes can adversely influence the direction or priority of response to an incident. Assumptions made can also lead to an underestimation of the seriousness of an incident.

#### Procedures

Any procedural failings have the potential to adversely impact victims, their families and community, e.g. failure to:

- Follow or interpret procedures correctly or effectively;
- Keep proper records; and
- Ensure that the victim, families and other relevant bodies are kept up to date with the progress of the case and relevant decisions or directions that have been made.

#### Family and Community Issues

A failure to recognise and address the diverse needs of a victim, their family or the community may inadvertently alienate them or cause misunderstandings. Victim care

and community engagement must recognise, and be sensitive to, individual needs and views.

Cognisance must also be given to the impact of crimes which act as a “signal” to a community that they are at risk. An incident of this nature has the potential to become critical at any point; (See [Police Service Equality, Diversity and Good Relations Strategy 2017 - 2022](#)).

## 5. Declaring a Critical Incident

Any Officer or member of Staff who believes an incident may be critical, must pass this information to their Supervisor. An Officer not below Inspecting rank, or Staff Officer grade, may declare a Critical Incident with sufficient information to believe the incident is, or may become, Critical. This will be subject to assessment and confirmation by a Gold Commander.

**District / Departments must review occurrences at Daily Management Meetings to identify any *Critical Incidents*.**

The Bronze Commander will ensure that,

- Details are provided to the Critical Incident Team - by email to [zCriticalIncidents](#); and
- The Incident Control Room (ICC) are informed for inclusion in briefing papers to the Senior Executive Team (SET).

See [Appendices A – G](#) for more information.

An incident should not be declared *Critical* simply because there is a risk that the police may be criticised or because a *Major Incident* has occurred. This also applies to *Internal Incidents*.

*Critical Incidents* is a standing agenda item at meetings of the Service Executive Team each Monday, Wednesday and Friday.

### Closure of a Critical Incident

A Critical Incident will only be closed by the Gold Commander at the time of closure. The decision to close a *Critical Incident*, and the rationale, must be carefully documented and communicated to relevant parties.

## 6. Command and Control

Command and Control is the authority and capability of an organisation to direct the actions of its personnel and the use of its equipment.

The College of Policing Authorised Professional Practice (APP) - [Critical Incident Management](#) and [Command and Control](#) have been developed nationally and should be used in conjunction with the ACPO (2009) *Guidance on Command and Control* which provides a nationally recognised framework for deployment of a tiered command structure.

The appropriate response tier is determined by the officer at Gold Command level declaring the Incident.

<b>Tier 1</b>	<b>District / Department Response.</b> <i>Critical Incidents</i> within the capability of one District / Department and where Actions and Risk are limited to that Business Area.
<b>Tier 2</b>	<b>Cross District/Department Response.</b> <i>Critical Incidents</i> that impact on more than one District / Department. There

<b>Tier 3</b>	<b>Service Response.</b> <i>Critical Incidents</i> with a service, Inter-Service or National Dimension and where there is a significant threat to public confidence and the reputation of the Police Service(s) involved. Management of the <i>Critical Incident</i> will require substantial activity by a significant proportion of the lead Service's resources.

There is a recognition that *Critical Incidents* may involve a related criminal investigation and appointment of a Senior Investigating Officer (SIO). It should be clear that the management of the *Critical Incident* remains the responsibility of the Gold Commander. However, the SIO or their representative should be involved in management meetings and key decisions, including development of the Media Strategy. Consultation between Gold Commander and the SIO may be required at an early stage when considering disclosure issues.

## 7. Gold Groups

A Gold Group should provide a strategic function and provide impartial support,

advice and analysis to the Gold Commander. They should not be involved in tactical or operational activities.

The specific function, membership and content of a Gold Group will vary for each *Critical Incident*. Gold Group meetings should be minuted and may be subject to disclosure:

- Under the Criminal Procedure and Investigations Act 1996, (unless Public Interest Immunity (PII) applies);
- Under civil discovery including the County Court or High Court jurisdictions;
- To Office of the Police Ombudsman for Northern Ireland (OPONI);
- To Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS);
- To Criminal Justice Inspection Northern Ireland (CJINI).

A Gold Group will help to ensure co-ordination in multi-agency *Critical Incidents*, and can support links with the local community and other legitimately interested parties. Gold Groups should include communities who may not appear to be directly affected but could be indirectly affected.

The Gold Commander should convene a Gold Group within 12 hours of a *Critical Incident* being declared where appropriate.

## 8. Victim and Family Liaison

### Family Liaison Officers (FLO)

Deployment of a FLO should be considered where a sudden, violent or unexplained death has occurred. FLO deployment can also be used with serious crime investigations, especially when a *Critical Incident* has been declared.

In all cases, the Family Liaison Co-ordinator, (C2 Serious Crime Branch), must be consulted in this process before a FLO is deployed; the use of a local police Single Point of Contact (SPOC) for the family may be considered more appropriate.

## 9. Community Issues

Consultation with the community should be given consideration in the management of a *Critical Incident*. This may assist by:

- Developing sensitive and effective policing;
- Challenging assumptions and mind-sets;



- Demonstrating openness and accountability;
- Providing an independent, community / non-police perspective; and
- Building family / community confidence and trust.

## 10. Independent Advice

Independent Advisers are able to engage in a range of policing activities, either on a case-specific basis, or as members of a recognised Advisory Group. Tasking independent advisers is for the Gold Group to consider, and the Gold Commander to decide.

