

**REPORT ON THE OPERATION
IN 2005 OF PART VII
OF THE TERRORISM ACT 2000**

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

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1. INTRODUCTION

1. The writing of this report will follow the pattern of my previous reports on Part VII. Hopefully this consistency will aid readers to follow my views and recommendations.
2. 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.
3. The Act came into force on the 19th February 2001, and therefore *Part VII* will cease to exist altogether in February 2006.
4. This means that a very important moment has arrived, summarised by these questions. Are special provisions still needed to deal with Northern Ireland terrorism issues? If so what should they contain?
5. The government declared its intention by the introduction in October 2005 of the *Terrorism (Northern Ireland) Bill*. The main purpose of that Bill is to extend the life of *Part VII*. The Bill additionally makes provision to add the offences created by the

Prevention of Terrorism Act 2005 to the list of scheduled offences under *Part VII*; to ensure that all scheduled offences are subject to the Attorney General's power to deschedule an offence; to repeal entirely those parts of *Part VII* which are not currently in force, together with *section 78* relating to the sentencing of children convicted of a scheduled offence; to ensure that breaches of bail in scheduled and non-scheduled cases are dealt with likewise; and to provide transitional provisions connected with the expiry of *Part VII*.

6. The Parliamentary Under Secretary of State at the Northern Ireland Office Shaun Woodward M.P. wrote to me on the 6th October 2005. He told me that *section 78* (see paragraph 80 below) could be repealed as no longer required. That apart, the new Bill would act as primary legislation to extend the remainder of the provisions of *Part VII* still in effect to the 31st July 2007, with a once-only provision for extension for a further year thereafter.
7. Under *Section 14, Prevention of Terrorism Act 2005* I have a role in reporting on the implications of that Act of any proposal by the Secretary of State for the amendment of the law relating to terrorism.
8. Pursuant to *Section 14*, I responded to the Minister's letter on the 28th October 2005 as follows-

Thank you for your letter of the 6th October 2005, to which you attached a copy of the draft *Terrorism (Northern Ireland) Bill*, together with a substantial briefing upon the Bill. I understand that the Bill is to receive its Second Reading debate in the House of Commons next Monday the 31st October 2005.

It is my responsibility under *section 14* of the *Prevention of Terrorism Act 2005* to report on the implications for the operation of that Act of any proposal made by the Secretary of State for the amendment of the law relating to terrorism. This letter is provided as part of that responsibility, and I am content for it to be published or made available in the Library of the House.

Around each turn of the year I provide a separate report on the operation of *Part VII* of the *Terrorism Act 2000*, which applies to Northern Ireland. I shall do so this year. For current consideration is the narrow focus of my work under *section 14* as summarised above.

The effect of the new Bill is to extend most of *Part VII* beyond its expiry date of February 2006. Changes are proposed to the *Part VII* powers in the Bill, albeit not especially extensive. I deal with them below.

The question of whether any special powers are still needed is a political issue, not for my consideration. The underlying aim since the Good Friday Agreement of 1998 has been the normalisation of criminal justice arrangements and court procedures in Northern Ireland. Plainly any continuation of the *Part VII* powers postpones the date of complete normalisation, if that term is intended to convey the purpose of achieving uniform laws in Northern Ireland and in England and Wales. However, my observations over the past three years have led me to believe that the significant effects of a devolved system of government will always mean some differences between and amongst the various parts of the United Kingdom with variants of devolution. This means that normalisation must be viewed as a comparison of relative rather than precise values.

Recent events and reports have supported the view that there are two sometimes conflicting strains of activity in Northern Ireland. On one side of the balance sheet is the announcement on the 26th September 2005 by PIRA of the cessation of armed conflict, and the laying down of arms. This was welcomed by the Independent Monitoring Commission in its *Seventh Report [2005 HC 546, 19th October 2005]*. On the other side is the Commission's conclusion that paramilitaries, especially Loyalists and dissident Republicans, continue to exert a malign influence over communities. This has the effect of obstructing the development of a normal culture of lawfulness of the kind the vast majority of the population of Northern Ireland desires and is entitled to take for granted.

In sum, I remain of the view that, in terms of the prevention of terrorism, some special powers remain necessary. Were there not such powers in the Bill, I would be driven to the conclusion that there would be a risk of more terrorist acts connected with the island of Ireland rather than less. Nevertheless, in the light of (occasionally difficult) conversations I have enjoyed with the political parties in Northern Ireland, I conclude that there are real grounds for optimism that in due time the structure of the special powers may be dismantled.

Like Ministers, I have been assisted by the report of the Northern Ireland Human Rights Commission *Countering Terrorism and Protecting Human Rights*, published in September 2004. In addition, I have continued to pay close attention to the views of police officers, civil servants, community groups, academics, and others who have taken the trouble to offer me a wide range of views.

I note that the Bill proposes that the revised powers are to be time limited to the 31st July 2007, rather than the five years used in the past. There is a once-only power to extend the provisions by a further year, subject to approval by affirmative resolution of both Houses of Parliament. This seems to me to be consistent with the Government's commitment to repeal the *Part VII* provisions entirely in the light of the security normalisation measures initiated by the Secretary of State on the 1st August 2005, a programme expected to last two years subject to an enabling environment. In my view the duration of the powers proposed in the Bill is justified on the merits and proportional.

