

**REPORT ON THE OPERATION  
IN 2004 OF PART VII  
OF THE TERRORISM ACT 2000**

by  
**LORD CARLILE OF BERRIEW Q.C.**

**REPORT ON THE OPERATION  
IN 2004 OF PART VII  
OF THE TERRORISM ACT 2000**

by  
**LORD CARLILE OF BERRIEW Q.C.**



## CONTENTS

1	Introduction	page	1
2	Scheduled offences: section 65 and Schedule 9		7
3	Remands and Bail: sections 67-71		13
4	Time limits for preliminary proceedings: section 72-74		19
5	Non-jury trials: section 75		22
6	Admissions and trials on indictment: the former section 76		27
7	Possession of Explosives and Firearms: section 77		28
8	Sentencing and Remission: sections 78-80		29
9	Powers of arrest, seizure etc: sections 81-88 and schedule 5		30
10	Power to stop and question: section 89		32
11	Powers over land, road closure etc: sections 90-95		34
12	Regulations for preservation of the peace: section 96		35
13	Port and Border Controls: section 97		36
14	Military Complaints Procedures: section 98 and Schedule 11		37
15	Codes of Practice: sections 99-101		38
16	Compensation: section 102 and Schedule 12		39
17	Terrorist Information: section 103		40
18	Police records: private security services: sections 104-106		42
19	Specified organisations: sections 107-110		43
20	Forfeiture orders: section 111 and Schedule 4 part 3		46
21	Duration: section 112		48
22	Annexes		49



# **REPORT ON THE OPERATION IN 2004 OF PART VII OF THE TERRORISM ACT 2000**

**BY  
LORD CARLILE OF BERRIEW Q.C.**

## **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 19<sup>th</sup> February 2001, and therefore Part VII will cease to exist altogether in February 2006. 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 18<sup>th</sup> February 2005<sup>1</sup>.

---

<sup>1</sup> Terrorism Act 2000 (Continuance of Part VII) Order 2004, SI 2003/431.

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 fourth 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 2005.

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 continued to increase, mainly thanks to the internet. I remain available and welcome such contact via the internet address [carlilea@parliament.uk](mailto:carlilea@parliament.uk), or by post to me at the House of Lords, London SW1A 0PW. The flow of such information from Northern Ireland has not increased. This may in part be due to the growing confidence of the public there in the peaceful and continuing progress of their political institutions, despite the uncertainty of the ongoing political process. There are clear messages from what I have received, reflected in comments I have recorded such as *“Is there really still a state of emergency so as to justify special legislation?”*; *“There should be a proper correlation between*

*legislation and alienation”;*“*Relaxation of special legislation would be an act of faith, sending out the right signals”.*

1.6 In 2004 I have continued to develop my 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 enjoyed further 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 additional 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 In the context of the ongoing negotiations between the political parties in Northern Ireland (in conjunction with the governments of the UK and Ireland) and the sunset provision referred to in paragraph 1.1 above, 2005 is of self-evident importance. The negotiations presumably will deal at least in outline with what should succeed Part VII in but a year's time.

1.8 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, as continuing controversy about the *Anti-Terrorism, Crime and*



*Security Act 2001* has shown. The continuing evidence of the activities of dissident paramilitary groups on both sides of the sectarian divide, and the apparent involvement of such groups in syndicated crime including smuggling and the proliferation of illicit drugs, demonstrate that a very high level of vigilance continues to be necessary and publicly reassuring. On the other hand, I believe there to be an acceptance by now 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.

- 1.9 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 2004, including the amendments to it. In this context I repeat my heartfelt plea of a year ago, 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. I believe that steps are being taken to achieve this – but the steps seem regrettably slow.

- 1.10 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.
- 1.11 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 8<sup>th</sup> 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.
- 1.12 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. 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. Both have gathered pace in 2004.
- 1.13 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 a general impression of a strong effort by all control authorities to strive for entirely normal civic life to resume as soon as possible and on a confident basis.