It must be noted that the Police Service is not obliged to follow advice that is given (although appropriate explanations should be given where recommendations are not followed).

Crime Prevention and Early Intervention Branch can provide assistance in identifying Independent Advisory Groups (IAG's) to provide advice on a range of issues.

## 11. Community Impact Assessments (CIA)

A CIA is used to identify and manage any factors relevant to an incident or policing activity that may impact upon the community and help inform the investigative response when relevant.

A CIA **must** be completed for all *Critical Incidents*.

The responsibility for its completion lies with the Silver Commander and should be undertaken in close liaison with the SIO (where one is appointed). It is crucial that the CIA is objective, evidence / intelligence based and capable of withstanding scrutiny. Assessment by District Command should include consultation with local Neighbourhood Policing Teams where possible.

There are two CIA forms:

- Short (SCIA); and
- Full (FCIA).

Both of these are available electronically on [PoInt](#) and only these formats are to be used.

### Short CIA (SCIA)

A SCIA must be completed by the Bronze Commander, preferably within 4 hours of a *Critical Incident* being declared, and be **reviewed regularly, particularly after each significant event or action**. The SCIA must be reviewed by the Silver Commander, who will make a decision about the requirement for a Full CIA to be completed.

A short CIA **will be completed** for:

- All *Critical Incidents*, or any incident which in the opinion of the SIO or Officer in Charge has the potential to become a *Critical Incident*;
- Serious Crime Incidents where the SIO or Officer in Charge directs that it is required. Serious Crime Incidents are defined as;  
“Murder, manslaughter, rape & serious sexual assault, terrorism, kidnap, robbery, and serious physical assaults”;
- Every search where a child, young person or vulnerable person is believed to be present;
- This list is not exhaustive; and

A short CIA **should be considered** for:

- Major planned policing activity – The SIO / Officer in Charge should consider completion of SCIA for any major planned policing activity where there may be a significant impact on the community; and
- A SCIA should be considered for every search conducted by police. (However remember a CIA will be completed for every search where a child, young person or vulnerable person is believed to be present), Please see [SI1617 Police Search](#);
- Any other incident or activity where the SIO or Officer in Charge deems its completion necessary;

### **There are three parts to the SCIA:**

**Part A** - Completed by the person requesting the assessment and forwarded electronically to the appropriate District Officer.

**Part B** - Completed by the appropriate District Officer after consultation with the requesting Officer. Part B must be authorised by the appropriate District Officer not below Chief Inspector rank.

**Part C** - Completed by the District and contains full details of the agreed risk management plan specific to that operation, including media / briefing information. Part C must be authorised by the appropriate District Officer not below the rank of Chief Inspector.

The following details should be provided:

- Grounds and / or reasons for the planned nature of the activity;
- Date and time of the planned activity;
- Name and address of subject (Including Niche ID if applicable);
- The person conducting the activity;
- In circumstances where it is appropriate to make reference to Intelligence, then only the Niche Intelligence Document Number may be entered;
- Of any risk to any person(s) including; members of the public, police, suspects, witnesses? (Required for every Community Impact Assessment); and
- In relation to any search for firearms or explosives, the request must record details of the Police Search Adviser (POLSA), District Silver Firearms Commander and Tactical (TAC) Adviser if consulted.

If appropriate, a Silver Commander should ensure completion of a CIA takes place in consultation with a Senior Investigating Officer (SIO).

### **Disclosure**

The CIA may contain sensitive material and should be listed appropriately considering disclosure under the Criminal Procedure and Investigations Act 1996.

## **12. Media and Public Meetings**

Where a *Critical Incident* has been declared, the Director of *Strategic Communications and Engagement* (SCED) will be notified by the Gold Commander confirming the declaration, and at the outset will appoint a SCED colleague to:

- Be part of the Gold Group;
- Provide strategic media advice to the Gold Group; and
- Be responsible for co-ordinating and releasing all media lines.

Primacy on internal and external corporate communications lies with SCED and the Gold Group, with the Gold Commander being the final authority. The Communications *Critical Incident* Strategy should be agreed with the Silver

Commander, the SIO, and, where appropriate, Legal Services Branch.

### Public Meetings

A public meeting may be considered necessary as part of the management process for community confidence. The use of a Policing & Community Safety Partnerships (PCSP) public meeting may be appropriate in this instance.

Meetings should be prepared in line with overall investigation and media strategies – and after consultation with:

- Family members and intermediaries;
- Community representatives;
- Independent Advisers;
- Gold Group members; and
- Senior Press Officer.

## 13. Information Sharing

There is a presumption in favour of openness, particularly in relation to victims, their families, and community representatives. However, on certain occasions, there may be reasons why it is felt necessary to maintain confidentiality, for example to protect intelligence. In such

instances, a brief and simple explanation should be provided for relevant parties. The decision and rationale should be recorded in the appropriate log. SIOs and Gold Groups should seek legal advice on disclosure in complex or sensitive cases.

## 14. Critical Incident Team (Co-ordination)

Operational Support Department (OSD) has responsibility for *Critical Incidents*. Chief Superintendent OSD has been appointed as the Police Service Lead with responsibility for strategic policy management.

The *Critical Incident* Team consists of:

- The Police Service Lead;
- Head of Crime Training;
- Debrief Co-ordinator; and
- Others as appropriate.