Clause 2 of the Bill repeals the existing power to bring into force provisions of the old *Part VII* no longer in force. That is a welcome piece of finality. Thus *Clause 2(2)* consigns to final repeal a number of powers seen as no longer required, some following advice given by myself and previous reviewers of the Northern Ireland legislation. This too is welcome.

You have added to the list of redundant provisions *section 78* of the *Terrorism Act 2000*. This had extremely limited application. I agree that it has become entirely unnecessary. Repeal is a welcome contribution to normalisation.

Clause 3 of the Bill contains important changes to the arrangements for scheduled offences. Not only does it add offences under the *Prevention of Terrorism Act 2005* to *schedule 9* of the *Terrorism Act 2000*, but significantly it makes the prosecution of all scheduled offences subject to the discretion of the Attorney General. This seems to me a sensible and useful change, designed to reduce the number of defendants tried in judge only courts by tight adherence

to the question of whether the offence alleged is connected with the special circumstances in Northern Ireland. The record of descheduling is good in recent years. I hope that this can be continued, and that fewer and fewer trials will occur other than by jury, in accordance with normal arrangements in the jurisdictions of Great Britain.

I shall report once again in my main *Part VII* report for the year 2005 as to whether there remains in my view a sufficient case to maintain the judge only system used for some scheduled offences, the Diplock Courts. It may help, however, if I say now that I am unlikely to conclude that it is yet time for their total removal. There is a residue of cases in which witness and/or jury intimidation and pressure may prevent a fair jury trial. Hopefully in the timeframe set by the current Bill this situation will settle to the point that similar arrangements can exist throughout the United Kingdom.

The transitional provisions contained in *clause 4* of the Bill in my view provide a better constructed transitional programme than *section 113* of the *Terrorism Act 2000*.

It follows from the above that I am satisfied that the Bill contains no proposals to cause me concern as independent reviewer, whether in connection with my responsibilities under *section 14* of the *Prevention of Terrorism Act 2005* or otherwise.

9. By the end of 2005 the Bill had progressed unamended through the House of Commons; and had been committed after second reading to a Grand Committee in the House of Lords.

10. I have stated in my previous reports on both *Part VII* and on 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. If the Bill becomes law, as seems likely, next year I shall produce a separate report founded on the new Act. This is my fifth annual report on *Part VII*.

11. I was too the Independent Reviewer of the detention provisions introduced under *Part 4* of the *Anti-Terrorism, Crime and Security Act 2001*. Those provisions have been repealed and replaced by the Control Orders system introduced by the *Prevention of Terrorism Act 2005*. My report on the operation of the 2005 Act was published in February 2006. My report on the whole of the *TA2000* will appear shortly after this one.

12. In addition, I have been asked by the Home Secretary to review and report upon the definition of terrorism in UK Law. I have issued a call for papers and am actively seeking views. Anyone wishing to contribute to that process should send their views to me in hard copy at 9-12 Bell Yard, London WC2A 2JR, or email me on reception@bellyard.co.uk marking the email for the attention of Carys Owen. I expect to produce that report towards the end of 2006.

13. As before, I have been greatly assisted by the patient and purposeful support which I have been given by officials of 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 other organisations and individuals who have advised, helped and contacted me.

14. The range of such material has if anything reduced in 2005. This perhaps is a sign of a more peaceful picture in sectarian violence during 2005.
15. I have enjoyed continuing contact with the general public as reviewer. I have received representations about Northern Ireland from around the world. I welcome such contact via the internet address carlileqc@aol.com or by post to me at the address given above.
16. Despite the continuing difficulties over the resumption of devolved government, I detect growing confidence in the public that there is an increasing return to normal civil life without the constant fear of violence.
17. Many have concluded from the present state of affairs that there can be a lighter touch in any special legislation. Some are firmly of the view that special legislation is no longer needed. Of those, a considerable body of opinion believes that the sunset of the current provisions is the moment not to be lost to make a bold statement that Northern Ireland can return to normality, and have the same counter terrorism laws as the rest of the United Kingdom.
18. During the course of the year the government introduced the *Northern Ireland (Offences) Bill* to deal with so-called “*on the runs*”. The proposal was founded upon agreement between the UK and Ireland governments to bring closure to a significant number of unconcluded cases. In January 2006 the Secretary of State announced that this legislation would not be proceeded with. The reasons for that decision lie in the

changing views of political parties. I was asked to examine the Bill at the time of its introduction. As potential law it was peculiar in nature, and proposed a number of fictions that caused concern to lawyers. It would have placed the judges involved in a position few judges would have welcomed. I am satisfied that it would have caused real legal and jurisdictional difficulties. The issue of *on the runs* remains unresolved as a result of the dropping of the Bill. I would urge the use of a less formal procedure than legislation - perhaps a form of peace and reconciliation commission founded on frankness and the desire to confirm the increasing normality in Northern Ireland, and the desire of the public to live free from fear - alongside the process of re-investigation commenced in early 2006 on unconcluded cases.

