REPORT ON THE OPERATION IN 2003 OF PART VII OF THE TERRORISM ACT 2000

BY

LORD CARLILE OF BERRIEW Q.C.

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1. INTRODUCTION

1.1 In the autumn of 2001 I was appointed as Independent Reviewer of the Terrorism Act 2000 [TA2000]. Pursuant to Section 112(4) of the Act, Part VII, which relates to Northern Ireland, shall cease finally to have effect at the end of the period of five years beginning with the day on which the Act was brought into force. The Act came into force on the 19th February 2001. Pursuant to Section 112(1), Part VII would cease to have effect at the end of the period of one year beginning with the day on which it was brought into force, subject to the Secretary of State laying the necessary Order for continuation of the whole or parts of Part VII for a further period not exceeding twelve months.

1.2 The result of Section 112 is that, unless continued by further Order, Part VII will cease to have effect on the 19th February 2004[1].

[1] Terrorism Act 2000 (Continuance of Part VII) Order 2003, IS 2003/427

1.3 I have stated in my previous reports of both Part VII and of the Act as a whole that I had concluded that it would be useful to continue to produce a separate report annually on Part VII. I am still of that view. This is my third annual report on Part VII. I am too the Independent Reviewer of the detention provisions introduced under Part 4 of the Anti-Terrorism, Crime and Security Act 2001. My reports on the operation of the whole of the TA2000, and on Part 4 of the 2001 Act, will appear early in 2004.

1.4 As before, I have been greatly assisted by the patient and purposeful support which I have been given by officials of both the Home Office, the Northern Ireland Office, the police and other law enforcement bodies, those involved in administering justice and running the courts, the political parties in Northern Ireland, human rights organisations, and many, many other organisations and individuals who have advised, helped and contacted me. I have drawn extensively upon their generously given time and documentation. The range of such material continues to increase, including research, comment and the extending resources on the Internet.

1.5 The amount of contact I have enjoyed with the general public as reviewer has increased, mainly thanks to the internet. I remain available and welcome such contact via the internet address carlilea@parliament.uk, or by post to me at the House of Lords, London SW1A 0PW.

1.6 Probably the most useful addition to my range of information during the past year has come from developing contacts with individuals and parties involved in the Northern Ireland Assembly. I have spent time with members of all the main parties and some of the smaller parties. I have made visits arranged at my request by political parties, including meetings with community groups. The aim of these has been to develop my understanding of the effect of Part VII as special counter-terrorism legislation, and to understand the potential impact of any changes to that legislation. I should welcome further suggestions from the political parties and others as to contacts I might usefully make and develop, to enlarge my understanding of the impact of Part VII on life in Northern Ireland – and of course suggestions for constructive change.

1.7 As I have said in the past, I am conscious and a close follower of the wide-ranging and often well-informed media interest in the effectiveness of anti-terrorism legislation. In the preparation of this report I have taken into account the public concern to ensure, as far as is possible, that terrorists are not able to penetrate and damage the everyday lives of ordinary, peaceful citizens. I have reflected too on the need to avoid an over-reaction to the perception of danger, a perception that sometimes may be greater than the reality. The balance is a difficult one. The continuing evidence of the activities of dissident para-military groups on both sides of the sectarian divide, and the apparent involvement of such groups on an increasing scale in syndicated crime including smuggling and the proliferation of illicit drugs, demonstrate that a very high level of vigilance is both absolutely necessary and publicly reassuring. On the other hand, I believe there to be considerable evidence of

an increasing realisation that the democratic process is a speedier vehicle towards acceptable change than an armed struggle, even when the political parties may seem irreconcilable on some key issues. Most citizens of Northern Ireland are as opposed to terrorist acts and other heavy crime as their fellow citizens elsewhere in Great Britain and Ireland.

1.8 My purpose and the principal requirement of this report is to assist the Secretary of State and Parliament in relation to whether the whole or portions of Part VII of TA 2000 should be renewed. In doing so I must consider the workings of the Act during 2003, including the amendments to it. In this context I make a small but heartfelt plea, and I know others support me in this. Because of the nature of the powers contained in the TA2000, it is important that all involved should know without having to struggle through subsequent amending legislation what the current version of the Act is. An up to date version is available on the internet, on excellent subscription sites. However, not everybody has access to or the requisite skill to arrive at those sites. It would be helpful if the government would issue printed updated versions through The Stationery Office, and an updated text on the Home Office website, as each item of amending legislation comes into force.

1.9 In carrying out my review of Part VII, I must examine whether it has been used fairly. Further, I must determine whether I should recommend that there is a continuing need for each of its provisions, and if so whether any amendments should be made.

1.10 The terms of reference for my activities may be found in the letters of appointment to my predecessors and myself. They are also to be found in the Official Report of the House of Lords debate of the 8th March 1984, which clearly shows what Parliament intended when the post of Reviewer was first established: the reviewer should make detailed enquiries of people who use the Act, or are affected by it, and the reviewer may see sensitive material.

1.11 I take a close interest in all available information concerning the political situation in Northern Ireland. I have paid special attention to the work and atmosphere of the Northern Ireland Legislative Assembly. I have sought to understand the political background to the suspension of the Assembly, and the potential consequences of the November 2003 election. I am familiar with the provisions of the Good Friday Agreement, which has had a profound effect upon political and criminal justice institutions in Northern Ireland. The Agreement remains in effect, and its continuation and the associated desire for peace and order are amongst my premises. I have taken into account the ongoing reform of the police and of the criminal justice system.

1.12 I have been briefed fully by the military in relation to their role in Northern Ireland. I have developed those briefings with direct observations on the ground with military patrols. The same applies to the Police Service of Northern Ireland. I have visited parts of Northern Ireland with the Army. During the past year my main purpose in these visits has been to understand the policing and security role performed by the Army, and how it interconnects with the work of the police and related services. I have been

concerned too to observe how soldiers, often very young, cope with their tasks. I have been impressed by the detailed understanding shown by today's military of their work there.

1.13 I am in contact with the legal checks and balances in the Northern Ireland situation, having spent time in discussions with (amongst others) the Lord Chief Justice of Northern Ireland and other senior judges, the Director of Public Prosecutions of Northern Ireland, senior management of the PSNI, the Police Ombudsman, the Independent Assessor of Military Complaints Procedures, the Independent Commissioner for Detained Terrorist Suspects and the Chief Commissioner of the Human Rights Commission, as well as the political parties as mentioned above. I have been assisted by conversations with members of the Northern Ireland Bar Library, and with solicitors. All mentioned in this paragraph have made significant contributions to my knowledge and process.

2. SCHEDULED OFFENCES: SECTION 65 AND SCHEDULE 9 TO TA 2000.

2.1 Schedule 9 sets out in three parts those offences which are made subject to special provisions in Sections 66 to 80 and Section 82 of the Act. During 2002-3 the Secretary of State made no orders to add or remove offences from Schedule 9, or to amend the Schedule in some other way. A change was made between the Northern Ireland (Emergency Provisions) Act list and Schedule 9 in the enactment of the TA 2000, founded upon a recommendation by J.J. Rowe Q.C.

2.2 Changes in the criminal system consequent to the Belfast Agreement have led to the substitution in the Schedule (from a day to be appointed) of the term *"Attorney General for Northern Ireland"* with *Advocate General for Northern Ireland"* [2]. Although the Northern Ireland Criminal Justice Review is well into its development and planning phase, and will make considerable differences to the everyday management of the system, the Advocate General in relation to Schedule 9 will perform exactly the same role currently carried out by the Attorney General. However, the Advocate General will have the advantage of being Belfast based.

2.3 Table A annexed to this report shows the number of indictable directions to de-schedule individual cases issue during the period January-September 2003. The presentation of the statistics has improved in 2003 as a result of the use of

[2] Justice (Northern Ireland) Act 2002, s28(2), Sch 7, paras 21,23

a new case management system in the office of the Director of Public Prosecutions (Northern Ireland).

2.4 It can be seen from Table A that in January-September 2003 194 indictable offences, representing 15.62% of the total, remained scheduled. This is a higher figure than the 9.2% for the whole of 2002, for 2001 (9.8%), for 2000 (7%), and for 1999 (10%). This percentage decrease in descheduling is disappointing, though the principles underlying applications to de-schedule offences, and the decisions on such applications, are considered on established and consistent criteria. Further, it is noteworthy that the number of persons charged with scheduled offences has dropped significantly in 2003, which is encouraging. Despite the percentage increase in offences remaining scheduled, there is no evidence of any change in policy. Scheduled cases remain a small part of the critical mass. As many as possible should be descheduled for the purposes of trial.