1.14 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 Committee for the Administration of Justice and also the political parties as mentioned above. I have been assisted by conversations with members of the Northern Ireland Bar Library, and with solicitors. I am grateful to them all for their 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 2003-4 the Secretary of State made no orders to add or remove offences from Schedule 9, or to amend the Schedule in some other way.
- 2.2 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.
- 2.3 Table A annexed to this report shows the number of indictable directions to de-schedule individual cases issue in 2002 and 2003, and during the period January-September 2004. The presentation of the statistics has continued to improve in 2004 as a result of the use of the 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 2004 103 indictable offences, representing 16.14% of the total capable of remaining scheduled, in fact remained scheduled. This is a higher figure than the 15.06% for the whole of 2003, and 10.91% (a figure corrected since my last report) for the whole of 2002. Any 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 dropped significantly in 2004, 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. As compared with a jury trial, in some cases there are advantages in a reasoned judgment dealing with issues of fact as well as law.

2.6 Table A includes a detailed breakdown for the first three quarters of 2004 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 great 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 Part 7 of the *Criminal Justice Act 2003* has introduced the possibility of non-jury trial in England and Wales, and in Northern Ireland, in some cases where there is a real danger of jury tampering. I understand that the provisions are unlikely to be extended to Northern Ireland in the coming months. The trial procedure in this small group of non-jury cases will become strikingly similar to that in scheduled cases in Northern Ireland. I am aware that the government is currently examining the degree of protection offered by the 2003

Act. It has the potential to protect against intimidation in terrorism cases, but there is some concern about how a judge would interpret the meaning of “*a clear and present danger*”<sup>2</sup>. In particular, the perception of danger may be a greater issue in Northern Ireland than in England and Wales, as may that of perverse verdicts arising from partisan juries. I am assured that these matters will be part of detailed consideration over the coming months as part of the wider review into the necessity and operation of special judicial arrangements within the context of an enabling environment.

2.8 I hope that included in that wider consideration will be a review of safeguards in the use of informants in criminal cases. I refer in particular to recommendation 16 of the report of the Northern Ireland Human Rights Commission “*Counter'ng Terrorism and Protecting Human Rights*”.<sup>3</sup>

2.9 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, the Committee on the Administration of Justice and others on this subject. From the evidence provided to me it appears that again in 2004 there were several incidents involving acts of terrorism that demonstrated a continuing danger from sophisticated terrorist crime. 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 clear and potentially permanent part of the criminal intelligence

---

<sup>2</sup> Criminal Justice Act 2003, section 44(4).

<sup>3</sup> September 2004.

picture of Northern Ireland. The police appear to me to be determined and trained 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 a real reduction in cross-sectarian attacks, though a level of intimidation remains and is of serious concern. There continues inter-sectarian violence within some loyalist paramilitary groups, and intimidation within parts of the republican community against Catholics who participate in civil institutions established as part of the Good Friday Agreement processes, especially those connected with policing.

2.10 Decommissioning of terrorist arms has commenced, but the suspension of the Northern Ireland Assembly still leaves limited room for confidence. Realistically one must recognise that there remains a significant if diminished supply of weaponry to paramilitaries of all persuasions. All who value peace will hope that the political parties will reach a constructive conclusion of continuing negotiations to restore the democratic process fully.

2.11 As last year, I have made journeys into urban areas in Belfast, Londonderry and elsewhere. I sense some though probably limited abatement in the social and economic influence of paramilitaries over communities. On both sides of the sectarian divide there continues 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. There remain continuing 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.

2.12 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.

2.13 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.

2.14 I have looked again 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 and previously, but I emphasise that I have given fresh and hopefully empirical consideration to the issue once again.

2.15 In 2002 and 2003 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. The scheduling system should continue whilst part of the governmental review in the light of the *Criminal Justice Act 2003*, discussed in paragraph 2.7 above.

2.16 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 in 2002 and 2003, and from January-September 2004. These reveal that 20% of such bail applications were refused [2003: 21%].
- 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 2<sup>nd</sup> October 2000.

- 3.5 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*<sup>4</sup>; 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*<sup>5</sup> 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<sup>6</sup>. There is a further challenge pending in the Strasbourg Court, *McKay v UK*. That case relates to the absence of jurisdiction to grant bail being vested in the magistrate before whom the arrested person is brought for his first appearance. If Mr McKay wins the Strasbourg case, this issue will have to be reconsidered.
- 3.6 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.
- 3.7 Last year and in the two previous years 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 they have been available for and subjected to parliamentary scrutiny on several occasions, being derived

---

<sup>4</sup> At first instance per Girvan J at [2002] NIJB 147.