19. In 2005 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. My dealings with the political parties have been changeable. Those who seemed to trust me least in 2004 were most helpful in 2005, but unfortunately I experienced the converse too. The important thing for the parties to know is that I have absolutely no preconceptions about the Northern Ireland situation save a determination to do whatever may be drawn from my role as a contribution towards achieving normality.

20. I have enjoyed further meetings with community groups. These are always most valuable. The aim of meeting them 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. I continue to 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 counter terrorism legislation on life in Northern Ireland
- and of course suggestions for constructive change.

21. 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. As the recent debates on the *Terrorism Bill 2005* have shown, achieving the balance is difficult. The debates in both Houses of the UK Parliament has demonstrated that people of good faith, often sharing the same aims, can have widely diverging views of how to achieve those aims. All seek a balance, proportionality that will withstand the tests imposed by the *European Convention on Human Rights* and litigation in domestic and international courts.

22. I have spent some time with the police and others concerned in the prevention and detection of serious crime. Unfortunately there is some though hopefully reducing yet continuing evidence of the activities of dissident para-military groups on both sides of the sectarian divide, and especially of the involvement of such groups in syndicated crime including robbery, kidnapping, smuggling and the proliferation of illicit drugs. The historic strength of some paramilitary groups, and the threat posed by their migration into well funded and sometimes dangerous crime, demonstrate that a very high level of vigilance continues to be necessary and publicly reassuring. On the other hand, I believe there to be a widespread acceptance by now that the democratic process is a speedier vehicle towards acceptable change than an armed struggle, even when political foes may

seem irreconcilable on some key issues. Almost all citizens of Northern Ireland are as opposed to terrorist acts and other heavy crime as their fellow citizens elsewhere in Great Britain and Ireland.

23. My purpose and the principal requirement of this report is to assist the Secretary of State and Parliament as to whether the powers currently contained in *Part VII TA2000* are functioning properly and fairly. In doing so I must consider the workings of the Act during 2005, including the amendments to it.
24. Yet again I repeat an earlier 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. I am pleased to report that progress is being made towards an updated text on the Home Office website, as each item of amending legislation comes into force. This has been a painfully slow process, but I am reasonably confident that during 2006 it will appear.
25. In carrying out my review of *Part VII*, I must examine whether it has been used appropriately during 2005. Further, I must determine whether I should recommend, piece by piece, that there is a continuing need for each of its provisions, and if so whether any amendments should be made.
26. 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.

27. I have been briefed fully by the military in relation to their role in Northern Ireland. In operational terms their involvement in law enforcement has diminished - though their preparedness has not. It is an expected development in a normalising scene that the military should become less concerned in activities generally regarded as the task of the police.

28. My contacts with and observations of the Police Service of Northern Ireland have been encouraging. When I started as independent reviewer in 2001 there were many crime scenes and crimes where the police would not have been trusted or present. I believe that the PSNI is taking part in ever increasing community policing. Naturally they must be cautious about the potential threat of unpredicted terrorism coming from maverick and dissident groups. Slowly, however, the relationship between police and public is moving towards that enjoyed in Great Britain. I continue to 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.

29. I have remained 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 Human Rights Commission, as well as the Committee for the Administration of Justice and also the political parties as mentioned above. I am grateful to them all for their significant contributions.

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

30. *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 2005 the Secretary of State made no orders to add or remove offences from *Schedule 9*, or to amend the Schedule in some other way.
31. The Northern Ireland Criminal Justice Review is well into its development phase, and will make considerable differences to the everyday management of the system. I was given a demonstration of the innovative *Causeway Project*. This project can be found on the internet at www.causeway.gov.uk. Its aim is to facilitate more efficient process by linking properly shareable information between police, courts, correctional and other relevant services. As it develops it should too enable those preparing criminal defence cases to link through secure gateways into the system and find statements and other information they need. I believe that the project may pioneer similar ones in Great Britain. It depends to a great extent on the functionality of the computer programmes on which it is built: compared with many other public service computer projects, the signs for the future are good.
32. It can be seen from Table A annexed to this report that in January-September 2005 120 indictable offences, representing 16.43% of the total capable of remaining scheduled, in fact remained scheduled. This is a slightly higher figure than in the previous two years. 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, and again in 2005, which is encouraging. There is no evidence of any change in policy. Scheduled cases remain a small part of the critical mass. As I have advised previously, and is accepted, as many as possible should be descheduled for the purposes of trial.

33. A significant improvement has been the reduction since 2003 in the number of persons involved in scheduled offences.

34. As I have reported each year, 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.

35. Table A includes a detailed breakdown for the first three quarters of 2005 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.

36. *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. As I noted last year, the provisions are unlikely to be extended to Northern Ireland in the foreseeable future. The trial procedure in this small group of non-jury cases will become strikingly similar to that in scheduled cases in Northern Ireland. I understand that these matters remain 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.
37. I have as before 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, especially at the sunset of *Part VII*. I have once again taken full note of the views of the Human Rights Commission, the Committee on the Administration of Justice and others including Sinn Fein (who expressed especially forceful views) on this subject.
38. From the evidence provided to me it appears that again in 2005 there were several incidents involving acts connected with terrorism that demonstrated a continuing danger from sophisticated terrorist crime.
39. I have absolutely no doubt that there were also numerous and in some cases extremely serious criminal offences of a non-terrorist nature in which there appears to have been or may well have been a strong terrorist link. Syndicated crime with a paramilitary connection is a clear, potentially permanent and wholly unacceptable part of the criminal intelligence picture of Northern Ireland. The welcome reduction in cross-sectarian attacks has continued, though a level of intimidation remains and is of serious

concern. There continues inter-necine violence within some loyalist paramilitary groups, and intimidation within parts of the republican community.