2.5 In terms of the outcome of cases, there remains no statistical or anecdotal evidence to justify the proposition that those charged with scheduled offences are at any disadvantage before the Courts or in the hands of the Director of Public Prosecutions or the Attorney General compared with those facing non-scheduled offences. Nobody has suggested to me that there is unfairness in the application of standards in the prosecution or judicial processes in relation to scheduled offences. Scheduling itself cannot be shown to be the cause of unfairness to defendants in the criminal justice process. Some practitioners, and unsurprisingly the judges, suggest that as compared with a jury trial there

are advantages in a reasoned judgment dealing with issues of fact as well as law.

2.6 Table A contains a detailed breakdown for the first three quarters of 2003 of applications to de-schedule cases for trial by jury. It is clear to me from the statistical evidence and other information presented to me that de-scheduling is very actively considered as an option in all cases. The majority of defendants who are charged with scheduled offences are in fact tried in the normal way, outside the scheduled mode of trial. This is consistent with the overall purpose of normalisation.

2.7 What is normal is not necessarily a constant. As I mentioned last year, the government's White Paper *Justice for All* gave rise to the Criminal Justice Bill. In the days before completing this report it has received the Royal Assent as the Criminal Justice Act 2003. It introduces non-jury trial in England and Wales, and in Northern Ireland, in some cases where there is strong evidence of potential intimidation and/or interference with the jury. The trial procedure in this small group of non-jury cases will become strikingly similar to that in scheduled cases in Northern Ireland. The experience of the criminal justice system in Northern Ireland will become an important source of knowledge for England and Wales.

2.8 I have continued to enquire of police, military and security officials as to terrorist activity. I remain aware of the very strong reservations expressed by

many about the whole process of scheduling and the use of non-jury courts. In particular, I have once again taken full note of the views of the Human Rights Commission on this subject. From the evidence provided to me it appears that there were several incidents during 2003 involving acts of terrorism that demonstrated a continuing danger from sophisticated terrorist crime, targeted on the police, military and others. There were also numerous serious criminal offences of a non-terrorist nature in which there appears to have been or may well have been a strong terrorist link. Whilst this is hard to prove, it seems reasonably clear that syndicated crime with a paramilitary connection (albeit sometimes remote) is a growing part of the criminal intelligence picture of Northern Ireland. The police have to remain flexible to meet changes in the patterns of terrorist-related crime. Prior to the Good Friday Agreement many of the incidents related to bomb attacks on commercial premises or on the security forces by republican terrorists. There has been some reduction in cross-sectarian attacks, though the level of intimidation remains quite high. There is a worrying increase in inter-necine violence within some loyalist paramilitary groups, and of significant levels of intimidation within parts of the republican community against Catholics who participate in civil institutions established as part of the Good Friday Agreement processes.

2.9 Decommissioning of terrorist arms has commenced, but the suspension of the Northern Ireland Assembly left limited room for confidence that the process would continue in the short term. Recently there appears to have been real progress in this regard, certainly enough to bring encouragement from the respective governments of the UK and Ireland. Unfortunately the progress has

not brought agreement between all the political parties. Realistically one must recognise that there remains a significant if diminished supply of weaponry to paramilitaries of all persuasions. However, terrorist organisations that have separated themselves from the existing level of political progress in Northern Ireland continue to show a reduced regard for conventions such as the giving of warnings and the exclusion of ordinary members of the public from danger areas.

2.10 As last year, I have made journeys into urban areas in Belfast and elsewhere. It remains clear without any evidence of abatement that the paramilitary organisations still exercise very significant social and economic influence over communities. On both sides of the sectarian divide there is a clear danger of intimidation within living and working neighbourhoods. Armed robberies remain at a high level, and the raising of money for paramilitaries by various intimidatory methods remains part of the picture. A sinister new development has been the large number of allegations of intimidation of individuals who have agreed to participate in community structures designed to broaden public acceptance of the Police Service of Northern Ireland as a service functioning in the interests of all sectors of the community whatever their religious origins.

2.11 As last year, I discussed with as many people as possible the issue of the scheduling of offences. It is to be noted that an analogous system exists in the Republic of Ireland.

2.12 On the evidence I have seen and heard, I believe that the security situation in Northern Ireland, and the continuing danger of intimidation of those called for jury service, justifies the continuing scheduling of offences. I hope that the trend towards normalisation will continue. It is a shared aim that scheduling should wither on the vine, given a continuing improvement in the political situation.

2.13 I have looked at TA2000 Schedule 9 very carefully, with a possible view to recommending a reduction in the range of scheduled offences. The problem with that exercise soon became apparent to me. It is not the criminal label that justifies the trial of an offence under the schedule, but rather the underlying facts and atmosphere of the case. I have concluded that nothing useful would be gained by tinkering with the list. This repeats my conclusion last year, but I emphasise that I have given fresh and hopefully empirical consideration to the issue once again.

2.14 In 2002 I carried out extensive consultation on the question of whether scheduling out should be replaced by scheduling in. The rationale for this suggestion is that ‘normality’ does not include scheduling and that if cases to be tried in the special way were the exceptions to a general rule of law there would be a greater appearance of normality. However, my conclusion is the same as last year, though with less hesitation. There is little drive to change that part of the system, which works fairly and efficiently.

2.15 No new issues have been drawn to my attention arising from the provisions of TA2000 Section 66, which requires a Magistrates' Court to conduct a preliminary inquiry into the offence in proceedings before such a Court for a scheduled offence. I have received no adverse representations on the working of this section.

3. REMANDS AND LIMITATIONS ON BAIL - SECTIONS 67 TO 71 TA 2000.

3.1 Section 67 in essence removes the normal presumption in favour of bail. The wording of Section 67(3) provides that a judge *"may, in his discretion"* admit to bail a person charged with a non-summary scheduled offence unless satisfied that there exist circumstances which are strong contra-indications to bail: those circumstances are set out in Section 67(3)(a) to (e), and the judge is to have regard to the matters set out in Section 67(4). The difference between the normal bail provisions both in Northern Ireland and Great Britain and the provisions in Section 67(3) lies in the discretion given by the distinction between the phrase quoted above and "shall". Special provisions are made in Section 68 for the grant of free legal aid to persons charged with a scheduled offence who intend to apply for bail.

3.2 Bail applications in scheduled offences may only be made to a judge of the High Court or the Court of Appeal, prior to being listed in the court of trial (Section 67(2)).

3.3 Table B sets out details of High Court bail applications in Northern Ireland in respect of persons charged with scheduled offences from January-September 2003. These reveal that 21% of such bail applications were refused [2002: 22%].

3.4 Throughout this report I have borne closely in mind the incorporation into United Kingdom domestic law of the European Convention on Human Rights,

following the enactment of the Human Rights Act 1998 and its coming into force on the 2nd October 2000.

3.4 There has been no successful challenge under the Human Rights Act to section 67 since the coming into force of Section 67(3). A challenge was mounted unsuccessfully in the case of *Re Shaw's Application for Bail*[3]*;* on that occasion the judgment was in relation to an appeal against refusal of bail. It is a case with a long and possibly continuing history. Under the title of *In the Matter of an Application by Martin Shaw for Judicial Review*[4] a detailed judgment was given by Kerr J on Mr Shaw's subsequent application for judicial review of the legality of section 67 and associated provisions affecting the magistrates' courts. It was held that the legislative provisions are lawful, and that there is no incompatibility with Article 5 of the European Convention on Human Rights. The judgment is available on the Northern Ireland Court Service's very useable website, and repays careful reading[5]

3.5 In any event, the courts are required to interpret the TA2000 so as to be compatible with the European Convention as far as possible. The discretion under section 67(3) may not be used in a way that would depart from Convention requirements.

3.6 Last year and in the previous year I reported that I remained persuaded that the nature of terrorist organisations and the threats that they pose are such that the special provisions relating to bail are justified. I was conscious of the fact that

[3] At first instance per Girvan J at [2002] NIJB 147
[4] Neutral Citation no. [2003] NIQB 68
[5] www.courtsni.gov.uk and follow 'judgments' link

they have been available for and subjected to parliamentary scrutiny on several occasions, being derived from Sections 3 to 7 of the Northern Ireland (Emergency Provisions) Act 1996. Conversations with those in the criminal justice field had sustained my belief that there might be circumstances in which a remand in custody would be justified though normal thresholds for granting bail had been reached, in the particular situation appertaining in Northern Ireland.