The Critical Incident Team (CIT) will:

- Maintain a Register of *Critical Incidents*;
- Maintain and support a network of Single Points of Contact (SPOC) at District / Departmental level;

- Manage Critical Incidents Service Instruction review;
- Facilitate / co-ordinate debrief of all *Critical Incidents*;
- Maintain a Register of Structured Debrief Officers and staff for *Critical Incidents*;
- Co-ordinate / plan annual conference and workshops for Service / District Command / Departments as appropriate;
- Review incidents for organisational learning, ensuring that lessons learnt are incorporated into training as appropriate; and
- Devise 'Terms of Reference' for the Critical Incident Team, including the role(s) of CIT members.

## 15. Single Point of Contact (SPOC) Network

District Commanders/Heads of Branch will appoint a *Critical Incident* SPOC as a matter of course. They will not ordinarily be below the rank of Chief Inspector or analogous staff grade.

Through District / Departmental management processes the SPOC will:

- Act as a liaison officer in their respective areas / department;
- Regularly review incidents dealt with in the District / Department;
- Assist in the identification of *Critical Incidents* that may have been missed;
- Be responsible for liaison between the Critical Incident Team and the District / Department;
- In consultation with the Gold Commander co-ordinate and / or facilitate the completion of the District / Departmental *Critical Incident* debrief (for all *Critical Incidents*).

## 16. Incident Debriefing

All *Critical Incidents* will be subject of a formal Debrief. The Critical Incident Team will advise the Debrief Co-ordinator of requests for debrief using the email address [zStructuredDebriefing](#) who will in turn discuss with the Gold Commander the Terms of Reference (TORs) and timing of a debrief.

Where there is a concurrent investigation ongoing, agreement will be reached on TORs with interested parties which could

include; Criminal Investigation Branch SIO, Professional Standards Department (PSD), OPONI, Public Prosecution Service (PPS), Health and Safety Executive Northern Ireland (HSENI).

Gold Commanders must utilise a formal debrief process for everyone involved in all *Critical Incidents* both internal and external to the Police Service. The Gold Commander will consider the debrief report and consider how Organisational learning can be captured.

Critical Incident Debrief Reports will be submitted to:

- Gold Commander;
- District Commander / Head of Branch; and
- Critical Incident Team.

Further assistance and guidance on the completion of the Critical Incident debrief, including contacting the Debrief Co-ordinator, can be obtained through the Critical Incident Team by emailing - [zCriticalIncidents](#).

Further and more detailed information can be found in the documents listed below.

This is not an exhaustive list.

<a href="#">A Guide to Emergency Planning Arrangements in Northern Ireland</a>	<a href="#">Authorised Professional Practice (APP) – Critical Incident Management</a>	<a href="#">Authorised Professional Practice - Family Liaison - Family Liaison - Further information</a>	<a href="#">Police Service Manual of Policy, Procedure and Guidance on Conflict Management</a>
<a href="#">Police Service Code of Policing Ethics</a>	<a href="#">HMIC report on Critical Incident Management, 2009</a>	<a href="#">HMIC Leading from the Frontline, 2008</a>	<a href="#">Northern Ireland Civil Contingencies Framework Document 2021</a>
<a href="#">Post Incident Peer Support Team</a>	Post Incident procedures <ul style="list-style-type: none"> <li>• <a href="#">Post-Deployment</a></li> <li>• <a href="#">Following Death or Serious Injury</a></li> </ul>	<a href="#">PSNI Equality, Diversity and Good Relations Strategy 2017 - 2022</a>	<a href="#">Service Instruction SI1317 Supporting Victims and Witnesses</a>