40. Decommissioning of terrorist arms has continued, 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.
41. As last year, I have made journeys into urban areas - in Belfast, Portadown, South Tyrone and elsewhere. I sense increasing abatement in the social and economic influence of paramilitaries over communities. As (for example) an interesting and energetic discussion with Mrs Bernadette McAliskey demonstrated to me, social policy and community activity in Northern Ireland is moving on, with emphasis being given in some places at least to issues of ethnicity, gender and equality on a broader front than the traditional sectarian divide.
42. Nevertheless I regret that 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 is still 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. However, my sense is that this diminished in 2005, though inevitably the evidence is anecdotal.

43. As each year, I discussed with as many people as possible the issue of the scheduling of offences. An analogous system exists in the Republic of Ireland. There the rate of conviction after scheduled trials is noticeably higher than in Northern Ireland: I draw no conclusion from that observation, but mention it for completeness.
44. 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 regret this very much. It is an important part of the march towards normalisation that juries should be unmoved by sectarian considerations or fear in reaching their verdicts. As I have said before, the aim must be that scheduling should wither on the vine, given a continuing improvement in the political situation. I hope that it will no longer be necessary after 2007, as is the inherent hope in the *Terrorism (Northern Ireland) Bill*.
45. I have looked for a fourth time at *TA2000 Schedule 9* very carefully, with a possible view to recommending a reduction in the range of scheduled offences. 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. The arrangements proposed in *Clause 3* of the Bill make all scheduled offences subject to the Attorney General's discretion. The test he applies when considering whether to deschedule is whether or not the offence is connected with the emergency in Northern Ireland. There are some anomalies in the present system that the change will iron out. For example, the change would ensure that a person charged with terrorism unconnected with Northern Ireland would be tried by a jury there. The change has the

potential to ensure further consistency and to reduce the number of cases tried under special arrangements for judge only courts.

46. In the past I have 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, there has been little in the way of representations on this narrow issue in 2005. There is no real drive to change that part of the system, which works fairly and efficiently. The scheduling system as amended by the Bill should continue until what is now the foreseeable end of scheduling.

47. As last year, 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.

48. *Section 67* in essence removed the normal presumption in favour of bail. The wording of *Section 67(3)* provided 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 were set out in *Section 67(3)(a) to (e)*, and the judge was 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)* lay 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.

49. In the past three years I reported that in my view *Section 67(3)* and *(4)* were effectively redundant in practice. For legal and practical reasons the same standards were being applied by judges in all cases, and those were the standards applied in Great Britain, plainly more favourable to bail applicants.

50. I am pleased to report that *Section 67(3)* and *(4)* were repealed as from the 19th February 2005¹. This can be seen as a modest but real example of legal normalisation.

51. 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)*).

¹ SI 2005/350 art 2(2)(a).

52. Table B sets out details of High Court bail applications in Northern Ireland in respect of persons charged with scheduled offences in 2002, 2003 and 2004, and from January-September 2005. These reveal that in 2005 22% of such bail applications were refused [2004: 20%]. There is no trend to be derived from the small changes over the past four years. High Court bail applications are successful in the majority of the cases going before the Court.
53. Table C shows the overall percentage of persons on bail at the time of trial in Northern Ireland in the period January-September 2005. In 2001 (not in the Table but noted previously) 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 showed 78% on bail at time of trial for scheduled offences, and 74% for non-scheduled offences. The 2004 figures were 67% and 71%. In 2005 there has been a movement back towards the 2003 situation, in that 74% of those charged with scheduled offences were on bail at the time of trial, and 72% charged with non-scheduled. This is a pleasing indication of a normal situation. As I would expect, there is no evidence that judges apply different standards to bail applications in scheduled and non-scheduled cases respectively.
54. This year I have received no 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. These arrangements should continue, and diminish the argument for such applications to be heard by Resident Magistrates.

55. One effect of the Bill when enacted will be that the provisions in *Section 67(3) and (4)*, like all repealed provisions in *Part VII*, will be permanently repealed – i.e. cannot be revived by regulation (as would have been possible before).
56. *Section 68*, which is a now redundant provision relating to legal aid, has been repealed².
57. *Section 69* deals with the management of those remanded in custody, and once again 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)* was partly repealed in 2003.
58. *Sections 70 and 71* provided 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.
59. Given advances in the youth justice system in Northern Ireland in recent years, I recommended last year that these two sections should be repealed. The *Criminal Justice (Children)(Northern Ireland) Order*³ provided for the young detained to be sent to premises suited to the custody and care of children, which exist now and provide the level of security for the purposes for which section 70 was designed.

² SI 2003/435, art 49(2), Sch 5.

³ SI 2003/1247, Sch 2.