<sup>5</sup> Neutral Citation no. [2003] NIQB 68.

<sup>6</sup> [www.courtsni.gov.uk](http://www.courtsni.gov.uk) and follow 'judgments' link.

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.

3.8 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.

3.9 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 2004. 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 78% on bail at time of trial for scheduled offences, and 74% for non-scheduled offences. The 2004 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 63% (and on the evidence increasing) of persons charged with scheduled offences are on bail at the time of trial is encouraging.

3.10 Once again I have looked at the bail provisions with particular attention. 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.

- 3.11 This year I have received fewer 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). This is because Saturday bail hearings for first applications were introduced by the High Court in January 2004 to combat delay, with the ready acquiescence of the Lord Chief Justice.
- 3.12 Court Service statistics show that one-third of eligible applicants chose to take up this option (together with an improved Summer recess arrangement). I find this level of uptake encouraging, especially as three-quarters of the Saturday applications were granted. These arrangements should continue, and diminish the argument for such applications to be heard by Resident Magistrates.
- 3.13 As last year, 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.

- 3.14 Overall, I consider the present arrangements to represent a satisfactory practical solution to the weekend bail problem described in detail in section 3 of my corresponding report last year.
- 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 However, my enquiries and consultations this year have stiffened my conclusion reported in the two previous years 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.
- 3.17 My firm opinion now is that section 67(3) has no real utility. I urge strongly that it be allowed to lapse.
- 3.18 Section 68, which is a now redundant provision relating to legal aid, has been repealed<sup>7</sup>.

---

<sup>7</sup> SI 2003/435, art 49(2), Sch 5.

- 3.19 Section 69, which deals with the management of those remanded in custody, has not been the subject of any observations made to me. I assume that it is functioning fairly and without difficulty. Section 69(2)(a) has been partly repealed.
- 3.20 Sections 70 and 71 provide for the Secretary of State to make directions for young persons charged with a scheduled offence to be held in a prison or other place as he may direct, while on remand. This power derives from a time when young persons were held in remand homes. These were somewhat insecure, and presented serious problems in the management of some of their remand population.
- 3.21 There have been advances in the youth justice system in Northern Ireland in recent years. The *Criminal Justice (Children)(Northern Ireland) Order*<sup>8</sup> provides for the young detained to be sent to Hydebank Young Offenders Centre from age 15 onwards. 14-16 year olds may be remanded to the refurbished Juvenile Justice Centre, soon to be replaced by new premises. Both Hydebank and the Juvenile Justice Centre provide the level of security for the purposes section 70 was designed to combat.
- 3.22 Given the above, in my opinion sections 70 and 71 are no longer required and should be repealed.

---

<sup>8</sup> SI2003/1247, Sch 2.

#### **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 2004, as in 2003. 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 From 1992 all criminal justice agencies operated under the aegis of an administrative time limits scheme. These arrangements have been monitored by the Case Progress Group, chaired by a senior Northern Ireland Office civil servant. There has existed too a progress and tracking group comprising representatives from the various criminal justice agencies and chaired by an assistant director from the Department of Public Prosecutions. Improved information flows have been designed to speed up the criminal justice system.



- 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.
- 4.6 Last year I expressed real concern about delay. I suggested that the Secretary of State might need to introduce time limits under section 72.
- 4.7 Table D shows processing times for scheduled defendants remanded in custody in 2003 and 2004 have improved at least in general trend since 2002, though the slippage since 2000 is worrying.
- 4.8 A number of initiatives have been introduced in the past year, and more are in the planning stages, which should have a major impact on processing times. Among these are the introduction of the Public Prosecution Service for Northern Ireland, the electronic communication facilities being put in place by Causeway, an independent review of practices within the Department of the DPP, ongoing legal aid reform, abolition of committal proceedings (likely to be replaced by arrangements similar to England and Wales), a major reform programme within Forensic Science, a new emphasis by the PSNI on reducing delay in the investigative stages and other partnership working aimed at removing 'dead time' in case processing .
- 4.9 In addition to this, Ministers decided last year that there should be an immediate focus on determining what short-term action might be taken to tackle delay in addition to the initiatives already in place. This resulted in the formation of an inter-departmental "Delay

Action Group” which has been looking at ways of improving the average case processing time for all indictable cases. The Group has now reported to Ministers and, as well as obtaining agreement to a limited number of modest new initiatives, has been tasked with monitoring progress by the criminal justice agencies in implementing the programme of major reforms outlined above. This brief for the Group is set within a context of recent improvements in the overall average time for processing indictable cases.

