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NORTHERN IRELAND POLICING BOARD

MONITORING PSNI COMPLIANCE

THE NORTHERN IRELAND POLICING BOARD

MONITORING PSNI COMPLIANCE WITH THE HUMAN RIGHTS ACT 1998 UNDER THE STATUTORY DUTY IN S.3(3)(B)(II) OF THE POLICE (NI) ACT 2000

MONITORING FRAMEWORK 2003-2004

INTRODUCTION

The Northern Ireland Policing Board is under a duty to secure the maintenance of the police in Northern Ireland (s.3(1) of the Police (Northern Ireland) Act 2000). It is also under a duty to secure that the police are efficient and effective (s.3(2)). In carrying out those functions, the Board is under a further duty, namely to monitor the performance of the police in complying with the Human Rights Act 1998 (s.3(3)(b)(ii)).

In February 2003, the Northern Ireland Policing Board appointed Keir Starmer QC as its Human Rights Advisor. His primary responsibility is to advise the Board how to meet the legislative requirement set out in s.3(3)(b)(ii) of the Police (Northern Ireland) Act 2000. Jane Gordon was appointed as assistant to the Board's Human Rights Advisor in July 2003. They have devised this Monitoring Framework.

In April 2003, the Policing Board agreed the contents of an outline programme for monitoring human rights compliance and that the process should be informed by three broad principles:

- (a) First that it is the PSNI's performance as a whole that is being monitored: i.e. success as well as failure.
- (b) Second that the process of monitoring should be dynamic and one in which the PSNI feels that there is a positive dialogue between it and the Policing Board, which recognises and addresses problems as they arise.
- (c) Third that the process of monitoring should not be retrospective: what is to be monitored is how the PSNI are complying with their Human Rights Act 1998 obligations now, not how well the police may or may not have complied with their obligations in the past.

This detailed Monitoring Framework incorporates those principles.

There are two stages to measuring compliance with the Human Rights Act 1998. First, the development of meaningful standards against which the performance of the police can be monitored. Second, the monitoring process itself.

The first stage is now complete. The Board proposes to monitor the PSNI's compliance with the Human Rights Act 1998 according to (i) the standards set out in the PSNI Code of Ethics and (ii) a more detailed set of criteria, drawn up by the Board's human rights advisors. The advantage of starting with the Code of Ethics is that it is an agreed document, which includes international human rights standards drawn from the European Convention on Human Rights and other relevant human rights instruments. It is intended to provide an ethical framework for the decisions and actions of police officers in Northern Ireland. It is also intended to make police officers aware of the rights and obligations arising under the Human Rights Act 1998.

The more detailed set of criteria to supplement the Code of Ethics is drawn from the same human rights instruments that underpin the Code of Ethics. It is grounded in the jurisprudence of the European Court of Human Rights, which underpins the Human Rights Act 1998. Other human rights instruments are only used to supplement that jurisprudence where there are gaps or ambiguities (a process that the European Court of Human Rights itself recognises as legitimate). Where the Code of Ethics deals with human rights standards on a broad basis, the detailed criteria break down those standards into practical, everyday indices, designed to assist the Policing Board in evaluating the PSNI's compliance with the Human Rights Act 1998 more closely. These indices are attached to this paper as Appendix 1. Hopefully they will assist the PSNI in more readily understanding the process and outcome of the

monitoring exercise carried out by the Policing Board. They may even serve a further purpose in enabling police officers to understand better how the benchmarks for ethical policing in the Code of Ethics should be applied in their day-to-day work. It is important to appreciate that these indices are not the subjective view of the Policing Board or its human rights advisors of the standards to which the PSNI should aspire, but objective standards resulting from the incorporation of the European Convention of Human Rights into domestic law through the Human Rights Act 1998. They are the standards that police officers are expected to comply with under the PSNI Code of Ethics, breach of which could also render the Chief Constable liable for damages under the Human Rights Act 1998 in relation to the actions of his officers.

It is proposed that the Policing Board's first report on the performance of the PSNI in complying with the Human Rights Act 1998 will be published in 2004. It will examine the following issues:

1. The PSNI programme of action.
2. The adequacy and effectiveness of PSNI human rights training.
3. Compliance of PSNI policies with the Human Rights Act 1998.
4. Compliance of PSNI operations with the Human Rights Act 1998.
5. Adherence by PSNI officers to the Code of Ethics.
6. Complaints, discipline and civil actions raising human rights issues.
7. Public order.
8. The use of force.
9. Covert policing.
10. Victims' Rights.
11. The treatment of suspects.
12. Human rights awareness among PSNI officers.

The Policing Board will also begin work on other issues including privacy, data protection and impact of human rights on District Policing Partnerships. However, it is not envisaged that this work will be completed in time for the first report on the performance of the PSNI in complying with the Human Rights Act 1998.

As to the level of scrutiny, it is proposed that the monitoring process should keep firmly in mind the key principle that emerges from human rights jurisprudence, namely that the protection of human rights must be 'practical and effective'. The monitoring process should therefore examine the PSNI's compliance with its obligations under the Human Rights Act 1998 at all levels.