3.7 As can be seen from Table B, High Court bail applications are successful in the majority of the cases going before the Court. Judges remain assiduous scrutineers of objections to bail in scheduled cases.

3.8 In commenting upon this part of the Bill I have considered the statistics contained in Table C, which shows the overall percentage of persons on bail at the time of trial in Northern Ireland in the period January-September 2003. In 2001 there was virtually no difference between the proportion of persons charged with scheduled and non-scheduled offences respectively on bail at the time of trial. In 2002 the gap widened to 58% on bail at time of trial for scheduled offences, and 73% for non-scheduled offences. The figures for 2003 show 74% on bail at time of trial for scheduled offences, and 75% for non-scheduled offences. The 2003 figures are evidence of the operation of the presumption in favour of granting bail in all classes of case in Northern Ireland. The fact that 74% of persons charged with scheduled offences are on bail at the time of trial is encouraging.

3.9 I promised in my last report that I would look at the bail provisions with particular attention this year. I have done so. The statistics are helpful both as a

snapshot and as an indication of trends, but of limited empirical or conclusive value, mainly because the cohort of individuals under consideration is quite small, small enough to be capable of distortion by a small number of multi-defendant serious cases.

3.10 I have received strong representations that section 67(2) should be amended to allow bail applications for non-summary scheduled offences to be heard by a wider range of judges than those of the High Court or the Court of Appeal (and the trial judge when dealing with trial adjournments). The way the problem has been put to me, particularly by solicitors, relates especially to weekend arrests. Because there is no police bail for scheduled offences, it has been suggested to me that police officers sometimes postpone charging or deliberately charge with a non-scheduled offence in order to avoid the defendant spending time in custody pending the arrangement of a bail application. Where a scheduled offence is charged, whilst there is no legal obstacle to prevent a weekend hearing, in practice High Court judges do not hear bail applications other than on weekdays. This means that a person may spend 2-3 days in custody before a fairly routine bail application with a near certainty of bail being granted. I accept that this can cause unnecessary and considerable stress in families, especially if the person charged is a primary carer of children or elderly relatives.

3.11 It has been suggested to me that a simple solution to this problem would be for Resident Magistrates, who are full-time judges, to deal with such applications. The analogy is drawn with the small cadre of District Judges at Bow Street Magistrates' Court in London who deal with police applications for extension of detention of suspects arrested under the Terrorism Act 2000. Whilst there might

be some objections to giving the jurisdiction to all Resident Magistrates, and there may be some who would be reluctant to accept it, the 'ticketing' of judges to permit them to deal with various categories of criminal offences is now commonplace and accepted.

3.12 I have no doubt that a group of Resident Magistrates could be identified to deal with the bail applications in question. However, there remain issues connected with intimidation and protection. Resident Magistrates, as their title suggests, are based amongst the communities they serve. I have obtained advice as to the risks they might face. I am advised that the security assessment is that there would be a significant threat of intimidation of and violence towards Resident Magistrates and those close to them; and that any of them dealing routinely with scheduled offence bail applications would need to be protected physically and permanently in proportion to the risk. The extent of physical protection given to senior judges, who try scheduled offences in non-jury courts, is both intrusive and extremely expensive and the subject of concern to the Chief Constable of the Police Service of Northern Ireland over cost and manpower.

3.13 I agree that bail hearings should be available at weekends in the category of cases under discussion. The most practical solution would be to have a duty judge on call to the High Court each weekend and during statutory holidays. This would mean that bail applications could be heard in Belfast whenever necessary. In so far as they are required, rules of court could ensure that as long as the defendant was represented his attendance at court would not be necessary generally; and the development of video link technology will facilitate an increasing number of

'virtual' court rooms to operate for bail applications as more installations are made. The High Court in Belfast already has facilities for remote video linkage.

3.14 The change suggested above is in my view important, simple, practical, and capable of almost immediate introduction. It has the advantage of requiring no legislation. Further, I am pleased to report that, following a discussion initiated by the Lord Chief Justice of Northern Ireland, the change has already been agreed. From January 2004 the High Court will sit on Saturdays to hear first bail applications in scheduled case. I shall monitor the use of this facility during the next 12 months. I am grateful to Sir Robert Carswell LCJ and his colleagues for their prompt and positive response to my concerns about this issue.[6]

3.15 Returning to section 67(3), it can be argued that the Section 67(3) exceptions are no wider than the exceptions to bail recognised by Article 5 of the European Convention. Currently there is no evidence that the provision operates in such a way as to affect the granting of bail, as judges base their decisions on the listed reasons and on principles familiar to and compatible with the Convention.

3.16 My enquiries and consultations this year have confirmed my conclusion reported last year that the effect of letting section 67(3) lapse would be negligible. The same Convention compatible standards would be applied. The removal of Section 67(3) would serve as a further indication of the return to normal circumstances in the criminal justice system in Northern Ireland.

[6] Letter from The Rt Hon Sir Robert Carswell LCJ to Lord Carlile dated the 24th November 2003

3.17 I would encourage further consideration of the repeal of section 67(3). I have heard nothing in 2003 to persuade me that my 2002 conclusion on this subject was wrong.

3.18 Section 68, which is a now redundant provision relating to legal aid, has been repealed from a date to be appointed[7].

3.19 Sections 69-71, which deal with the management of those remanded in custody including young persons, have not been the subject of any observations made to me. I assume that they are functioning fairly and without difficulty.

[7] IS 2003/435, art 49(2), Sch 5

4. TIME LIMITS FOR PRELIMINARY PROCEEDINGS - SECTIONS 72 TO 74

4.1 Section 72 is concerned with time limits for preliminary proceedings. It empowers the Secretary of State to make regulations by negative resolution procedure to specify, in respect of any of the preliminary stages of proceedings for a scheduled offence, the maximum period for the prosecution to complete a particular stage, and the maximum period for which the accused may be remanded or committed in custody awaiting the completion of that stage.

4.2 Detailed provisions are made in Sections 72 and 73 for the contents of such statutory regulations and their consequences.

4.3 In fact no regulations have been made by the Secretary of State pursuant to Section 72 in 2002, as in 2001. I have been assured that such regulations would be proposed if the Secretary of State felt that there were delays in the system of processing scheduled offences which were not being addressed by the various agencies involved.

4.4 Since 1992 all criminal justice agencies have operated under the aegis of an administrative time limits scheme. These arrangements are monitored by the Case Progress Group which is chaired by a senior Northern Ireland Office civil servant. It meets quarterly and includes representatives of the Law Society and the Bar Council. There is also a progress and tracking group which comprises representatives from the various criminal justice agencies

and is chaired by an assistant director from the Department of Public Prosecutions. The Causeway Group is about to implement improved information flows to speed up the criminal justice system. I am satisfied that very considerable efforts are being made to address the problem of delays.

4.5 Consideration has been given from time to time by the Secretary of State as to whether or not to deal with delays by regulations under section 72. To date the judgment has been that, as the existing administrative system operates reasonably satisfactorily, there is no need to promulgate regulations. I am informed that the administrative time limits scheme is currently under active review. The question of making regulations will be considered again in the light of the outcome of that review[8].

4.6 At present Ministers are satisfied that all criminal justice agencies are conscious of the need to expedite the process of criminal cases and devote substantial efforts towards that objective. Ministers believe that genuine and continuing efforts are being made to reduce delays in the criminal justice system generally.

4.7 I agree. Insufficient material was placed before me to justify the conclusion that regulations are required as a matter of urgency, or that the throughput of cases in the Crown Court is being delayed in an unacceptable way. However, as in 2002 Table D shows average processing times in the Magistrates courts for scheduled defendants remanded in custody in 2003 to have deteriorated significantly. The slippage since 2000 is worrying. Committals are still being delayed, and this year the Crown Court figures have deteriorated. The average

[8] The above summary of the current position is drawn from my own enquiries, and from paragraph 37 of the judgment in the Shaw judicial review referred to above.

period in the Crown Court between committal and hearing has increased. If there is not significant improvement shown in the next few months, the argument in favour of regulations will have strengthened considerably.

4.8 The Secretary of State should be vigilant as to delays in the Magistrates' courts, with a view to further consideration as to whether statutory regulations are needed in the future.