4.10 It is fair to note that a small number of scheduled offences can often have a disproportionate impact on the overall figures. This is mainly because such cases can be of a highly complex nature and often rely heavily on forensic evidence. As mentioned above, Forensic Science (FSNI), working with the PSNI, has put together a programme of major reforms designed to speed forensic turnaround.

4.11 These improvements should have a beneficial effect, without the introduction of formal time limits under section 72.

## 5. NON-JURY TRIALS - SECTIONS 74 AND 75

- 5.1 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."<sup>9</sup> The nature 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. The prime aim is to ensure that prosecution and defence alike receive a fair trial, even in a context of perceived intimidation of parties and witnesses.
- 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 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.

---

<sup>9</sup> Report of the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland; Cn 5185, Dec 1972.

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. As in the previous years 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 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 I repeat the comment reported last year from a representative of one of the political parties in the Assembly, who 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. However, I know that the

government is currently examining the necessity and operation for special judicial arrangements within the context of an enabling environment. The issue of whether a three judge court may be more appropriate at that time will certainly be an area of examination.

5.10 If the political process of an enabling environment led to a three judge court becoming part of the Northern Ireland system, I remain of the view expressed last year that a similar jurisdiction to the Dublin Special Criminal Court, with 3 judges from different levels of the Bench, would work. 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.

5.11 Once again 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. 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.

5.12 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, and

the evolving political process. Political and economic judgments at that level are founded on broader considerations than my responsibilities as reviewer permit. A three judge court would command greater confidence in one part of the community, without diminishing confidence rationally elsewhere.

## **6. ADMISSIONS AND TRIALS ON INDICTMENT - SECTION 76**

6.1 As reported previously, section 76 has been repealed<sup>10</sup>.

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

---

<sup>10</sup> SI 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*.<sup>11</sup>

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.

---

<sup>11</sup> R v Andre Shoukri; reference KERC4062.

## **8. SENTENCING AND REMISSION - SECTIONS 78 TO 80**

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

8.2 Section 78(3) has been amended to provide that for sentencing purposes a 'child' is a person who has not attained the age of 18 (formerly 17)<sup>12</sup>. I shall monitor any practical consequences of this change as they arise.

8.2 I repeat a request made last year and before, 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.

---

<sup>12</sup> 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 3 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 the old checkpoint congestion is hopefully diminishing into history (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 welcome significant reductions across the board in January-September 2004. 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 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 will continue to be necessary until the political situation evolves further.
- 9.6 As noted last year, paragraphs 19-21 of Schedule 5 to the Act have been revoked. This revocation has caused no deleterious effects.

## **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 by the police and armed forces respectively pursuant to Section 89 between January-September 2004. The peaks are related to the marching season. The corrected statistics for 2002 showed a total of 2448 persons stopped and questioned by the police. In 2003 that fell to 1368. The number will be higher in 2004, because of the decline in stops by the military. Military stops increased from 9873 in 2002 to 10921 in 2003, but with a very large reduction to 4285 in January to September 2004, about 53% of the previous year's comparable figure. The trend is welcome.
- 10.3 As stated above, there has been a decrease in the numbers stopped by both the police and the military during parts of the year. However, I am concerned about the still high level of stops, as I am about stops of still large numbers of travellers from Northern Ireland and Ireland entering Great Britain sea and air ports. I shall keep a close and specific watch on the use of section 89 and other stop procedures, 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 fourteen times, according to the corrected statistics shown in Table K.
- 11.3 According to the corrected official statistics in Table K, in the period January-September 2004 there were fourteen requisition orders.
- 11.4 The requisition power is used regularly at Drumcree and Whiterock, for the requisition of land surrounding the church, upon which the 'defence line' was built and the street widened. I have seen the site. At the time of the Whiterock parade the site of the former Mackie's factory has been 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. There is a regular annual pattern.
- 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 My opinion is as last year - 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 In 2002 I recommended that section 97(1) and (2) be allowed to lapse. This advice was accepted, and they are no longer in force.<sup>13</sup> Last year I recommended likewise for section 97(3). It has now been repealed, to no disadvantage.<sup>14</sup>

---

<sup>13</sup> SI2003/427, arts 1, 2(2)(a), effective from the 19th February 2003.