<a href="#"><u>Service Instruction SI0616 – ‘Serious Crime Scenes</u></a>	<a href="#"><u>Service Instruction SI0517 – ‘Public Complaints and the Role of the Police Ombudsman’</u></a>		
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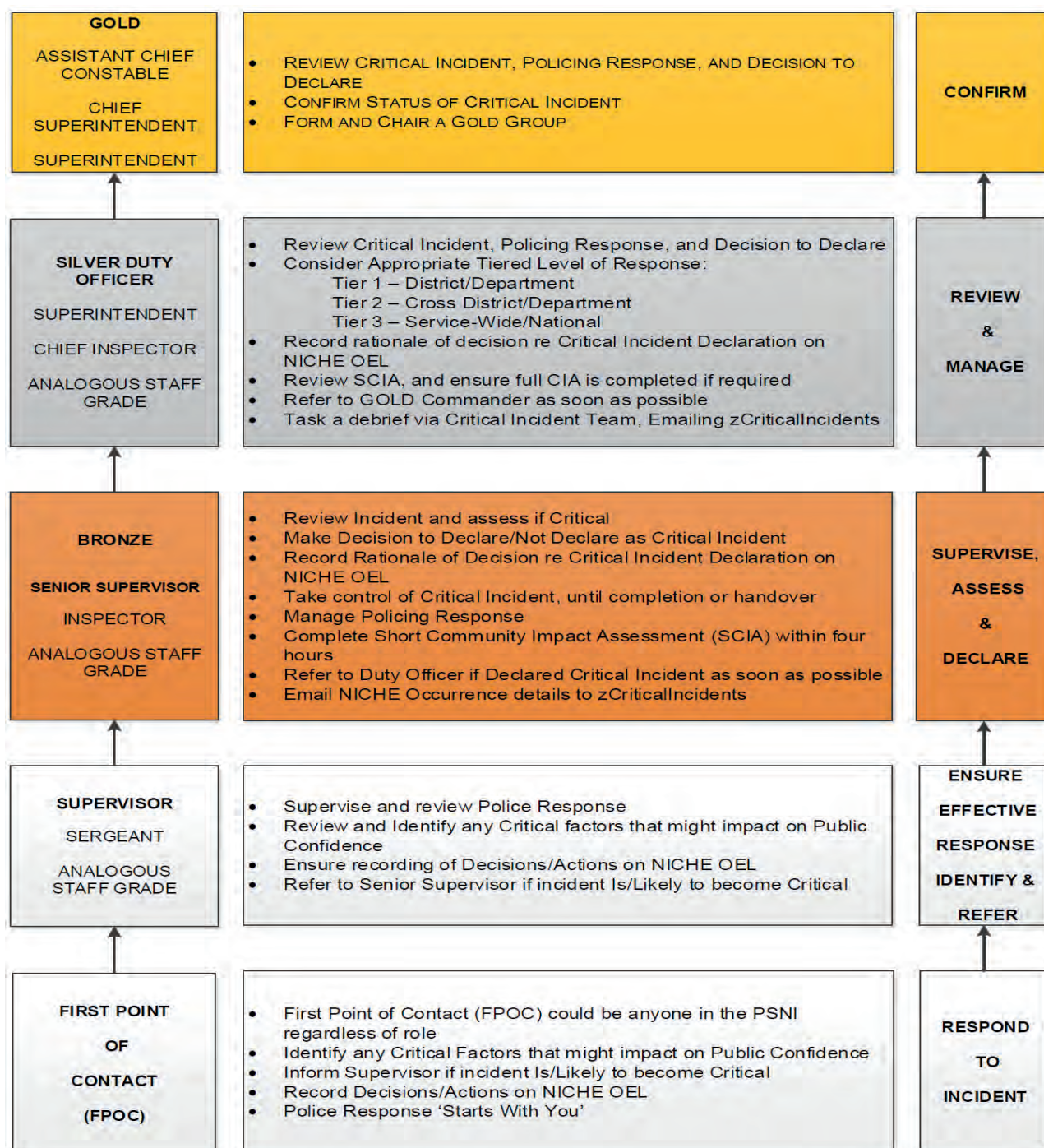
## 17. Critical Incident Training

Crime Faculty will retain responsibility for delivering training and continuous professional development in relation to *Critical Incidents*, particularly in the case of senior officers who will perform Gold and Silver functions.

The Police College’s annual business plan will include details in terms of how *Critical Incident* training will be reviewed and delivered on a year by year basis.



## Appendix A Critical Incident Flowchart Process



Any incident where the **effectiveness** of the Police response is likely to have a **significant impact** on the **confidence** of the victim, their family, and/or the community

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## Appendix B Role of the First Point of Contact and Role of the Supervisor

### Role of The First Point of Contact

The First Point of Contact (FPoC) for a *Critical Incident* could be anyone within the Police Service, regardless of their role. Their initial actions and decisions taken could have a significant impact on the confidence that the victim, their family and / or the community has in our response.

If the FPoC assesses that it may be or is likely to become a *Critical Incident* early advice should be sought from a supervisor.

The FPoC should:

- a) Establish relevant information and share with those responding;
- b) Inform the Supervisor on duty as soon as possible when an incident is identified as Critical or potentially so, even if the incident has been dealt with and closed;
- c) Identify whether critical factors are present which may cause loss of confidence in the police response. Where confidence issues in the police response are raised, take steps to resolve them as soon as possible; and
- d) Update Niche Occurrence Enquiry Log (OEL) to reflect actions taken.

### Role of The Supervisor - Sergeant, or Analogous Staff Grade.

- a) Supervise & review police response;
- b) Review & identify any critical factors that might impact on public confidence;
- c) Ensure recording of decisions / actions on Niche OEL;
- d) Refer to Senior Supervisor if incident is likely to become Critical;

## Appendix C Role of the Senior Supervisor – Bronze

### Role of the Senior Supervisor - Bronze

1. The Senior Supervisor who declares the Critical Incident should be of the rank of Inspector or Staff Officer Grade;
2. Review the incident, checking for appropriate police response. Make decision to declare / not declare as Critical Incident. Record rationale on Niche OEL.
3. Inform Duty Officer that a Critical Incident has been declared as soon as possible, with the following briefing:
  - Details of the incident and any intelligence available;
  - Details of any offences involved;
  - The rationale behind the decision to declare a Critical Incident;
  - Actions taken and considered;
  - Identification of scenes (people / locations / victims);
  - Victim, family or community tensions or complexities; and
  - Media issues / interest / actions taken.
4. Manage the police response. Take control of the incident until such time as the incident is either completed, or command has been handed over to the designated Silver Commander or other appropriate authority. Where appropriate, attend the scene.
5. Take immediate steps to manage or resolve confidence issues, this may include early engagement with community representatives. Complete a **Short Community Impact Assessment (SCIA)**, preferably **within 4 hours** of initial assessment.
6. Ensure all relevant decisions have been made and are clearly documented; ensure that Niche OEL is updated in a timely fashion. (Think Audit and Review).