5. NON-JURY TRIALS - SECTIONS 74 AND 75

5.1 It is always worth reminding ourselves that the establishment of non-jury trials in Northern Ireland resulted from Lord Diplock's 1972 Commission to "consider what arrangements for the administration of justice in Northern Ireland could be made in order to deal more effectively with terrorist organisations."[9] The urgency of this requirement has evolved over time. Today we aim to have an effective and fair system of trial, robust enough to deal with the special challenges of terrorism without diluting in any way the quality of justice achieved.

5.2 The central recommendation of the 1972 Commission was that trials of terrorist related crimes, defined as "scheduled offences", should be heard by a judge of the High Court or County Court sitting without a jury. This was first given effect by the Northern Ireland (Emergency Provisions) Act 1973. Lord Diplock's rationale for this recommendation was that the jury system as a means for trying such crime was under strain and that there existed no safeguard against the danger of perverse verdicts - a danger which could arise either because of intimidation or partisan juries.

5.3 In 1999 the Home Secretary announced the establishment of a Review Group comprising representatives of the Northern Ireland Office, the Home Office, the

[9] Report of the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland; Cn 5185, Dec 1972

Northern Ireland Court Service, the Attorney-General's Office, the Director of Public Prosecutions (Northern Ireland) and the then Royal Ulster Constabulary. Wide consultations ensued.

5.4 Underlying the work of the Review Group was the general consensus that normalisation should occur as soon as possible; and that the restoration of jury trial would be seen as a normalising event. The Review reported to the Secretary of State for Northern Ireland in May 2000. It shared the view that there should be a return to jury trial as soon as possible, and carried out a brief but full examination of relevant issues. The Review concluded that the time was not yet right for an immediate return to jury trial. The principal reason for this was the conclusion that the risk of intimidation of jurors remains very significant. Attention was drawn to a number of recent cases where there was persuasive evidence of such intimidation.

5.5 In both 2001 and 2002 I undertook to make an independent assessment of the continuing debate about Diplock Courts. A very forceful case had been made and continues to be made by the Northern Ireland Human Rights Commission for the immediate return to jury trial in all cases. This year too I have made what I hope has been a robust assessment of the issue, and have discussed the issue of non-jury courts with a very wide range of people and organisations. For the most part I have been the instigator of such discussions. It is not a subject that has led to significant spontaneous representations.

5.6 As last year, I have studied many documents (not all in the public domain) and publications on the issue. I am aware that from time to time government at a

senior level has considered two aspects of the Diplock courts – (i) should they continue? (ii) if so, should they be changed from single to multiple judge courts?

5.7 An important factor in discussion of the first question is evidence of the quality of Diplock Courts. There is a near unanimity of the opinions expressed to me that Northern Ireland judges apply rigorous standards to the quality of evidence in non-jury trials, and that the innocent are at least as likely to be acquitted before a Diplock judge as before a jury. Whether this is absolutely correct or not, the provision of detailed reasons by judges in non-jury cases enables defendants and their lawyers to know why they have been convicted, and facilitates decisions on appeals in a way not available in jury cases. Whilst there is absolutely no doubt that there is broader acceptability by the public at large of the results of jury trials, there is no qualitative evidence of unfairness to defendants in non-jury cases.

5.8 A representative of one of the political parties in the Assembly emphasised to me that, whilst many people would like to return to universal jury trial for serious cases as a mark of normalisation, the real problem is one of history rather than merits. The term 'Diplock Court', that person told me, is steeped in pejorative history, and it was suggested that the term should cease to be used despite the undoubted distinction and good faith of the late Lord Diplock. The same person suggested to me that the absence of women from the High Court Bench is a legitimate concern. These seem to me to be cogent points, which should be given due regard. Nevertheless the person who made these comments did not suggest that the time for abandoning non-jury trials had yet arrived.

5.9 I have concluded that the use of non-jury trials in those cases that are not scheduled out is working adequately, and I can see no sound reason for differing from the conclusions reached by the Diplock Review in May 2000. The security situation is not yet such as to reassure me that jury trial would be fair trial in all cases.

5.10 Indeed, there is some evidence of an increasing level of lower scale intimidation, by which I mean intimidation by innuendo and threat rather than the overt use of violence. The targets for that kind of intimidation include prison officers (who are particularly vulnerable) and members of District Policing Partnerships (DPPs). In relation to prison officers there have been many incidents reported. There have been several cases identified of intimidation of Catholic members of DPPs.

5.11 The more difficult question has been whether Diplock courts should have more than 1 judge. My 2003 review has involved a particular focus on this question, as some of my interlocutors became anxiously aware. I have considered this on the basis that, if there were to be a change, it would be to a 3-judge court: this is consistent with all the views expressed to me in favour of a change. It would be consistent with the situation in the Republic of Ireland, where the Special Criminal Court deals with serious terrorism issues without a jury. The Special Criminal Court consists of three judges of non-equivalent judicial status, a High Court Judge presiding, and the equivalent of a Circuit/County Court judge and of a Resident Magistrate respectively.

5.12 I am satisfied that the creation in Northern Ireland of a 3 judge trial court in which all the judges were from the High Court would have manpower and

resource implications that could not realistically be met. This raises the possibility of a similar jurisdiction to the Dublin Court, with 3 judges from different levels of the Bench. Having visited the Special Criminal Court in Dublin twice during the year, spoken to the judges and carried out some research, I do not accept the argument that non-equivalent judges cannot function well together as a tribunal both of fact and law in criminal trials. Other available analogies include the Employment Tribunal and the Employment Appeal Tribunal, and the England and Wales Court of Appeal (Criminal Division) which can include a Lord Justice of Appeal, a High Court Judge and a Circuit Judge. I have considered carefully the argument that if judges from a level below the High Court were to be included in 3 judge trial courts, in a small jurisdiction such as Northern Ireland it might prove difficult for those coming from the less senior jurisdiction to exclude conscious or sub-conscious deference to the seniority of their colleagues. That argument seems to me to underestimate the independence of mind and integrity of the judiciary. I have now concluded that, if a change in the manning of the non-jury courts was to take place, it could safely and without risk of injustice involve 3 judges of non-equivalent status. If this change were to be made I would expect such a court to consist of one judge from each of the three levels of the criminal jurisdiction in Northern Ireland, with the High Court Judge presiding.

5.13 The conclusion in the previous paragraph is a change from the views I have expressed previously on the issue of the functionality of a 3 judge court and its composition. However, that conclusion is far from an end to the matter. That a 3 judge court could work does not necessarily mean that it should be introduced. There are other factors to be considered.

5.14 The first is that there would be a need to appoint more judges at all three levels, with the associated cost and the provision and management of essential training. This would involve significant additional expenditure. All public funding ultimately falls on the taxpayer. Given that there is only limited public demand for the change to a 3 judge court, and given the recognised need for investment in policing and other perhaps equally pressing parts of the criminal justice system, Ministers might find it difficult to justify the extra costs involved.

5.15 The second factor to be considered is a related and very substantial cost issue, with which there is an associated matter of the disposition and dispersal of the judiciary in the particular situation of Northern Ireland. Resident Magistrates sit in many towns, as do judges trying cases on indictment. At present intense security (in itself a matter of concern to and discussion with the Chief Constable of the PSNI) is provided to a smallish group of the most senior judges. The cost of security for each such judge is high, as it involves round the clock human as well as mechanical surveillance. They are protected well, in proportion to the realistic risk assessments that are made and reviewed periodically. In order to achieve an effective and efficient multiple judge non-jury court, it is likely that there would have to be a pool of at least ten additional judges from whom membership for trials could be chosen. Some, particularly resident Magistrates living in the countryside well away from Belfast, and with their everyday Magistrates' Court work in an inevitable less secure environment, would present challenging and resource intensive security risks. The last sentence of the previous paragraph applies with equal force to this context.

5.16 The third factor is one I dealt with in my report for 2002. Whilst the effect of a 3-judge court might be more neutral politically if it was already in place, there is justified apprehension that a change from a single judge at this time would be inflammatory. Independent observers from outside both the government penumbra and the legal profession have reinforced to me that a change to a 3-judge court would certainly be viewed by some as provocative, and by most others as mere tinkering. This year I have seen no evidence from polling or elsewhere of real disaffection with the judicial system, so as to indicate an imperative for change.

5.17 My overall conclusion is that a 3 judge non-jury court could function satisfactorily even if the judges were of non-equivalent judicial status. Nevertheless the present single-judge courts continue to offer a high standard of justice: there is no evidence of any deficit in the quality of single-judge courts. Having provided those conclusions, whether there should be a change is a matter outside my direct purview. It is a matter for Ministers, whose political and economic judgments are founded on broader considerations than my responsibilities as reviewer permit.