60. I am pleased to report that both sections have been repealed as from the 19th February 2005⁴.

⁴ SI 2005/350 art 1.

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

61. *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. Detailed provisions are made in *Sections 72 and 73* for the contents of such statutory regulations and their consequences.
62. It remains the case that no regulations have been made by the Secretary of State pursuant to *Section 72*. I have been told 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.
63. Table D shows that processing times for scheduled defendants remanded in custody in 2004 and 2005 have improved significantly.
64. The introduction of the Public Prosecution Service for Northern Ireland, and the electronic communication and information facilities being put in place by the Causeway project, will continue to maintain the pressure against delays.

5. NON-JURY TRIALS – SECTIONS 74 AND 75

65. 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."⁵ 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.
66. 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.
67. 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.

⁵ Report of the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland; Cn 5185, Dec 1972.

68. 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 remained very significant. Attention was drawn to a number of recent cases where there was persuasive evidence of such intimidation.
69. 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. In 2004 in particular I made what I hope was a robust assessment of the issue. Again in 2005 I have discussed the issue of non-jury courts with a wide range of people and organisations. In most instances I have been the instigator of such discussions. It is not a subject that has led to any unpredicted spontaneous representations.
70. As in previous years, I have studied many documents 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?
71. One needs to separate from each other issues of the legal merits and the politics. On the former, an important factor in discussion is evidence of the quality of Diplock Courts.

Nobody said to me during 2005 that they have any reservations about the standards applied by Northern Ireland judges in non-jury trial. The innocent are at least as likely to be acquitted before a Diplock judge as before a jury. I regard this as more of an endorsement of judicial quality in Northern Ireland in particular, rather than as a general endorsement of judge-only courts. 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.

72. On the political aspect of judge-only courts, I am in no doubt 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' remains steeped in pejorative history. However much one would like to lose that label (despite the undoubted distinction and good faith of the late Lord Diplock) it will not go away until the courts system he recommended comes to an end. The political problem is outside my terms of reference. The courts work well. Politicians and Parliament will have to determine the balance between the risk of a justice shortfall and the advantage of total normalisation of the trials system.
73. The absence of women from the High Court Bench remains a proper concern. Gender is a legitimate issue for those deciding on the appointment of judges at all levels.
74. I have concluded again this year that the use of non-jury trials in those cases that are not scheduled out is working adequately. On the merits there is no 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 continually 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. In my view the preferable conclusion in 2007 would be a return to jury trial in all cases. However, that depends to a great extent on political leadership. If all political parties and sectarian organisations make it clear and really mean that jury intimidation is unacceptable to the point of being universally regarded as a very serious crime in itself, it may well be possible in 2007 to abandon judge-only courts. Compromises being the stuff in which political outcomes are made if not measured, I suspect that the introduction of a three-judge system may be the more achievable outcome. Certainly, subject to increased judicial resources, a three-judge system could be operated, especially if the number of cases falling within the system was reduced by increasing scheduling out.

75. A three judge court would certainly command greater confidence in one part of the community, without diminishing confidence rationally elsewhere. Sinn Fein could not have expressed their views on this matter to me more forcefully than they did.

6. ADMISSIONS AND TRIALS ON INDICTMENT – SECTION 76

76. As reported previously, *section 76* was repealed⁶ in 2002. So far as I am aware the repeal of *section 76* has caused no difficulties. This is another provision to enjoy permanent repeal as a result of the current Bill when enacted.

⁶ SI 2002/2141, art 2.

**7. POSSESSION OF EXPLOSIVE SUBSTANCES AND FIREARMS –
SECTION 77**

77. My conclusion in relation to *Section 77* is as last year and previously. *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*.⁷

78. 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.

79. Having regard to the political situation, including the continuing existence of some paramilitary organisations, 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.

⁷ R v Andre Shoukri [2003] NICA 53.

8. SENTENCING AND REMISSION – SECTIONS 78 TO 80

80. Once again I have received no representations in relation to these sections, save from the government as described above. *Section 78* is to be repealed as no longer being required.

81. Last year I repeated a recurring request, namely 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. So far as I am aware, this has not yet happened. I can see no real problem about assembling and publishing what would be useful figures as a snapshot of the effectiveness of the remission system.

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

82. In this section my conclusions are as in the 4 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.

83. The actions of the military are subject to the jurisdiction of the Independent Assessor of Military Complaints Procedures. He produces detailed and assiduous reports, and is very active as occasion demands. He provides significant reassurance in relation to such 'policing' roles as the military retain. Those roles are reducing, along with the visibility of the military. The dismantling of watch towers, and the reduction in military helicopter activity, has provided evidence of normalisation on which many have commented to me favourably.