7. Ensure that the appropriate ControlWorks closing sub code (CRIT) has been applied.
8. Notify the District / Departmental Critical Incident SPOC, provide the Critical Incident Team with details by email to [zCriticalIncidents](#), and inform the Incident Control Room (ICC) for briefing purposes.
9. Where a decision is made not to declare a Critical Incident, the rationale needs to be documented clearly and the initial identifying staff member informed of this decision.

## Appendix D Role of the Duty Officer – Silver

### Role of Duty Officer

As a guide, the Duty Officer should be of the rank of Chief Inspector or Superintendent or Analogous Staff Grade.

1. Ensure Service Instructions and Policies for incident type are being followed.
2. Review Critical Incident, policing response, and decision to declare. Ensure incident has been correctly identified and appropriate incident management is in place.
3. Consider the appropriate tiered level of response, whether:
  - Level 1 (District / Departmental);
  - Level 2 (Regional); or
  - Level 3 (Service-Wide).
4. Make sure all relevant decisions have been identified, are in place and are being clearly documented. (Think Audit and Review).
5. Inform the Gold Commander as soon as possible who will brief the Chief Officer.
6. Ensure that the appropriate recording to capture resource costs is commenced.
7. Review Short Community Impact Assessment (SCIA), and ensure completion of Full CIA if required, (A Full CIA can be requested for any incident whether it is Critical or not).
8. Task a *Debrief* via the Critical Incident Team, (by emailing [zCriticalIncidents](#)), to secure organisational learning.
9. [Appendix F](#) provides a template guide for Critical Incident meetings and note taking.

## Appendix E Role of the Chief Officer/Head of Branch/District Commander – Gold

### Role of the Chief Officer/Head of Branch/District Commander - Gold

1. There is an obligation on Chief Officers to ensure that *Critical Incidents* are only declared when it is necessary and appropriate to do so, and that the response is proportionate to the scale of the incident.
2. Where a *Critical Incident* has been declared the District Commander / Head of Branch will brief the relevant Chief Officer who will:
  - i. Review Critical Incident, policing response, and decision to declare; and
  - ii. Make the decision to confirm the declaration of a *Critical Incident*.

In the event of any possible conflict of interest, another Chief Officer, appointed by the Police Service Command, will fulfil the role.

3. In the case of multiple demands from simultaneous *Critical Incidents*, any dispute between Gold Commander(s) and the resource owner, the matter may be raised with the Chief Constable or Deputy Chief Constable for resolution.
4. At this point the appropriate level of command response shall be confirmed (see [Command and Control](#)). Consideration must also be given to command resilience and temporary allocation of command support where necessary in order to ensure that, (where appropriate), the appointed Gold and Silver Commanders are not distracted from their responsibilities by everyday policing issues.
5. The Chief Officer who confirms the declaration of a Tier 3 (Service-Wide) *Critical Incident* shall ensure that all Police Service Command Officers / Departmental Heads (Chief Officer Level)

are informed without delay, except where to do so would hinder the progress of an investigation. This will enable all departments to consider possible implications that may come within their remit and plan for appropriate response to requests from Gold / Silver Command.

6. Form and chair a Gold Group. The first meeting should take place **within 12 hours of declaration**, where appropriate.
7. Inform Director of Strategic Communications and Engagement, who will at the outset appoint a SCED colleague.
8. [Appendix F](#) provides a template guide for *Critical Incident* meetings and note taking.

## Appendix F Critical Incident Management – Notes

Operation / Critical Incident Name	
Meeting Date / Time / Location	
Meeting Attendees	
Meeting notes completed by	

Offence / Incident	
Date / Time	
Location	
District / Department	
Victim	
Suspect	
Niche reference	

### Pursue

**INFORMATION & INTELLIGENCE** – Intelligence gaps, Actions, Suspect Vehicles, Background Intel, Firearms

Update:

ACTIONS:

**INVESTIGATION** – Golden hour principles, Specialist Support, Forensics, Firearms

Update:

ACTIONS:

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**DISRUPTION / VISIBILITY – Level 2 Tasking, District, Threat Assessments**

Update:

ACTIONS:

**Prevent**

**COMMUNICATION – External – Press release, Social Media.**

Internal – Po!nt, email, video

Update:

ACTIONS:

**Protect**

**COMMUNITY – Community Impact Assessment, Threat Assessment, Safeguarding**

Update:

ACTIONS:

**Prepare**

**STRATEGIC OVERSIGHT – Working Strategy, Partnership working, updates to Policing Board, Department of Justice, Northern Ireland Office, Policing & Community Safety Partnerships, Elected Representatives, Staff Associations**

Update:

ACTIONS:

**FINANCE - Ownership, Cost Centre, Overtime requirements**

Update:

ACTIONS:

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## Appendix G Contact Us

### Service Instruction Author

Inspector Richard Brown P017301

### Email

[zCriticalIncidents](mailto:zCriticalIncidents)



**Police Service**  
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Apply appropriate Government Protective Marking when complete

## FULL COMMUNITY IMPACT ASSESSMENT FORM

1. Version/Review Number:

2. Date/Time Completed:

**Note:** In completing this form you should refer to Service Procedures 50/07 and Notes for Guidance

### Section A – Incident Details

3. Incident Type:

4. Incident Time/Date:

References:

5. Niche Ref:

6. Policy Book:

7. HOLMES

8. URN:

9. Critical Incident Ref No.

10. **Summary of Grounds/Reason for Activity** (if intelligence led, include document number only. **DO NOT** record any other intelligence details)

Apply appropriate Government Protective Marking when complete

A large, empty rectangular box with a thin black border, occupying the upper half of the page. It is intended for the user to provide information or a response.