6. ADMISSIONS AND TRIALS ON INDICTMENT - SECTION 76

6.1 As reported last year, section 76 has been repealed[10].

6.2 So far as I am aware the repeal of section 76 has caused no difficulties.

[10] IS 2002/2141, art 2

7. POSSESSION OF EXPLOSIVE SUBSTANCES AND FIREARMS - SECTION 77

7.1 My conclusion in relation to Section 77 TA 2000 is as last year. Section 77 imposes a form of evidential onus on a defendant charged with a scheduled offence of possessing explosives and petrol bombs, and various offences relating to firearms. It is for the defendant to prove that he did not know of the presence of articles on premises or that he had no control over them if he is to rebut the presumption that he was in possession of such articles (and, if relevant to the offence, knowingly). The effect of the onus placed on the defendant has been illustrated clearly by the Court of Appeal of Northern Ireland in the 2003 judgment of Kerr J in *R v Shoukri*.[11]

7.2 The assumption referred to above is unusual in such legislation, in that it is one permitted to the Court rather than required of the Court. This leaves room for judicial discretion in appropriate circumstances.

7.3 Having regard to the terrorist situation, and the difficulty in obtaining evidence as to the source and chain of provision of explosives and firearms. In my view the necessity for Section 77 remains clear. It is not causing any injustice.

[11] R v Andre Shoukri; reference KERC4062

8. SENTENCING AND REMISSION - SECTIONS 78 TO 80

8.1 I have received no representations in relation to these sections.

8.2 I note that section 78(3) has been amended from a date to be appointed to provide that for sentencing purposes a 'child' is a person who has not attained the age of 17 (formerly 18)[12]. I shall monitor any practical consequences of this change once it is brought into force.

8.2 I repeat a request made last year and in 2001, that it would be helpful if statistics concerning convictions during remission could be published as part of the regular statistical bulletins published by the Northern Ireland Office.

[12] Justice (Northern Ireland) Act 2002 s 63(1), Sch 11, paras 22,24

9. POWERS OF ARREST, SEARCH, SEIZURE AND EXAMINATION OF DOCUMENTS - SECTIONS 81 TO 88 TA 2000: SCHEDULE 5

9.1 In this section my conclusions are as in the 2 previous years. Section 81 allows a police officer to enter and search any premises if he has reasonable suspicion that a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism is to be found there. Section 82 provides that any police officer may arrest without warrant any person whom he has reasonable grounds to suspect is committing, has committed or is about to commit a scheduled offence or an offence under the Act which is not a scheduled offence, and may enter and search any premises or other place for that purpose. Section 82(3) empowers an officer to seize and retain anything which he suspects is being, has been or is intended to be used in the commission of a scheduled offence or an offence under the Act which is not a scheduled offence. Section 83 provides a power of arrest and detention for a period not exceeding 4 hours to a member of Her Majesty's Forces on duty who reasonably suspects that a person is committing, has committed or is about to commit any offence, together with corresponding powers of entry and seizure.

9.2 The actions of the military are subject to the jurisdiction of the Independent Assessor of Military Complaints Procedures. He has informed me, and I accept that there has been no significant difference in the operation of core military security procedures as compared with the preceding period under the Northern Ireland (Emergency Provisions) Act 1996. The Independent Assessor's reports are rigorous and very fully researched, and provide significant reassurance in relation to such 'policing' roles as the military retain.

9.3 In terms of basic military patrolling, while much of the old checkpoint congestion is no longer seen (and with it the regular use of the stop and search provisions), it remains an option if circumstances are adjudged to make it necessary.

9.4 Tables E to I contain data relating to the exercise of powers of entry (Section 81), arrests (Sections 82 and 83), searches (Sections 82 and 83), searches for munitions and transmitters (Section 84) and examination of documents (Sections 87-88). It can be seen that generally the powers are used sparingly, with the 2003 figures up for entry, but significantly down for arrests and non-munitions searches. The number of searches performed by the Army under those categories is well down: this is a welcome indication of a return to a more conventional civil society, in which crime investigation is the preserve of the police and the other non-military services.

9.5 Table H deals with premises searches for munitions and transmitters pursuant to section 84. These have increased from a total of 1556 last year to 1665 in January to September 2003, with a significant increase in military activity under the section. I presume that this is explained by operational considerations, particularly the Army's special skills with the items sought. I shall keep a particular watch on this category of activity in the next year.

9.6 I have concluded that the powers provided by sections 81-88 work reasonably well given the difficult operating conditions that sometimes have to be faced, and

the intrusion on privacy often involved. I have no doubt that the provisions continue to be necessary.

9.7 TA2000 Schedule 5, made pursuant to Section 37, provides throughout the United Kingdom for search warrants to be issued by the courts for the purposes of a terrorist investigation, and related matters. Paragraphs 18-21 of the original Schedule relate to Northern Ireland. Paragraphs 19-21 enabled the Secretary of State, in place of the courts, to authorise a search of premises in the investigation of terrorist finance or direction offences. Section 112(5)(b) made it clear that these paragraphs were intended to be treated as temporary.

9.8 During the passage of the Terrorism Bill through Parliament in 1999 it became clear that the Secretary of State has used the identical predecessor powers about thirty times. However, the powers have not been used since 1998.

9.9 The rationale for the powers was that they enabled the police to obtain a search warrant in certain cases without having to disclose sensitive intelligence or techniques to a court, a disclosure that conceivably might put a person's life in danger or otherwise jeopardise the investigation. It was thought that without these exceptional powers the police might hesitate to seek warrants in a few cases and possibly abandon important investigations. In practice this was not the case. The police saw no operational need for the powers, and were content to seek warrants through the courts.

9.10 In my last Part VII report I recommended that paragraphs 19-21 should be repealed. I am pleased to note that this advice was accepted, and that the

paragraphs are no longer in force.[13] In my view this change represents a welcome step towards the normalisation envisaged by the Good Friday Agreement.

[13] IS 2003/427, arts 1 and 2(2)(c), effective on the 19th February 2003.

10. POWER TO STOP AND QUESTION - SECTION 89 TA 2000

10.1 Section 89 empowers an officer to stop a person for so long as is necessary to question him and ascertain his identity and movements, what he knows about a recent explosion or another recent incident endangering life, and what he knows about a person killed or injured in a recent explosion or incident. It is an offence to fail to comply and respond. Section 89 stops can be irritating and intrusive for the great majority of citizens going about their lawful business.

10.2 Table J shows the number of persons stopped pursuant to Section 89 between January-September 2003. The peaks are related to the marching season. The statistics for 2001 showed an average of 971 persons per calendar month being stopped and questioned pursuant to the section. For the whole of 2002 this increased to an average of 1027. The monthly average for the first three quarters of 2003 is 715. Last year's improved statistical presentation showed that 80.1% of these actions were carried out by the military and 19.9% by the police. For 2003 the comparable figures are 89% by the military and 11% by the police.

10.3 From the statistics it can be seen that here has been a decrease in the numbers stopped by both the police and the military during parts of the year. This decrease is welcome. However, I am concerned about the still high level of stops and think the issue worthy of more detailed study. I shall keep a close and specific watch on the use of section 89 in the coming year.

10.4 Statistics are not available of persons failing to stop or answer question following a stop by the military. For the present I remain of the view that any requirement

to maintain such statistics would place impracticable burdens on soldiers dealing with members of the public in the operational situation.

10.5 The oral and documentary evidence available to me leads me to the conclusion that the power to stop and question is administered and supervised to a high standard, and remains necessary.

11. POWERS OF ENTRY, TAKING POSSESSION OF LAND, ROAD CLOSURE ETC. - SECTIONS 90 TO 95 TA 2000.

11.1 The powers under these sections are vested severally and in some cases jointly in the police, the military and the secretary of State. All regard them as key aids to public order.

11.2 In 2002 the Section 91 power to take possession of land was exercised by requisition once.

11.3 According to the official statistics in Table K, in the period January-September 2003 there were no requisition orders.

11.4 As reported last year, the requisition power was used most recently at Drumcree and Whiterock. At Drumcree (19th June–4th September 2002) it was used for the requisition of land surrounding the church, upon which the 'defence line' was built and the stream widened. I have seen the site. At the time of the Whiterock parade (26th June – 2nd July 2002) the site of the former Mackie's factory was requisitioned for the forward basing of police and military personnel, and two gardens were requisitioned to allow the building of an obstacle across Springfield Road.