84. Thankfully the old and regular checkpoint congestion is 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.
85. 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 entries have reduced significantly in 2005, a welcome reduction in intrusion into private property. Arrests have increased, but without significant effect on the number of persons charged: these statistics are founded on a very small numerical base and can be distorted by one or two police operations: they are not significant. Given that some extremely major enquiries have continued during the year, notably that into the Northern Bank robbery, in my view the powers continue to be used sparingly.
86. 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 until the political situation evolves further. I have received no representations to the contrary.
87. *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

88. *Section 89* empowers an officer to stop a person for so long as is necessary to question him/her and ascertain identity and movements, any knowledge about a recent explosion or another recent incident endangering life, and any knowledge 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.
89. Table J shows the number of persons stopped by the police and armed forces respectively pursuant to *Section 89* between January-September 2005. The peaks are related to the marching season. In 2005 military stops have declined significantly. The consequence is that the total stops in the first three quarters of 2005 was 5,013, down from 5,628 in the comparable part of 2004, and well down on 2003. The trend is very welcome.
90. I remain 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 continue to keep a close and specific watch on the use of *Section 89* and other stop procedures, in the coming year. I doubt if the security situation would be significantly affected if there was even better targeted use of intelligence and information reaching the police, and a reduction in stops of up to 50%.
91. 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.

92. 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.
93. In 2004 the *Section 91* power to take possession of land was exercised by requisition fourteen times, according to the statistics shown in Table K. This was concentrated by an event, as is usual.
94. In the period January-September 2005 there were thirteen requisition orders.
95. The requisitioning and road closure provisions are useful for the preservation of the peace, well administered, and still necessary. In my view these are among the most useful provisions in *Part VII*, in that without infringing civil liberties disproportionately they contribute to the keeping of the peace.

12. REGULATIONS FOR PRESERVATION OF THE PEACE: SECTION 96

96. *Section 96* provides a general power to the Secretary of State to make regulations for the preservation of the peace.
97. 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 non-violent criminal activity in Northern Ireland.
98. Although rarely invoked, the regulations still in force are regarded by the police as potentially useful to deal with predictable situations.
99. I accept that these powers remain potentially useful, but only very occasionally. However, I doubt that anything significant would be lost if they were repealed as part of the normalisation process. The powers of conventional policing should now suffice for dealing with the situations envisaged.

13. PORT AND BORDER CONTROLS: SECTION 97

100. *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*. This power was neither used nor even sought on any occasion. The police and the Army accepted that the Army's powers to stop and search would be adequate in all circumstances envisaged by these subsections.

101. 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.⁸ In 2003 I recommended likewise for *section 97(3)*. It has now been repealed, to no disadvantage.⁹ This means that the whole section will now disappear from statute.

⁸ SI 2003/427, arts 1, 2(2)(a), effective from the 19th February 2003.

⁹ SI 2004/431.

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

102. The present Assessor, Jim McDonald, 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. He has been reappointed till October 2007.
103. The Independent Commissioner for Detained Terrorist Suspects, Dr Bill Norris, has undertaken another very valuable role. He has demonstrated an extremely active and informed interest in the procedures of detentions, and was often present to scrutinise performance at the time of detentions. With their small but very competent staff, they have given me help of real value.
104. Dr Norris's post was subsumed in October 2005 by Custody Visitors. I hope that they will be able to replicate his rigour and sheer presence in scrutinising the processes and conduct of detention.

**15. REGULATIONS, CODES OF PRACTICE AND OTHER
MISCELLANEOUS PROVISIONS**

105. Codes of Practice have been prepared in relation to the exercise by police officers of powers under the Act. Once again, the Codes of Practice have not been the cause of difficulty or complaint to me. 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.
106. The Police Ombudsman of Northern Ireland provides a further and formidable filter and protection. She would certainly investigate any significant alleged breaches.
107. *Sections 101(5A) and (7A)* have been added to the Act.¹⁰ *Subsection (5A)* strengthens the impact of the Codes.
108. A revised PACE Code for Northern Ireland 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. I understand that the work in progress is expected to be completed very shortly: I hope this is correct.
109. I have been able to see various forms of written guidance given to the military at all levels. They are of good quality.

¹⁰ Police (Northern Ireland) Act 2003, S 32(1), Sch 3, para 8(1)(2)(3).

16. COMPENSATION – SECTION 102 AND SCHEDULE 12

110. *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* 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.
111. Table L sets out the compensation paid in the period between the 1st January 2005 and the 30th September 2005, and in the previous three years. The table shows a continuing and substantial 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 an encouraging part of the evidence of a gradual return to normality.
112. The proper provision of compensation for disturbance to private rights is a continuing necessity. The compensation system works well and should be retained.

17. TERRORIST INFORMATION – SECTION 103.

113. *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.
114. *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. It remains necessary.
115. 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*.

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

116. I have no comments to make about the provisions in *Sections 104 and 105* concerning police records.
117. *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 2005 were allowed, without conditions.
118. In England and Wales a 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*.
119. *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 in the last two years, 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, for at least one more year.

**19. SPECIFIED ORGANISATIONS – SECTIONS 107
TO 110 TA 2000.**

120. There is no doubt that genuine and constitutional political parties have grown out of paramilitary activity in Northern Ireland. That is a product of a turbulent and divided history. Those and other political parties share the view that terrorism is now unacceptable as a political weapon. Unfortunately terrorist groups remain, some ‘sleeping’ but potentially dangerous and possibly unpredictable. The water between criminality and terrorism remains murky. In my view the specification of proscribed organisations remains necessary and proportionate, having regard to the continuing danger posed by a small number of still terrorist groups, especially those which have placed themselves entirely outside the sphere of influence of the Northern Ireland democratic institutions and political parties.