**Section B – Consultation/Research:**

**11. Internal Consultation:**

Date/Time	By Whom	Consultee Name/ Department	Summary/Notes

12. External Consultation:

Date/Time	By Whom	Consultee Name/ Organisation	Summary/Notes

13. **Impact Factors - Consider the presence/involvement of Children/Young People or Persons otherwise vulnerable**

14. **Community Tensions Including Potential for Disorder**

15. **Previous History:**

## Section C – Risk Assessment:

### Risk Quantification Matrix

Likelihood	Impact			
	1 Minor	2 Significant	3 Serious	4 Major
4 – Almost certain	4	8	12	16
3 – Very likely	3	6	9	12
2 – Possible	2	4	6	8
1 – Unlikely	1	2	3	4

### Bandings

**High** = 9 - 16

**Medium** = 6 - 8

**Low** = 1 - 5

### 16. Risks to Community (Human)

	Score	Risk Assessment (X)	
Impact		High	<input type="checkbox"/>
Likelihood		Medium	<input type="checkbox"/>
Total score		Low	<input type="checkbox"/>

17. Risks to Community (Structure)

	Score	Risk Assessment (X)	
Impact		High	<input type="checkbox"/>
Likelihood		Medium	<input type="checkbox"/>
Total score		Low	<input type="checkbox"/>

18. Risks to Witnesses

	Score	Risk Assessment (X)	
Impact		High	<input type="checkbox"/>
Likelihood		Medium	<input type="checkbox"/>



Total score

	Low
--	-----

☐

19. Risks to Police

	Score	Risk Assessment (X)	
Impact		High	<input type="checkbox"/>
Likelihood		Medium	<input type="checkbox"/>
Total score		Low	<input type="checkbox"/>

20. Risks to Specific Groups - Consider the presence/involvement of Children/Young People or Persons otherwise vulnerable. How will you manage the Unforeseen Presence of Vulnerable Persons present?

	Score	Risk Assessment (X)	
Impact		High	<input type="checkbox"/>

Apply appropriate Government Protective Marking when complete

Likelihood		Medium	<input type="checkbox"/>
Total score		Low	<input type="checkbox"/>

21. Other Risks

	Score	Risk Assessment (X)	
Impact		High	<input type="checkbox"/>
Likelihood		Medium	<input type="checkbox"/>
Total score		Low	<input type="checkbox"/>

	Score	Risk Assessment (X)	
Impact		High	<input type="checkbox"/>

Apply appropriate Government Protective Marking when complete

Likelihood

	Medium
--	--------

☐

Total score

	Low
--	-----

☐

**Section D – Risk Management Plan (Control Measures):**

**22. Risk Management Plan Including Specific Reference to Timing of Proposed Activity**

**23. Agreed Media/Briefing Lines to be taken**

**24. Other Matters/Comments if appropriate**

**25. Debrief Including Organisational Learning**

--	--

<b>District Officer</b>	Date:		Time(24 hr):	
SIGNATURE	Name (Print)	Rank (Chief Inspector or above)	Service No.	

<b>SIO/Officer in Charge</b>	Date:		Time(24 hr):	
SIGNATURE	Name (Print)	Rank	Service No.	

<b>Gold Commander (if applicable)</b>	Date:		Time(24 hr):	
SIGNATURE	Name (Print)	Rank	Service No.	

The National Decision Model should be evidenced throughout the planning and conduct of all property searches where children, young persons or those otherwise vulnerable are present. This should include the Community Impact Assessment.

Consideration should be given to storing all completed Community Impact Assessment forms centrally at respective Area level, such as in Coordination and Tasking and Centres (CTCs).

Consideration should be given to identifying a suitable resource within PSNI at Area Level to own and maintain a 'Lessons Learned' document for property searches where children, young persons or those otherwise vulnerable are present. The Lessons Learned document could be held on one central database, accessible to relevant personnel and be maintained by approved authors at Area Level.





**Police Service**  
of Northern Ireland

NICHE Reference: \_\_\_\_\_

Apply appropriate Government Protective Marking when complete

# SHORT COMMUNITY IMPACT ASSESSMENT

This form is to be completed in line with Service Procedure 10/2012

## **Critical Incident Management and Community Impact Assessments**

**DISCLOSURE: This page contains Sensitive**

Officer to note Service number and initial: \_\_\_\_\_

NICHE Reference: \_\_\_\_\_  
Apply appropriate Government Protective Marking when complete

### Part A – Community Impact Assessment Request

Team/Activity		
Who is conducting the Planned Activity		
Contact Details of Team		

<b>Summary of Grounds/ Reason for Activity</b>  (If intelligence led, include document number only. <b>DO NOT</b> record any other intelligence details)	
---	--

<b>Lawful Authority</b>  (PACE, TACT, J&S)	
--	--

<b>Proposed Timing of Activity</b>	Date:	Time (24 hr):
------------------------------------	-------	---------------

<b>If Arrest – Subject Details:</b>	Name (Print)	NICHE ID:
---	--------------	-----------

<b>Address(es)</b>	
--------------------	--

<b>Address(es) researched by:</b>	<b>C3 DIU</b>	-	<b>JIC</b>	-
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<b>Firearms &amp; Explosives – Has specialist search advice been obtained?</b>	<b>POLSA</b>	-	<b>Firearms TAC Adviser</b>	-
--	--------------	---	-----------------------------	---