11.5 The requisitioning and road closure provisions are useful for the preservation of the peace, well administered, used sparingly and undoubtedly necessary.

12 REGULATIONS FOR PRESERVATION OF THE PEACE: SECTION 96

12.1 Section 96 provides a general power to the Secretary of State to make regulations for the preservation of the peace.

12.2 Old regulations, made in 1991 under the predecessor to Section 96, are still in force. These include rules concerning the halting of trains and the regulation of funerals. The power has been used in the past to prevent the use of certain border roads in South Armagh in order to disrupt an organised fuel smuggling enterprise. Fuel smuggling remains very much a part of criminal activity in Northern Ireland.

12.3 Although rarely invoked, the regulations still in force are regarded by the police as potentially useful to deal with predictable situations.

12.4 In my view Section 96 remains necessary and potentially useful.

13 PORT AND BORDER CONTROLS: SECTION 97

13.1 Section 97(1) and (2) enabled the Secretary of State to confer port and border control powers on the Army by specifying them as examining officers under Schedule 7.

13.2 This power was neither used nor even sought on any occasion.

13.3 The police and the Army agree that the Army's powers to stop and search would be adequate in all circumstances envisaged by these subsections.

13.4 Last year I recommended that section 97(1) and (2) be allowed to lapse. This advice was accepted, and they are no longer on force.[14]

13.5 Section 97(3) enables the Secretary of State to make provisions, including modification of Schedule 7, about entering or leaving Northern Ireland by land. Last year I called for further views as to the continuing need for this provision. The shortage of responses may well be the result of the section never having been used. It is difficult to foresee circumstances in which it might be used, and in reality it seems to me to be superfluous to reasonable legislative requirements. I recommend that it be repealed.

[14] SI 2003/427, arts 1, 2(2)(a), effective from the 19th February 2003

14. SECTION 98 and SCHEDULE 11: THE INDEPENDENT ASSESSOR OF MILITARY COMPLAINTS PROCEDURES

14.1 The Assessor's most recent Annual Report was submitted to parliament on the 16th July 2003.

14.2 The present Assessor, Jim McDonald, was reappointed to the post on the 24th August 2003, for a further two years. He provides a valuable part of the checks and balances required in the particular situation in Northern Ireland, where the Army plays a still obvious part in the maintenance of public order.

15. REGULATIONS, CODES OF PRACTICE AND OTHER MISCELLANEOUS PROVISIONS

15.1 Codes of Practice have been prepared in relation to the exercise by police officers of powers under the Act. The Codes of Practice have not been the cause of difficulty or complaint, so far as I am aware. They are of good quality, drawn upon experience of previous Codes of Practice used in Great Britain and in Northern Ireland of a similar or analogous kind, and a sound protection for the liberty of the subject and investigators alike.

15.2 Section 101(5A) and (7A) have been added to the Act.[15] Subsection (5A) strengthens the impact of the Codes.

15.3 I am given to understand that work is under way to examine whether the Terrorism Act Codes could be subsumed by a revised PACE Code, which would include advice on the treatment of both PACE and terrorism detainees. This would bring Northern Ireland into the same situation as exists in England and Wales.

15.4 Without going into detail, I think it proper to add that, as last year, I have been able to see various forms of written guidance given to the military at all levels. I have been extremely impressed by their quality, and especially by the written

[15] Police (Northern Ireland) Act 2003, S 32(1), Sch 3, para 8(1)(2)(3)

procedures and guidance notes provided to soldiers patrolling the streets. A great deal of thought has gone into that documentation.

16. COMPENSATION - SECTION 102 AND SCHEDULE 12

16.1 Schedule 12 provides for compensation to be paid for certain action taken under Part VII of the Act. Paragraph 1 of Schedule 12 provides for compensation where under Part VII of the Act property is taken, occupied, destroyed or damaged; or any other act is done which interferes with private rights of property. The Schedule contains provisions removing the right to compensation for persons convicted of a scheduled offence in connection with which the Part VII act was done.

16.2 I have made specific enquiry of officials about the operation of the compensation regime and the amounts paid. Table L sets out the compensation paid in the period between the 1st January 2003 and the 30th September 2003. They show a significant decrease on last year. Having regard to the powers contained in Part VII, the cost of compensation is at an acceptable level. That there is less to be paid is part of the evidence of a gradual return to normality.

16.3 There has been no indication to me that the compensation system is not working well. The proper provision of compensation for disturbance to private rights is plainly a continuing necessity.

17. TERRORIST INFORMATION - SECTION 103.

17.1 Section 103 is concerned with terrorist information. It creates offences if a person collects, records, publishes, communicates or attempts to elicit information, or has in his possession records or documents containing information that might be useful in committing or preparing an act of terrorism. The offences are limited to information concerning those who might be regarded as particularly vulnerable to terrorist acts, namely judges, constables, members of Her Majesty's Forces, court officers and full-time employees of the Prison Service in Northern Ireland. It particularly covers the disclosure of information, whether maliciously or innocently, and plainly is directed at the media as well as at terrorist organisations.

17.2 Section 103 applies only to Northern Ireland. This is because of the specific nature of the threat posed there against certain categories of people working within sensitive areas of security.

17.3 In 2001 I suggested possible extensions of the categories. Sir George Baker reporting in 1987 recommended a larger list than is contained in section 103; whereas in 1991 Viscount Colville of Culross Q.C., as reviewer of the provisions corresponding to what is now the TA2000, rejected the extension of the list. In 2002 I expressed the view that Section 103 should be retained, and I recommended that it be extended to include part-time employees of the prison service. I was advised that this would have increased by 26 the approximately 2000 full-time employees already protected by the section.

17.4 The government has informed me that, mindful of its equality obligations under the Northern Ireland Act 1998 it accepts my recommendation to amend the list at section 103 to include part-time employees of the prison service. To amend the section, and to tidy up the existing provision on account of a technical anomaly found in the legislation, further primary legislation will be required. The relevant legislation has already received a second reading in the House of Lords.

18. POLICE RECORDS AND POWERS, AND PRIVATE SECURITY SERVICES - SECTIONS 104 TO 106.

18.1 I have no comments to make about the provisions in Sections 104 and 105 concerning police records.

18.2 Section 106 brought into effect Schedule 13, which provides a regime for the licensing of private security services. The provision of unlicensed services is an offence. Table M reveals that all applications for licenses and renewals in the first three quarters of 2003 were allowed, with only 1 made subject to conditions.

18.3 In England and Wales a new regulatory scheme exists for the security industry, aimed principally at the regulation of bouncers. In Northern Ireland this issue is currently dealt with piecemeal by district councils through their entertainment licensing function, but without explicit or directly comparable powers to those given under the Private Security Industry Act 2000.

18.4 TA2000 Section 106 has worked well, and has been a satisfactory continuation of the licensing system in operation under the previous legislation. The extension of the Private Security Industry Act 2000 should receive continuing consideration by the Northern Ireland Office. I remain satisfied that there are problems about changing Northern Ireland law to correspond with the new situation in England and Wales. These arise principally from difficulties one can envisage from the use of Enhanced Criminal Records Checks as provided for under the new Act: these include police intelligence as well as criminal records, and the applicant is entitled to see the product. This could have a significant effect on intelligence gathering

in respect of suspected terrorists. In my judgment Section 106 in its present form remains necessary.

19. SPECIFIED ORGANISATIONS - SECTIONS 107 TO 110 TA 2000.

19.1 The specification of proscribed organisations remains necessary, having regard to the continuing danger posed by terrorist groups, especially those which have placed themselves entirely outside the sphere of influence of the Northern Ireland democratic institutions and political parties. I remain satisfied that very careful consideration is given to issues of proscription and de-proscription, with the public interest as the key factor.

19.2 Pursuant to Section 11 TA 2000 a person commits an offence if he belongs or professes to belong to a proscribed organisation. Sections 108-111 were introduced following the Omagh bombing.

19.3 Section 108 makes provisions for the evidence that may lead a Court to conclude that a Section 11 offence has been committed.

19.4 Section 108(2) and (3) render admissible under a Section 11 charge hearsay evidence which would not otherwise be admissible. The evidence must be given orally by a police officer of at least the rank of superintendent. If it is his opinion that the accused belongs to an organisation which is specified, or belonged to an organisation at a time when it was specified, that statement "shall be admissible" as evidence of the matter stated, but the accused shall not be committed for trial, be found to have a case to answer or be convicted solely on the basis of the statement.