121. Banning organisations in this way can trespass unintentionally on to the outer shores of legitimate politics. If citizens hold political beliefs and are willing to be open about their activities (it being a contradiction in terms to be a secret political party), usually proscription would not be justified. It remains vital that very careful consideration is given to issues of proscription and de-proscription, with the public interest as the key factor. I remain 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.

122. 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.

123. *Section 108* makes provisions for the evidence that may lead a Court to conclude that a Section 11 offence has been committed.
124. *Section 108(2) and (3)* render admissible in relation to *Section 11* 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.
125. Once again this year 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 carefully assessed 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 before reaching him and can be difficult to verify. 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 each year by careful enquiry and impression. Events have confirmed the detail and good quality of such intelligence.
126. I am mindful that fairly recently the Independent Monitoring Commission reached a similar to my own, namely that fringe or dissident groups represent a considerable threat.¹¹

¹¹ IMC Third Report: HC1218 14th November 2004.

127. Nevertheless section 108 has not been used. I find it difficult to impossible 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.
128. In Ireland, a similar provision to *section 108* has been used for three decades, and has resulted in convictions as recently as 2001. Nevertheless, as last year I am totally unpersuaded by the arguments for its retention. *Section 108* should be repealed. There would be no disadvantage to the cause of public protection from terrorism. It is now inconsistent with the thrust of normalisation and the Good Friday Agreement.
129. *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.
130. 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.**

131. *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).

132. As in the previous 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.

133. *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).

134. *Paragraph 36* of the Schedule enabled the Secretary of State, rather than the courts, to make and enforce restraint orders.

135. I recommended in my report for 2003 that *Schedule 4 paragraph 36* be allowed to lapse. This has happened.¹²

136. *Paragraph 37* may still have some utility: without it only contempt of court powers would be available to deal with breach of a court restraint order.

137. In my view *Section 111* remains necessary and proportional.

¹² IS 2003/427, art 1.

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

138. This is going to be dealt with in the new legislation, as described above.

ANNEXES

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
Oct-Dec	325	219	283	42
2003 Total	1,567	1,034	1,331	236
2004				
Jan-Mar	228	160	195	33
Apr-Jun	251	188	214	37
Jul-Sept	159	122	126	33
Oct-Dec	102	88	94	8
2004 Total	740	558	629	111
2005				
Jan-Mar	189	130	145	44
Apr-Jun	346	185	273	73
Jul-Sept	195	131	192	3
2005 Total to date	730	446	610	120

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: The Public Prosecution Service for Northern Ireland.

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)¹.

Year	Number of applications	Number granted	% granted ²	Number refused	% refused ² ₃	Other outcomes	% 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	1,494	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
Oct-Dec	475	228	48	108	23	139	29
2003 Total	1,775	861	49	380	21	534	30
2004							
Jan-Mar	401	171	43	90	22	140	35
Apr-Jun	434	187	43	81	19	166	38
Jul-Sept	429	225	52	85	20	119	28
Oct-Dec	505	273	54	90	18	142	28
2004 Total	1,769	856	48	346	20	567	32
2005							
Jan-Mar	271	139	51	52	19	80	30
Apr-Jun	394	208	53	67	17	119	30
Jul-Sept	656	314	48	167	25	175	27
2005 Total to date	1,321	661	50	286	22	374	28

- 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 (%)
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
Oct-Dec	86	73
2003 Total	78	74
2004		
Jan-Mar	65	73
Apr-Jun	46	73
Jul-Sept	71	61
Oct-Dec	78	74
2004 Total	67	71
2005		
Jan-Mar	77	74
Apr-Jun	75	71
Jul-Sept	71	73
2005 Total to date	74	72

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	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
2003 Total	44.1	73	7.1	25	23.4	24
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
Oct-Dec	46.5	10	10.1	6	7.4	4
2004 Total	41.9	50	6.5	28	23.1	25
2005						
Jan-Mar	45.3	9	11.0	3	5.1	3
Apr-Jun	46.4	18	6.7	8	28.2	7
Jul-Sept	32.7	21	5.6	7	25.9	7
2005 Total to date	40.2	48	7.0	18	23.2	17

- 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: 1st 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 ¹
2002		
Jan-Mar	9	0
Apr-Jun	0	0
Jul-Sept	14	N/A
Oct-Dec	11	N/A
2002 Total	34	N/A
2003		
Jan-Mar	4	N/A
Apr-Jun	12	10
Jul-Sept	32	29
Oct-Dec	15	15
2003 Total	63	54
2004		
Jan-Mar	8	8
Apr-Jun	15	14
Jul-Sept	2	1
Oct-Dec	6	6
2004 Total	31	29
2005		
Jan-Mar	3	3
Apr-Jun	6	6
Jul-Sept	3	2
2005 Total to date	12	11

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 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
Oct-Dec	12	5	0
2003 Total	39	10	5
2004			
Jan-Mar	1	0	1
Apr-Jun	5	2	3
Jul-Sept	0	0	1
Oct-Dec	1	0	1
2004 Total	7	2	6
2005			
Jan-Mar	12	4	5
Apr-Jun	20	0	0
Jul-Sept	0	0	1
2005 Total to date	32	4	6