<sup>14</sup> SI2004/431.

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

14.1 The present Assessor, Jim McDonald, was reappointed to the post on the 24<sup>th</sup> 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.

14.2 The Independent Commissioner for Detained Terrorist Suspects undertakes another very valuable role. He takes an extremely active interest in the procedures of detentions, and is often present to scrutinise performance at the time of detentions.

14.3 Both, together with their small but very competent staff, have given me help of real value.

## **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.<sup>15</sup> Subsection (5A) strengthens the impact of the Codes.
- 15.3 I am assured that work is continuing on a revised PACE Code for Northern Ireland. This will include advice on the treatment of both PACE and terrorism detainees. This will bring Northern Ireland into the same situation as exists in England and Wales. The work in progress is expected to be completed by the end of 2005.
- 15.4 I have been able to see various forms of written guidance given to the military at all levels. I remain impressed by their quality, and especially by the written procedures and guidance notes provided to soldiers patrolling the streets. A great deal of thought has gone into that documentation.

---

<sup>15</sup> Police (Northern Ireland) Act 2003, S 32(1), Sch 3, para 8(1)(2)(3).

## **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 once again made 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 1<sup>st</sup> January 2004 and the 30<sup>th</sup> September 2004, and in the previous two years. The table shows a continuing and significant decrease. 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. The government accepted this recommendation.

17.4 The distinction between full and part-time employees of the prison service was removed by an amendment to section 103 provided by *section 14, Justice (Northern Ireland) Act 2003*. I am grateful for that response.

**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 2004 were allowed, without 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. As last year, 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. However, I am concerned that the proscription 'list' should be kept up to date, by the removal of organisations that have not existed for some considerable time, unless there is reliable information of a 'sleeper' group awaiting deproscription.
- 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 I have given the closest consideration to this section of my report. 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. In addition, the Independent Monitoring Commission has reached a conclusion similar to my own, namely that fringe or dissident groups represent a considerable threat.<sup>16</sup>

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 Ireland, a similar provision to section 108 has been used for three decades, and has resulted in convictions as recently as 2001. There are potential cases for its use currently in the criminal justice system in Northern Ireland. Nevertheless I am totally unpersuaded by the arguments for its retention. It has been suggested to me that it remains potentially useful, but I disagree. 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.

---

<sup>16</sup> IMC Third Report HC1218 14<sup>th</sup> November 2004.

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 As last year, 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 TA2000 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.<sup>17</sup> 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.

20.7 In my view Section 111 remains necessary and proportional.

---

<sup>17</sup> IS 2003/427, art 1.

**21. DURATION OF PART VII – SECTION 112 TA 2000.**

As before, I have received no representations questioning as such 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. There is much interest in the future of Part VII type provisions, given the present political uncertainty in Northern Ireland on the one hand, and on the other the lapse of Part VII by sunset provision in February 2006.

**ANNEXES A – N**



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 <sup>1</sup>	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
<b>2002 Total</b>	<b>1,365</b>	<b>933</b>	<b>1,216</b>	<b>149</b>
2003				
Jan-Mar	525	314	418	107
Apr-Jun	314	229	282	32
Jul-Sept	403	272	348	55
Oct-Dec	325	219	283	42
<b>2003 Total</b>	<b>1,567</b>	<b>1,034</b>	<b>1,331</b>	<b>236</b>
2004				
Jan-Mar	228	160	195	33
Apr-Jun	251	188	214	37
Jul-Sept	159	122	126	33
<b>2004 Total to date</b>	<b>638</b>	<b>470</b>	<b>535</b>	<b>103</b>

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.

**NB: Quarterly statistics may be subject to minor revision**



## B

### Limitation of Power to grant bail: High Court bail applications in Northern Ireland in respect of persons charged with scheduled offences (Section 67)<sup>1</sup>.