19.5 In considering this section I am mindful that the police officer of at least the rank of superintendent in giving the evidence will be acting on information or intelligence provided to him by others. Against that, there is obviously a risk that the information contained in his evidence may have passed through several hands. I do bear closely in mind the quality of the intelligence and information to which the authorities often have access in Northern Ireland, something of which I have satisfied myself by careful enquiry. I remain of the view that the quality of such intelligence and information is generally good and is assessed carefully against appropriate criteria and standards.

19.6 Section 108 has not been used, so far as I am aware. I find it difficult to envisage a situation in which a court would find itself able to attach significant weight to evidence given under Section 108. In this context weight, not admissibility is the true issue.

19.7 In my view section 108 could be repealed without any measurable disadvantage to the cause of public protection from terrorism. It is a provision that lies uncomfortably in the broader context of normalisation and the Good Friday Agreement. I recommend that very serious consideration be given to repeal.

19.8 Section 109 allows adverse inferences to be drawn from a failure to mention a fact which is material to a Section 11 offence and which the accused could reasonably be expected to mention when being questioned or on being charged. It is a pre-requisite of the adverse inference that before being questioned charged

or informed the accused was permitted to consult a solicitor. Conviction cannot be founded upon this adverse inference.

19.9 The adverse inferences available under Section 109 are consistent with the now established general criminal law in England and Wales, following the enactment of Section 34 of the Criminal Justice and Public Order Act 1994. I remain of the view that Section 109 remains necessary and proportional. I am reinforced in this conclusion by the provisions of Section 110, and especially Section 110(1)(c), which sustains other enactments leading to evidence being ruled inadmissible.

20. FORFEITURE ORDERS - SECTION 111 TA 2000 : SCHEDULE 4 PART III.

20.1 Section 111 provides for the forfeiture of money or any other property if a person is convicted of an offence under Section 11 (Membership of a Proscribed Organisation) or Section 12 (Support for a Proscribed Organisation).

20.2 I have received no representations against the continuation of Section 111. Any person other than the convicted person who claims to be the owner of or otherwise interested in anything which can be forfeited under the Section is given an opportunity to be heard.

20.3 Schedule 4 part III makes provision in relation to forfeiture orders made by a court in Northern Ireland under TA200 Section 23, where there is a conviction of an offence contrary to sections 15-18 (fund-raising, use and possession of terrorist money or other property, entering into funding arrangements and money laundering for terrorism).

20.4 Paragraph 36 of the Schedule enabled the Secretary of State, rather than the courts, to make and enforce restraint orders. Section 112(5)(a) made it clear that this paragraph was to be treated as temporary.

20.5 The paragraph 36 powers and their predecessor had not been used for many years. I was advised that in appropriate cases now the police would seek restraint orders through the courts, and that there are more effective powers in any event available under general criminal legislation.

20.6 I recommended last year that Schedule 4 paragraph 36 be allowed to lapse. This has happened.[16] So far as paragraph 37 is concerned, I accept that it may still have some utility: without it only contempt of court powers would be available to deal with breach of a court restraint order. However, paragraph 37 is now redundant in its application to paragraph 36. I have had drawn to my attention a potential procedural problem arising from the relationship between paragraph 37 and section 112: this should be considered and tidied up if necessary for legislative clarity.

20.7 In my view Section 111 remains necessary and proportional.

[16] IS 2003/427, art 1

21. DURATION OF PART VII - SECTION 112 TA 2000.

I have received no representations questioning the duration of Part VII, or the revival provisions, save in so far as I have received criticism of the necessity of any special provisions for Northern Ireland whatsoever. These issues were fully debated in Parliament and elsewhere, and as before I do not currently see it as part of my responsibility to comment on or question the contents of Section 112.

A

Number of instances in Northern Ireland for which offences are certified out of the scheduled mode of trial by the Attorney General (Section 65, Schedule 9).

Year	Total Number of offences for which applications made[1]	Number of persons involved	Number of offences for which applications	
			1. Granted	2. Refused
2002				
Jan-Mar	221	141	207	14
Apr-Jun	299	200	267	32
Jul-Sept	361	277	323	38
Oct-Dec	484	315	419	65
2002 Total	**1,365**	**933**	**1,216**	**149**
2003				
Jan-Mar	525	314	418	107
Apr-Jun	314	229	282	32
Jul-Sept	403	272	348	55
2003 Total to date	**1,242**	**815**	**1,048**	**194**

Note: 1. An application may relate to one person charged with one offence, or one person charged with a number of offences, or a number of persons with the same offence.

Source: Department of the Director of Public Prosecutions.

B

Limitation of Power to grant bail: High Court bail applications in Northern Ireland in respect of persons charged with scheduled offences (Section 67)[1].

Year	Number of applications	Number granted	% granted [2]	Number refused	% refused [2]	Other outcomes [3]	% other outcomes [2]
2002							
Jan-Mar	317	194	**61%**	55	**17%**	68	**21%**
Apr-Jun	321	176	**55%**	62	**19%**	83	**26%**
Jul-Sept	408	187	**46%**	102	**25%**	119	**29%**
Oct-Dec	448	217	**48%**	107	**24%**	124	**28%**
2002 Total	**1494**	**774**	**52%**	**326**	**22%**	**394**	**26%**
2003							
Jan-Mar	416	188	**45%**	97	**23%**	131	**31%**
Apr-Jun	429	203	**47%**	96	**22%**	130	**30%**
Jul-Sept	455	242	**53%**	79	**17%**	134	**29%**
2003 Total to date	**1,300**	**633**	**49%**	**272**	**21%**	**395**	**30%**

Notes:

1. Figures exclude applications for compassionate home leave, variation of bail conditions, surety discharges and revocation of bail.
2. Percentages may not add to 100 due to rounding.
3. s under 'Other Outcomes' include applications withdrawn, dismissed and adjourned.
4. ıled offences are those offences defined by Schedule 9 to the Terrorism Act 2000.

Source: Northern Ireland Court Service.

C

Limitation of power to grant bail: Percentage of persons on bail at time of trial in Northern Ireland (Section 67).

Year	Persons charged with	
	Scheduled Offences (%)	Non-Scheduled Offences (%)
2002		
Jan-Mar	33	78
Apr-Jun	63	74
Jul-Sept	48	77
Oct-Dec	68	71
2002 Total	**58**	**73**
2003		
Jan-Mar	65%	77%
Apr-Jun	82%	75%
Jul-Sept	71%	69%
2003		
Total to date	**74%**	**75%**

Source: Northern Ireland Court Service.

D

Time limits for preliminary proceedings: Average processing times in Northern Ireland for scheduled defendants remanded in custody and dealt with by the Crown Court (Section 72).

Year	Average processing time – weeks					
	Remand to Committal		Committal to Arraignment		Arraignment to Hearing	
	Average processing time	Number of defendants	Average processing time	Number of defendants	Average processing time	Number of defendants
2002						
Jan-Mar	35.1	17	4.9	13	6.7	12
Apr-Jun	43.8	29	3.0	11	13.6	11
Jul-Sept	41.8	18	12.4	10	4.1	10
Oct-Dec	44.5	25	9.0	11	11.8	11
2002 Total	**41.9**	**89**	**7.1**	**45**	**9.1**	**44**
2003						
Jan-Mar	42.9	17	9.6	8	12.3	8
Apr-Jun	47.5	38	5.3	10	46.0	9
Jul-Sept	45.3	6	8.4	2	17.1	2
2003 Total to date	**46.0**	**61**	**7.3**	**20**	**28.8**	**19**

Notes:

1. ıble is based on defendants disposed of within the time period. It includes only those in custody in each separate remand stage and where a waiting time has been recorded. (Not all defendants experience a waiting time between arraignment (plea entry) and hearing.) Figures include defendants with bench warrants and court recesses.

2. The three periods are treated separately and cannot be totalled as

some defendants may change status (custody to bail and vice-versa) between stages.

3. Hearing: 1st day of trial (i.e. commencement of trial at court).

4. Scheduled defendants disposed of in April-June 2003 include a high percentage of lengthy and complex cases, contributing to waiting times being uncharacteristically high.

Source: Northern Ireland Court Service.

E

Section 81 – Arrest of suspected terrorists (Power of entry).

Year	Number of premises entered	Number of premises searched
2002		
Jan-Mar	9	0
Apr-Jun	0	0
Jul-Sept	14	N/A
Oct-Dec	11	
2002 Total	**34**	**N/A**
2003		
Jan-Mar	4	N/A
Apr-Jun	12	10
Jul-Sept	32	29
2003		
Total to date	**48**	**-**

Source: Police Service of Northern Ireland.