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 ¹
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
Oct-Dec	9	18
2003 Total	24	72
2004		
Jan-Mar	0	16
Apr-Jun	15	2
Jul-Sept	0	4
Oct-Dec	1	0
2004 Total	16	22
2005		
Jan-Mar	2	0
Apr-Jun	4	0
Jul-Sept	21	0
2005 Total to date	27	0

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 ¹
	Dwellings	Other	Total	Total
2002				
Jan-Mar	91	22	113	32
Apr-Jun	90	27	117	61
Jul-Sept	100	34	134	92
Oct-Dec	188	39	227	98
2002 Total	469	122	591	283
2003				
Jan-Mar	171	34	205	385
Apr-Jun	125	21	146	415
Jul-Sept	96	10	106	489
Oct-Dec	94	14	108	397
2003 Total	486	79	565	1,686
2004				
Jan-Mar	44	7	51	142
Apr-Jun	109	19	128	50
Jul-Sept	61	6	67	86
Oct-Dec	64	12	76	83
2004 Total	278	44	322	361
2005				
Jan-Mar	44	8	52	62
Apr-Jun	63	7	70	50
Jul-Sept	137	36	173	76
2005 Total to date	244	51	295	188

Note: 1. Searches conducted by Her Majesty's forces are in conjunction with the Police Service of Northern Ireland. Figures represent the aggregate of all Route, Area, Vehicle, Railway and Venue searches conducted by Her Majesty's forces

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 examined
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
Oct-Dec	25	24
2003 Total	104	97
2004		
Jan-Mar	17	17
Apr-Jun	36	30
Jul-Sept	12	11
Oct-Dec	18	15
2004 Total	83	73
2005		
Jan-Mar	25	15
Apr-Jun	12	5
Jul-Sept	33	18
2005 Total to date	70	38

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 and 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
2002 Total	2,448	0	9,873
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
2003 Total	1,368	1	10,921
2004			
Jan-Mar	252	0	2,279
Apr-Jun	352	0	966
Jul-Sept	739	1	1,040
Oct-Dec	619	1	871
2004 Total	1,962	2	5,156
2005			
Jan-Mar	974	0	753
Apr-Jun	438	0	1,165
Jul-Sept	597	0	1,086
2005 Total to date	2,009	0	3,004

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

K

Section 91 – Taking Possession of land, & c¹

Year	Number of Requisition Orders	Number of De-requisition Orders
2002		
Jan-Mar	0	1
Apr-Jun	<i>16</i>	<i>0</i>
Jul-Sept	0	<i>14</i>
Oct-Dec	0	0
2002 Total	<i>14</i>	<i>15</i>
2003		
Jan-Mar	0	0
Apr-Jun	<i>13</i>	0
Jul-Sept	<i>1</i>	<i>20</i>
Oct-Dec	0	<i>2</i>
2003 Total	<i>14</i>	<i>22</i>
2004		
Jan-Mar	0	0
Apr-Jun	14	0
Jul-Sept	0	14
Oct-Dec	0	0
2004 Total	14	14
2005		
Jan-Mar	0	0
Apr-Jun	0	0
Jul-Sept	13	13
2005 Total to date	13	13

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)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
Oct-Dec	264,745	34,727	299,472
2003 Total	1,885,697	313,609	2,199,306
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
Oct-Dec	31,930	4,653	36,583
2004 Total	425,548	48,243	473,791
2005			
Jan-Mar	47,880	6,444	54,324
Apr-Jun	42,623	5,152	47,775
Jul-Sept	29,211	4,061	33,272
2005 Total to date	119,714	15,657	135,371

- 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
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
Oct-Dec	22	21	1	0	0	0
2003 Total	107	105	2	0	0	0
2004						
Jan-Mar	29	29	0	0	0	0
Apr-Jun	29	29	0	0	0	0
Jul-Sept	24	24	0	0	0	0
Oct-Dec	16	15	1	0	0	0
2004 Total	98	97	1	0	0	0
2005						
Jan-Mar	27	27	0	0	0	0
Apr-Jun	30	30	0	0	0	0
Jul-Sept	26	26	0	0	0	0
2005 Total to date	83	83	0	0	0	0

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.**

Dr Al Ansary, Library of Congress, Washington DC

The Alliance Party

The GoC Army Northern Ireland

The Chamber of Shipping and member companies serving Northern Ireland

The Committee on the Administration of Justice

The Northern Ireland Court Service

The Lord Chief Justice of Northern Ireland

Other senior judges in Northern Ireland

The Director of Public Prosecutions for Northern Ireland and staff

The Democratic Unionist party

Northern Ireland Human Rights Commission

The Independent Assessor of Military Complaints Procedures in Northern Ireland

The Independent Monitoring Commission

The Independent Commissioner for Detained Terrorist Suspects

The Embassy of Ireland

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

Officers of the Metropolitan Police

The National Co-ordinator of Ports Policing

Officers of Scottish Police forces

The National Co-ordinator of Special Branches

The Place Initiative Portadown

Many ports officers around Great Britain

The Police Ombudsman of Northern Ireland Mrs Nuala O'Loan

Progressive Unionist Party

Sinn Fein

Social Democratic and Labour Party

South Tyrone Empowerment Programme

Ulster Unionist party