Year	Number of applications	Number granted	% granted <sup>2</sup>	Number refused	% refused <sup>2</sup>	Other outcomes <sup>3</sup>	% other outcomes <sup>2</sup>
<b>2002</b>							
Jan-Mar	317	194	<b>61</b>	55	<b>17</b>	68	<b>21</b>
Apr-Jun	321	176	<b>55</b>	62	<b>19</b>	83	<b>26</b>
Jul-Sept	408	187	<b>46</b>	102	<b>25</b>	119	<b>29</b>
Oct-Dec	448	217	<b>48</b>	107	<b>24</b>	124	<b>28</b>
<b>2002 Total</b>	<b>1,494</b>	<b>774</b>	<b>52</b>	<b>326</b>	<b>22</b>	<b>394</b>	<b>26</b>
<b>2003</b>							
Jan-Mar	416	188	<b>45</b>	97	<b>23</b>	131	<b>31</b>
Apr-Jun	429	203	<b>47</b>	96	<b>22</b>	130	<b>30</b>
Jul-Sept	455	242	<b>53</b>	79	<b>17</b>	134	<b>29</b>
Oct-Dec	475	228	<b>48</b>	108	<b>23</b>	139	<b>29</b>
<b>2003 Total</b>	<b>1,775</b>	<b>861</b>	<b>49</b>	<b>380</b>	<b>21</b>	<b>534</b>	<b>30</b>
<b>2004</b>							
Jan-Mar	401	171	<b>43</b>	90	<b>22</b>	140	<b>35</b>
Apr-Jun	434	187	<b>43</b>	81	<b>19</b>	166	<b>38</b>
Jul-Sept	429	225	<b>52</b>	85	<b>20</b>	119	<b>28</b>
<b>2004 Total to date</b>	<b>1,264</b>	<b>583</b>	<b>46</b>	<b>256</b>	<b>20</b>	<b>425</b>	<b>34</b>

- 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. Figures under "Other outcomes" include applications withdrawn, dismissed and adjourned.
  4. Scheduled 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 (%)
<b>2002</b>		
Jan-Mar	33	78
Apr-Jun	63	74
Jul-Sept	48	77
Oct-Dec	68	71
<b>2002 Total</b>	<b>58</b>	<b>73</b>
<b>2003</b>		
Jan-Mar	65	77
Apr-Jun	82	75
Jul-Sept	71	69
Oct-Dec	86	73
<b>2003 Total</b>	<b>78</b>	<b>74</b>
<b>2004</b>		
Jan-Mar	65	73
Apr-Jun	46	73
Jul-Sept	71	61
<b>2004 Total to date</b>	<b>63</b>	<b>70</b>

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
<b>2002 Total</b>	<b>41.9</b>	<b>89</b>	<b>7.1</b>	<b>45</b>	<b>9.1</b>	<b>44</b>
2003						
Jan-Mar	41.0	18	8.5	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
Oct-Dec	36.2	11	8.0	5	3.1	5
<b>2003 Total</b>	<b>44.1</b>	<b>73</b>	<b>7.1</b>	<b>25</b>	<b>23.4</b>	<b>24</b>
2004						
Jan-Mar	34.6	14	4.6	10	12.0	9
Apr-Jun	55.6	7	6.8	6	38.1	6
Jul-Sept	41.1	13	4.7	5	31.7	5
<b>2004 Total to date</b>	<b>41.4</b>	<b>34</b>	<b>5.3</b>	<b>21</b>	<b>24.8</b>	<b>20</b>

- Notes:
1. The table 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: 1<sup>st</sup> day of trial (i.e. commencement of trial at court).

Source: Northern Ireland Court Service.

**E**

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

Year	Number of premises entered	Number of premises searched <sup>1</sup>
2002		
Jan-Mar	9	0
Apr-Jun	0	0
Jul-Sept	14	N/A
Oct-Dec	11	N/A
<b>2002 Total</b>	<b>34</b>	<b>N/A</b>
2003		
Jan-Mar	4	N/A
Apr-Jun	12	10
Jul-Sept	32	29
Oct-Dec	15	15
<b>2003 Total</b>	<b>63</b>	<b>54</b>
2004		
Jan-Mar	8	8
Apr-Jun	15	14
Jul-Sept	2	1
<b>2004 Total to date</b>	<b>25</b>	<b>23</b>