<b>Details of Guidance</b>	
----------------------------	--

<b>REQUESTING OFFICER</b>	Date:	Time (24 hr):
---------------------------	-------	---------------

SIGNATURE	Name (Print)	Rank	Service No.
-----------	--------------	------	-------------

**DISCLOSURE: This page contains Sensitive**

Officer to note Service number and initial: \_\_\_\_\_

NICHE Reference: \_\_\_\_\_

Apply appropriate Government Protective Marking when complete

### Part B – District Response

<b>Is a Full Community Impact Assessment (FCIA) appropriate?</b>	<b>Yes</b> <input type="checkbox"/>	<b>No</b> <input type="checkbox"/>
--	-------------------------------------	------------------------------------

<b>Consulted with Senior Officer (on call)</b>	Date:	Time (24 hr):	
	Name (Print)	Rank (Superintendent or above)	Service No.

#### Impact Factors - Consider the presence/involvement of Children/Young People or Persons otherwise Vulnerable

--

#### Community Tensions Including Potential for Disorder

--

#### Previous History

--

<b>AUTHORISATION</b>	Date:	Time (24 hr):	
<b>SIGNATURE</b>	Name (Print)	Rank (Chief Inspector or above)	Service No.

**DISCLOSURE: This page contains Sensitive**

Officer to note Service number and initial: \_\_\_\_\_

Apply appropriate Government Protective Marking when complete

<b>Risk Management Plan Including Specific Reference to Timing of Proposed Activity</b>
<b>Agreed Media/Briefing Lines to be taken</b>
<b>Other Matters/Comments if appropriate</b>
<b>Debrief Including Organisational Learning</b>

<b>District Officer</b>	Date:	Time (24 hr):
-------------------------	-------	---------------

<b>SIGNATURE</b>	Name (Print)	Rank (Chief Inspector or above)	Service No.
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<b>SIO/Officer in Charge</b>	Date:	Time (24 hr):	
<b>SIGNATURE</b>	Name (Print)	Rank	Service No.

**DISCLOSURE: This page contains Sensitive**

Officer to note Service number and initial: \_\_\_\_\_

The National Decision Model should be evidenced throughout the planning and conduct of all property searches where children, young persons or those otherwise vulnerable are present. This should include the Community Impact Assessment.

Consideration should be given to storing all completed Community Impact Assessment forms centrally at respective Area level, such as in Coordination and Tasking and Centres (CTCs).

Consideration should be given to identifying a suitable resource within PSNI at Area Level to own and maintain a 'Lessons Learned' document for property searches where children, young persons or those otherwise vulnerable are present. The Lessons Learned document could be held on one central database, accessible to relevant personnel and be maintained by approved authors at Area Level.

## ANNEX M DISTRICT/AREA EVIDENCE TO SUPPORT JSA AUTHORISATION

JSA Reference Number:

## District/Area Evidence to Support Authorisation to Stop and Search – Para 4A, Schedule 3 under the Justice and Security Act (Northern Ireland) 2007

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

- 1) **Name of Applicant: Area Superintendent – (Insert name, rank, position)**

--

- 2) **Length of Request:**

Please note that the duration of a request should be “**no longer than is necessary**”.

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

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

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

Entire Area	[		]	
Specific Area/District	[		]	Map Attached [ ]

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

Requesting Officers should only request the power when they **reasonably suspect** that the safety of any person might be endangered by the use of munitions or wireless apparatus, and he / she reasonably considers the request for authorisation **necessary** to prevent such danger (Please see Explanatory Notes for more detail).

--

- 5) **Requesting Officer:**

Requesting Officers must be Area Coordinator or Designated Deputy.

Signature:  Print Name/Rank:  Date Signed:
--

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

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

**2) Requesting Officer Contact and Telephone Number:**

Chief Superintendent	Ext
----------------------	-----

**3) Assessment of the threat:**

Requesting Officers should provide a detailed account of the intelligence and incidents which has given rise to reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. This should include classified material where it exists (Please see Explanatory Notes for more details).

**4) Previous use of Powers:**

Area Coordinators should demonstrate that they are satisfied that previous use of the powers has been both necessary and proportionate (Include statistics if this helps to support the rationale).



## 5) Community engagement and accountability:

Area Coordinators should provide a detailed account on the steps that have been taken to engage those communities that will be affected by the authorisation. Where it has not been possible to carry out community engagement prior to authorisation, the Area Coordinator should carry out a retrospective review of the use of the powers (Please see Explanatory Notes for details).

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

## JSA 3

<p><b><u>Point 2</u></b></p>	<p><b><u>Length of request</u></b></p> <p>Start time is the time and date required by the Requesting Officer. The <b>maximum</b> period for a request is <b>14 days</b>, and requests should <b>not</b> be made for the maximum period unless it is necessary to do so, based on the intelligence about the particular threat. Requests should be for no longer than necessary. Justification should be provided for the length of a request, setting out why the intelligence supports amount of time requested. If a request is one which is similar to another immediately preceding it, information should be provided as to why a new request is justified and why the period of the initial request was not sufficient. Where different areas or places are specified within one request, different time periods may be specified in relation to each of these areas or places – indeed the time period necessary for each will need to be considered and justified.</p> <p>PSNI may authorise the use of section Para 4A, Schedule 3 powers for less than forty-eight hours, however, <b>continuous use of 48 hour-long authorisations, whereby the powers could remain in force on a “rolling” basis is not justifiable and would constitute an abuse of the provisions.</b></p>
<p><b><u>Point 4</u></b></p>	<p><b><u>Reason for exercising Para 4A, Schedule 3 powers</u></b></p> <p>The test for requesting JSA powers is that the person requesting it: must reasonably suspect that the safety of any person might be endangered by the use of munitions or wireless apparatus and reasonably considers the request necessary to prevent such an act and that the area(s) or place(s) specified in the request are no greater than is necessary and the duration of the request is no longer than is necessary to prevent such an act.</p>