This will include close scrutiny of the mechanisms in place which are intended to ensure that policy (both at the drafting and the implementation stages), training (from preparation through to implementation, awareness and appraisal), investigations and operations (from planning through to implementation) are effective in ensuring human rights compliance. It will also attempt to assess the impact of human rights considerations on decision-making on the ground. If possible, this should allow for an input from the communities policed by the PSNI.

Inevitably the monitoring exercise carried out by the Policing Board will also examine the adequacy and effectiveness of the structural mechanisms set up by the PSNI to ensure that the obligations under the Human Rights Act 1998 are met. A PSNI Human Rights Working Group was set up in late 1998 to prepare for the coming into force of the Human Rights Act 1998. In 1999, that became a Human Rights Unit, which by September 2000 had three full time officers and remained in place until June 2002. Since then there has been one human rights officer. In addition, a human rights lawyer to the PSNI was appointed on 1st October 2001 to fulfil Patten Recommendation 6. One of the key objectives of this appointment was to ensure that the PSNI has expert, experienced advice to guide policymaking and operational decision-making. The Human Rights Accountable Officer/Champion was ACC Sam Kinkaid from 2001 until A/ACC Judith Gillespie took over on 5th October 2003.

It is also proposed that the monitoring carried out by the Policing Board should recognise that other processes are already in place which, in one way or another, measure the performance of the PSNI (particularly those dealing specifically with human rights). A schedule of other statutory bodies dealing with human rights compliance in Northern Ireland, with a short analysis of each of their remits, is attached to this paper as Appendix 2. The Policing Board is required to have regard to the need to co-ordinate its activities with those of other statutory bodies, and to co-operate with such authorities (s.3(4)(d) of the Police (Northern Ireland) Act 2000). It is not intended that, in carrying out its functions under s.3(3)(b)(ii) of the Police (Northern Ireland) Act 2000, the Policing Board should replicate the work of these bodies. Instead the Policing Board will obtain and review the reports, research and recommendations of these bodies where they touch on PSNI human rights issues and, where the Policing Board's human rights advisors consider that a legitimate issue relating to the PSNI's compliance with the Human Rights Act 1998 arises, assess the PSNI's response to them.

The Policing Board recognises that there is an overlap between the statutory duty of the PSNI to have due regard to the need to promote equality of opportunity under s.75 of the Northern Ireland Act 1998 and the non-discrimination provisions of the European Convention of Human Rights. The PSNI's equality scheme has been approved by the Equality Commission. This sets out how the PSNI is going to meet its obligations under s.75 of the Northern Ireland Act 1998 and is kept under review by the Equality Commission. In addition, the Policing Board is under a statutory duty to include in its annual report an assessment of the extent to which the membership of the police and the police support staff is representative of the community of Northern Ireland (s.57(2)(f) of the Police (Northern Ireland) Act 2000). In those circumstances, the Policing Board considers that to include an assessment of recruitment and membership of the PSNI in monitoring the performance of the PSNI in complying with its obligations under the Human Rights Act 1998 would unnecessarily duplicate work already being done on that issue.

Since this is the start of a process, it is proposed that this detailed Monitoring Framework be kept relatively flexible so that, where necessary, changes can be made as soon as reasonably practicable.

1. THE PSNI HUMAN RIGHTS PROGRAMME OF ACTION.

1.1 Patten Recommendation 1 requires the Chief Constable and the Policing Board to publish a programme of action to "focus policing in Northern Ireland on a human rights-based approach". A consultation paper on the Human Rights Programme of Action was published in January 2002. This included a draft Programme of Action. The Office of the Oversight Commissioner provided four performance indicators for the implementation of Patten Recommendation 1, which includes evidence of responsibility assigned, not just for planning but also for continual monitoring of the comprehensive programme.

1.2 The Policing Board's human rights advisors will provide the PSNI with comments on the draft Programme of Action at the outset of the monitoring process. The Policing Board will then examine the revised Programme of Action and consider its effectiveness as a tool for ensuring that the PSNI complies with its duties under the Human Rights Act 1998. This will include consideration of the four performance indicators drawn up by the Office of the Oversight Commissioner, but will

be more focused on the practical effects of the Programme of Action. It is hoped that any observations of the Policing Board on the Programme of Action will influence future versions of it. The Policing Board recognises the central importance of the PSNI's Programme of Action and hopes that this is a key area in which the monitoring process can provide for a positive dialogue between the Policing Board and the PSNI.

2. TRAINING

2.1 The Patten Report recognised that "training was one of the keys to instilling a human rights-based approach into both new recruits and experienced police personnel" and specifically recommended training in the "fundamental principles and standards of human rights and the practical implications for policing" (para.4.9). It also recommended, as a matter of priority, that all members of the police service should be instructed in the implications for policing of the Human Rights Act 1998, and the wider context of the European Convention on Human Rights and the Universal Declaration of Human Rights (para.16.21).