Note: 1. Information from July 2002 to March 2003 not available

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 <sup>1</sup>	Persons arrested by Her Majesty's forces
<b>2002</b>			
Jan-Mar	2	N/A	4
Apr-Jun	7	N/A	4
Jul-Sept	12	N/A	8
Oct-Dec	10	N/A	7
<b>2002 Total</b>	<b>31</b>	<b>N/A</b>	<b>23</b>
<b>2003</b>			
Jan-Mar	6	N/A	4
Apr-Jun	12	1	0
Jul-Sept	9	4	1
Oct-Dec	12	5	0
<b>2003 Total</b>	<b>39</b>	<b>10</b>	<b>5</b>
<b>2004</b>			
Jan-Mar	1	0	1
Apr-Jun	5	2	3
Jul-Sept	0	0	1
<b>2004 Total to date</b>	<b>6</b>	<b>2</b>	<b>5</b>

Note: 1. Information not available prior to April 2003.

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

## G

**Numbers 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 <sup>1</sup>
2002		
Jan-Mar	7	6
Apr-Jun	2	26
Jul-Sept	5	33
Oct-Dec	11	41
<b>2002 Total</b>	<b>25</b>	<b>106</b>
2003		
Jan-Mar	7	7
Apr-Jun	0	38
Jul-Sept	8	9
Oct-Dec	9	18
<b>2003 Total</b>	<b>24</b>	<b>72</b>
2004		
Jan-Mar	0	16
Apr-Jun	15	2
Jul-Sept	0	4
<b>2004 Total to date</b>	<b>15</b>	<b>22</b>

Note: 1. All searches conducted by Her Majesty's forces are in conjunction with the Police Service of Northern Ireland.

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 <sup>1</sup>		
	Dwellings	Other	Total	Dwellings	Other <sup>2</sup>	Total <sup>3</sup>
<b>2002</b>						
Jan-Mar	91	22	113	0	32	32
Apr-Jun	90	27	117	0	61	61
Jul-Sept	100	34	134	0	92	92
Oct-Dec	188	39	227	0	98	98
<b>2002 Total</b>	<b>469</b>	<b>122</b>	<b>591</b>	<b>0</b>	<b>283</b>	<b>283</b>
<b>2003</b>						
Jan-Mar	171	34	205	0	385	385
Apr-Jun	125	21	146	0	415	415
Jul-Sept	96	10	106	0	489	489
Oct-Dec	94	14	108	0	397	397
<b>2003 Total</b>	<b>486</b>	<b>79</b>	<b>565</b>	<b>0</b>	<b>1686</b>	<b>1686</b>
<b>2004</b>						
Jan-Mar	44	7	51	0	142	142
Apr-Jun	109	19	128	0	50	50
Jul-Sept	61	6	67	0	86	86
<b>2004 Total to date</b>	<b>214</b>	<b>32</b>	<b>246</b>	<b>0</b>	<b>278</b>	<b>278</b>

Note:

1. Searches conducted by Her Majesty's forces are in conjunction with the Police Service of Northern Ireland.
2. Figures represent the aggregate of all Route, Area, Vehicle, Railway and Venue searched conducted by Her Majesty's forces
1. Following a review of collation procedures by Her Majesty's forces Headquarters, figures in italics indicate revised data to that previously published.

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
<b>2002 Total</b>	<b>51</b>	<b>43</b>
2003		
Jan-Mar	28	22
Apr-Jun	23	23
Jul-Sept	28	28
Oct-Dec	25	24
<b>2003 Total</b>	<b>104</b>	<b>97</b>
2004		
Jan-Mar	17	17
Apr-Jun	36	30
Jul-Sept	12	11
<b>2004 Total to date</b>	<b>65</b>	<b>58</b>

Source: Police Service of Northern Ireland



# J

## Section 89

Year	Police Service for Northern Ireland		Her Majesty's forces
	Number of persons stopped	Number of persons failing to stop or answer questions	Number of persons stopped questioned
2002			
Jan-Mar	63	0	2,286
Apr-Jun	307	0	2,251
Jul-Sept	1,471	0	3,561
Oct-Dec	607	0	1,775
<b>2002 Total</b>	<b>2,448</b>	<b>0</b>	<b>9,873</b>
2003			
Jan-Mar	282	1	2,952
Apr-Jun	294	0	1,763
Jul-Sept	360	0	3,366
Oct-Dec	432	0	2,840
<b>2003 Total</b>	<b>1,368</b>	<b>1</b>	<b>10,921</b>
2004			
Jan-Mar	252	0	2,279
Apr-Jun	352	0	966
Jul-Sept	739	1	1,040
<b>2004 Total to date</b>	<b>1,343</b>	<b>1</b>	<b>4,285</b>