## JSA 4

<p><b><u>Point 1</u></b></p>	<p>If a request is one which covers a similar geographical area to one which immediately preceded it, information should be provided as to how the intelligence has changed since the previous authorisation was made, or if it has not changed, that it has been reassessed in the process of making the new request, and that it remains relevant, and why.</p> <p><b>Whilst it is possible to issue a successive authorisation for the same geographic areas, this will only be lawful if it is done on the basis of a fresh assessment of the intelligence, and if the authorising officer is satisfied that the authorisation is justified.</b></p>
<p><b><u>Point 3</u></b></p>	<p><b><u>Assessment of the threat</u></b></p> <p>The Requesting Officer should provide a detailed account of the intelligence and incidents which have given rise to reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. This should include classified material where it exists. Threat Assessments from Irish Republican Terrorism are provided by MI5 via C3. Assessments of the threat to various aspects of the UK infrastructure, such as aviation, transport, military establishments are available and if necessary should be sought. If reference is made to MI5 assessments, Requesting Officers should ensure that these references are to current material.</p> <p>A high state of alert may seem enough in itself to justify a request for powers; however it is important to set out in the detail the relation between the threat assessment and the decision to request.</p> <p>Intelligence specific to particular dates may still be included, even if the relevant date has passed, if it is still believed to be current.</p>
<p><b><u>Point 5</u></b></p>	<p><b><u>Community Engagement</u></b></p> <p>The Requesting Officer should demonstrate that communities have been engaged as fully as possible throughout the authorisation process. When using the power, PSNI may use existing community engagement arrangements. However, where stop and search powers affect sections of the community with whom channels of communication are difficult or non existent, these should be identified and put in place.</p>



## POLICE POWERS DEVELOPMENT GROUP

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### TERMS OF REFERENCE *Draft*

#### 1) Purpose: -

The Police Powers Development Group exists to provide a forum in support of the Policing Plan and to continue delivering Policing within the Community by identifying and promoting best practice in relation to use of force, stop and search, criminal justice disposals and police detentions in custody.

#### 2) Objectives: -

To improve public confidence and consistency of service delivery PPDG will;

- 1) Provide a point of contact for the service on the use of police powers including liaising with and responding to recommendations made by oversight bodies.
- 2) Monitor and evaluate the use of police powers to identify any adverse differential impact they may have with regards to equality.
- 3) Support and hold to account policy leads in these areas to ensure police powers are being used fairly and impartially.
- 4) Identify, communicate and seek to replicate internal and external good practice.
- 5) Task research in relation to novel or contentious police powers.
- 6) Make arrangements to ensure external accountability for the use of police powers.



**3) Meetings: -**

- 1) Meetings will be chaired by ACC OSD and held quarterly.
- 2) Extraordinary meetings may be held at the discretion of the chairperson.
- 3) Staff officer to ACC OSD will manage the committee.
- 4) Minutes will be recorded and an action log will be retained.
- 5) A quarterly analytical report will be prepared for each meeting.

**4) Other Attendees will include : -**

Chief Superintendent OSD

Chief Superintendent DPC

Superintendent Performance OSD

Superintendent Protective Services OSD

Superintendent Ops Police College

Deputy Head of Corporate Comms

Head of Statistics Branch

Head of Corporate Information Branch

Legal Services Representative

Superintendent C3

Superintendent Justice and Standards

Senior Analyst

Inspector Policing Powers Development

## **5) Governance**

PPDG will report directly to the Service Performance Board

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# Stop and Search Information

## Why do police have power to Stop and Search?

Stop and Search can help the police prevent and detect crime, to protect the public and make your area safer.

## How should a Stop and Search be carried out?

You should be treated politely and with respect. A search should normally be done by an officer of the same sex as you. This does not mean you are being arrested. If you are stopped in a public place, you only have to take off your coat or jacket, hat and gloves, unless the officer believes you are using clothes to hide your identity. If you have been stopped in relation to terrorism, you can be asked to remove footwear.

**Report online. Call 101**  
**In an emergency call 999**

[psni.police.uk](https://psni.police.uk)      

**we care  
we listen  
we act**



**Police Service**  
of Northern Ireland

### YOUR RIGHTS. Before you are searched, the police officer should tell you:

- The reason why you are to be searched
- What law they are using to stop and search you
- That you must wait to be searched
- What they are looking for
- Their name or their service number
- The station they work at
- That you have a right to get a form, giving details of the stop and search.

The police officer will give you a reference number, which you can quote to ask for a copy from a police station. You can do this at any time within the next 12 months.

Date:

Reference Number:

*To obtain a full written record of your stop/search produce this reference number in person at a police station within 12 months. You may seek independent legal advice. If you are under 18 and would like free independent legal advice about stop and search and your experience please contact the Children's Law Centre 0808 808 5678.*

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