F

Persons arrested in Northern Ireland by members of the PSNI and Her Majesty's forces under Sections 82 and 83 respectively.

Year	Section 82		Section 83
	Persons arrested by Police	Persons subsequently charged[1]	Persons arrested by Her Majesty's forces
2002			
Jan-Mar	2	N/A	4
Apr-Jun	7	N/A	4
Jul-Sept	12	N/A	8
Oct-Dec	10	N/A	7
2002 Total	**31**	N/A	**23**
2003			
Jan-Mar	6	N/A	4
Apr-Jun	12	1	0
Jul-Sept	9	4	1
2003 Total to date	**27**	**-**	**5**

Notes: 1 Information not available prior to April 2003.

Source: Police Service of Northern Ireland

Her Majesty's forces Headquarters Northern Ireland.

G

Number of occasions in which premises in Northern Ireland were searched by police and Her Majesty's forces under Sections 82 and 83 respectively.

Year	PSNI Searches	Searches by Her Majesty's forces[1,2]
2002		
Jan-Mar	7	6
Apr-Jun	2	26
Jul-Sept	5	33
Oct-Dec	11	41
2002 Total	**25**	**106**
2003		
Jan-Mar	7	7
Apr-Jun	0	38
Jul-Sept	8	9
2003 Total to date	**15**	**54**

Notes:

1. ajority of searches by the Police Service of Northern Ireland are conducted in conjunction with Her Majesty's forces therefore the figures under each category should not be combined.

2. ng searches carried out by her Majesty's forces under section 83 are no longer disaggregated by occupied or derelict status.

Source: Police Service of Northern Ireland
Her Majesty's forces Headquarters Northern Ireland.

H

Section 84 – Premises searches (Munitions and Transmitters)

Year	Number of Premises Searched by Police			Number of Premises searched by Her Majesty's forces
	Dwellings	Other	Total	
2002				
Jan-Mar	91	22	113	38
Apr-Jun	90	27	117	79
Jul-Sept	100	34	134	157
Oct-Dec	188	39	227	100
2002 Total	**469**	**122**	**591**	**374**
2003				
Jan-Mar	171	34	205	338
Apr-Jun	125	21	146	384
Jul-Sept	96	10	106	29
2003 Total to date	**392**	**65**	**457**	**751**

Note: 1. The majority of searched by Her Majesty's forces are conducted in conjunction with the Police Service of Northern Ireland therefore Her Majesty's forces and Police Service of Northern Ireland figures should not be aggregated.

Source: Police Service of Northern Ireland
Her Majesty's forces Headquarters Northern Ireland.

I

Section 87 – Examination of Documents

Year	Number of Occasions documents examined	Number of Occasions documents removed
2002		
Jan-Mar	4	4
Apr-Jun	16	16
Jul-Sept	16	9
Oct-Dec	15	14
2002 Total	**51**	**43**
2003		
Jan-Mar	28	22
Apr-Jun	23	23
Jul-Sept	28	28
2003 Total to date	**79**	**73**

Source: Police Service of Northern Ireland.

J

Section 89.

	Police Service for Northern Ireland		Her Majesty's forces
Year	Number of Persons Stopped	Number of persons failing to stop or answer questions	Number of persons stopped
2002			
Jan-Mar	63	0	2,286
Apr-Jun	307	0	2,251
Jul-Sept	1471	0	3,561
Oct-Dec	607	0	1,775
2002 Total	**2,448**	**0**	**9,873**
2003			
Jan-Mar	282	1	2,952
Apr-Jun	294	0	1,763
Jul-Sept	360	0	2,928
2003 Total to date	**936**	**1**	**7,643**

Source: Police Service of Northern Ireland
Her Majesty's forces Headquarters Northern Ireland.

K

Section 91 – Taking Possession of land, & c.

Year	Number of Requisition Orders	Number of De-requisition Orders
2002		
Jan-Mar	0	1
Apr-Jun	1	1
Jul-Sept	0	1
Oct-Dec	0	0
2002 Total	**1**	**3**
2003		
Jan-Mar	0	0
Apr-Jun	0	0
Jul-Sept	0	0
2003 Total to date	**0**	**0**

Source: Northern Ireland Office.

L

Compensation (Northern Ireland) (Section 102, Schedule 12)[1]

Year	Amount £		
	Compensation Payments[2]	Agency Payments[3]	Total
2002			
Jan-Mar	1,087,298	150,638	1,237,936
Apr-Jun	597,716	141,352	739,068
Jul-Sept	1,192,755	124,643	1,317,398
Oct-Dec	1,149,152	126,007	1,275,159
2002 Total	**4,026,921**	**542,640**	**4,569,561**
2003			
Jan-Mar	496,186	116,587	612,773
Apr-Jun	802,268	85,391	887,659
Jul-Sept	322,498	76,904	399,402
2003 Total to date	**1,620,952**	**278,882**	**1,899,834**

Notes:

1. s relate to cash payments actually made during the relevant periods. They do not relate to the expenditure on Terrorism Act claims expressed on a Resource Accounting basis that the Compensation Agency reports elsewhere.
2. Includes payments under the Northern Ireland (Emergency Provisions) Act 1996, and solicitors' and loss assessors' fees.
3. rises loss adjusters' fees (employed by The Compensation Agency).

Source: The Compensation Agency.

M

Private Security Services: Applications for licence to provide security for reward (Northern Ireland) (Section 106, Schedule 13).

Year	Number of applications for licence	Number of licences issued	Number issued with conditions	Number of appeals against conditions	Number of licences refused	Number of refusals appealed
2002						
Jan-Mar	32	32	0	0	0	0
Apr-Jun	26	26	0	0	0	0
Jul-Sept	22	22	0	0	0	0
Oct-Dec	19	19	0	0	0	0
2002 Total	**99**	**99**	**0**	**0**	**0**	**0**
2003						
Jan-Mar	33	33	0	0	0	0
Apr-Jun	30	30	0	0	0	0
Jul-Sept	22	21	1	0	0	0
2003 Total to date	**85**	**84**	**1**	**0**	**0**	**0**

Note: 1. Includes application for renewal of existing licences and applications for new licences.

Source: Northern Ireland Office.

N

Persons, Offices and Departments who gave information or views

[Note: some individuals have been excluded from this list either on request or at the discretion of the Reviewer, on the grounds of privacy and/or security]

The Army
GOC Northern Ireland
Chief of Staff, Army HQ Northern Ireland
Other military staff
and connected civilian personnel

British Irish Intergovernmental Secretariat, Belfast

Bar Library, Belfast – The Northern Ireland Bar
Eugene Grant QC
Dennis Boyd

Professor Paul Bew
Queen's University, Belfast

The Court Service, Northern Ireland

Dr Bill Norris MD FRCPsych
Independent Commissioner for
Detained Terrorist Suspects

DPP: Sir Alasdair Fraser CB QC
Director of Public Prosecutions, Northern Ireland
Staff of the DPP

The Director of Public Prosecutions of The Irish Republic
and colleagues

Professor Conor Gearty
King's College London

Home Office officials

Human Rights Commission
Professor Brice Dickson
Chief Commissioner

Judges
The Lord Chief Justice of Northern Ireland
Other senior Northern Ireland judges
Judges in The Irish Republic
The President of the High Court
And colleagues

Embassy of the Irish Republic

The Rt. Hon Lord Lloyd of Berwick

Jim McDonald, Independent Assessor of Military Complaints Procedures in NI

Northern Ireland Law Society

Peter O'Brien
Billy McNulty
Hugh Edgar

Northern Ireland Office officials

Ministers
The Rt. Hon Jane Kennedy M.P. (Northern Ireland Office)
Lord Filkin (Department of Constitutional Affairs)

The Parades Commission
Sir Anthony Holland (Chairman)

Police
Alan McQuillan, Acting Deputy Chief Constable, Police Service of Northern Ireland
Tenant Street Police Station officers, Belfast
Other officers of The Police Service of Northern Ireland
Officers of the Metropolitan Police
Officers of Scottish Police forces
The National Coordinator of Ports Policing
Many ports officers around Great Britain

Police Ombudsman
Mrs Nuala O'Loan, Police Ombudsman for Northern Ireland

Political parties
Democratic Unionist Party
Sinn Fein
Social Democratic and Labour Party
Ulster Unionist Party
Progressive Unionist Party

The Women’s Coalition

Security personnel

Professor Clive Walker
Leeds University