Note:

1. The figure in italics is a revision to the number previously reported for the period July to September 2003

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

**K**

**Section 91 – Taking Possession of land, & c<sup>1</sup>**

Year	Number of Requisition Orders	Number of De-requisition Orders
2002		
Jan-Mar	0	1
Apr-Jun	<i>14</i>	<i>0</i>
Jul-Sept	0	<i>14</i>
Oct-Dec	0	0
<b>2002 Total</b>	<b><i>14</i></b>	<b>15</b>
2003		
Jan-Mar	0	0
Apr-Jun	<i>13</i>	0
Jul-Sept	<i>1</i>	<i>20</i>
Oct-Dec	0	2
<b>2003 Total</b>	<b><i>14</i></b>	<b><i>22</i></b>
2004		
Jan-Mar	0	0
Apr-Jun	14	0
Jul-Sept	0	14
<b>2004 Total to date</b>	<b>14</b>	<b>14</b>

Note: 1. Following a review of data collection and collation procedures, revisions to previously published data are shown in italics.

Source: Northern Ireland Office.

## L

### Compensation (Northern Ireland) (Section 102, Schedule 12)<sup>1</sup>

Year	Amount £		
	Compensation Payments <sup>2</sup>	Agency Payments <sup>3</sup>	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
<b>2002 Total</b>	<b>4,026,921</b>	<b>542,640</b>	<b>4,569,561</b>
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
Oct-Dec	264,745	34,727	299,472
<b>2003 Total</b>	<b>1,885,697</b>	<b>313,609</b>	<b>2,199,306</b>
2004			
Jan-Mar	175,802	20,553	196,355
Apr-Jun	165,239	13,138	178,377
Jul-Sept	52,577	9,899	62,476
<b>2004 Total to date</b>	<b>393,618</b>	<b>43,590</b>	<b>437,208</b>

- Notes:
1. Figures relate solely to claims paid during the relevant period.
  2. Includes solicitors' and loss assessors' fees.
  3. Comprises 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
<b>2002</b>						
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
<b>2002 Total</b>	<b>99</b>	<b>99</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>2003</b>						
Jan-Mar	33	33	0	0	0	0
Apr-Jun	30	30	0	0	0	0
Jul-Sept	22	21	1	0	0	0
Oct-Dec	22	21	1	0	0	0
<b>2003 Total</b>	<b>107</b>	<b>105</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>2004</b>						
Jan-Mar	29	29	0	0	0	0
Apr-Jun	29	29	0	0	0	0
Jul-Sept	24	24	0	0	0	0
<b>2004 Total to date</b>	<b>82</b>	<b>82</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

Source: Northern Ireland Office.

**TABLE N: Some persons, offices and departments who gave information or views.**

The current and previous Lords Chief Justice of Northern Ireland

Other senior judges in Northern Ireland

The Director of Public Prosecutions for Northern Ireland and staff

The Monitoring Commission

The Chamber of Shipping and member companies serving Northern Ireland

The Embassy of Ireland

The Independent Assessor of Military Complaints Procedures in Northern Ireland

The Independent Commissioner for Detained Terrorist Suspects

The Parades Commission Chairman Sir Anthony Holland

The Chief Constable and other officers of the Police Service of Northern Ireland

Officers of the Metropolitan Police

Officers of Scottish Police forces

The National Co-ordinator of Special Branches

The National Co-ordinator of Ports Policing

Many ports officers around Great Britain

The Police Ombudsman of Northern Ireland Mrs Nuala O'Loan

The Democratic Unionist party

Sinn Fein

Ulster Unionist party

Social Democratic and Labour Party

Progressive Unionist party

Ebrington Centre, Londonderry

Gasyard Centre, Londonderry

Holywell Trust, Londonderry

Northern Ireland Human Rights Commission, Chairman professor Brice Dickson

Professor Tom Hadden

Dr Rogelio Alonso

British Irish Parliamentary Secretariat