2.2 Before the Human Rights Act 1998 entered into force, the RUC produced a guide for trainers, which was updated in October 2001. In December 2001, the Human Rights Centre at Queen's University held a two-day seminar for PSNI training staff, which included an introduction to the Human Rights Act 1998 and explored the relationship between human rights and other laws.

2.3 Since 2001 there has been a specific one-day human rights module on the PSNI trainers' course. This was initially delivered by the Human Rights Centre at Queen's University, but is now delivered by the PSNI human rights lawyer.

2.4 During 2001, human rights training was delivered to all police officers and 'front line' support staff as a one-day course, which included a human rights workbook. An aide memoir and distance learning pack was issued to all officers. A human rights module was also included in the training for student officers and part time reserve officers.

2.5 As a direct response to Patten Recommendation 141, a 'Course for All' has been devised for all members of the PSNI, both police and civilian. It includes an explanation of the fundamental principles and standards of human rights and practical implications for policing. Delivery of the course began in November 2002.

2.6 In October 2000, the Northern Ireland Human Rights Commission produced a report on the RUC's training materials and some of its training sessions on the Human Rights Act 1998. The Chief Commissioner and several staff observed training courses, commented on training plans and discussed training issues with the RUC's Human Rights Act 1998 Working Group.

2.7 Further monitoring took place in 2002, culminating in the publication by the Northern Ireland Human Rights Commission of an Evaluation of Human Rights Training for Student Police Officers. This dealt with the 21-week Student Officer Training Programme (which is not solely human rights based). The evaluation focused on three themes including the rule of law, which includes mainstreaming human rights into the training provided.

2.8 The Human Rights Commission also carried out further evaluation of the PSNI's human rights training for probationer police constables and of the PSNI "Course for All". Reports of both these evaluations have not yet been published but are expected soon.

2.9 The terms of reference of all the above evaluations were agreed in advance between the Commission and the PSNI.

2.10 In April 2003, the PSNI produced its own review of human rights training within the PSNI. The aim of this research was to produce an evaluation status report in keeping with the needs of the Oversight Commissioner. A variety of methodologies were used including content analysis, stakeholder interviews, focus groups and questionnaires. Results were clustered under the 11 performance indicators set out by the Oversight Commission.

2.11 All PSNI training is currently being audited according to a protocol and where appropriate re-written. In addition an Advisory Council on Training is being set up, which will meet every 3-4 months.

2.12 In monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Policing Board will evaluate all the training material used for PSNI human rights training. It will also evaluate the effectiveness of the protocol for auditing and reviewing human rights training. Although the Policing Board is only concerned with human rights training from February 2003 onwards, it will draw on the previous research already conducted by the Northern Ireland Human Rights Commission and the PSNI as important background material of relevance to current training.

2.13 It is not envisaged that the Policing Board will be able to conduct its own comprehensive monitoring of the actual delivery of human rights training in time for its first report on the performance of the PSNI in complying with the Human Rights Act 1998. However it will conduct random and unannounced checks of each of the human rights training sessions for (i) student officers, (ii) other officers and (iii) policy makers. The Policing Board will also evaluate the PSNI's own arrangements for monitoring the actual delivery of human rights training and keep itself informed of the work of the Advisory Council on Training. The Policing Board will keep under review the question of whether it should conduct its own comprehensive monitoring of the actual delivery of human rights training in time for its second report on the performance of the PSNI in complying with the Human Rights Act 1998.

2.14 The Policing Board will also devise a human rights awareness questionnaire intended to gauge the general knowledge base of PSNI officers in respect of basic human rights issues. This will be circulated to as wide a group of officers within the PSNI as possible in different district command units/regions. The results of this research will be read together with the results of previous research by the PSNI itself into officer satisfaction in respect of human rights training and the cultural audit it intends to administer in the near future.

3. POLICY

3.1 In 2000, the Human Rights Unit audited all police policies and general orders for human rights compliance. Ensuring all new policies and orders comply with the Human Rights Act 1998 is now the responsibility of policy makers.

3.2 Human rights audit training for policy makers was conducted by an external trainer in February 2002 and April 2003. This training is intended to equip policy makers with the necessary skills to audit policies for human rights compliance.

3.3 In monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Policing Board will evaluate the audit of all police policies and general orders that was carried out by the Human Rights Unit in 2000. This will include an examination of the framework document devised by the Human Rights Unit for the audit. Any areas of concern will be brought to the attention of the PSNI.

3.4 The Policing Board will also consider the training currently given to policy drafters to equip them with the necessary skills to audit policies for human rights compliance. The Policing Board's human rights advisors will attend one of the human rights training sessions for policy makers before the first report on the PSNI's compliance with the Human Rights Act 1998 is published.

3.5 The Policing Board will also study the arrangements put in place by the PSNI to ensure that its policies comply with the Human Rights Act 1998. This will include an examination of the extent to which policy drafters seek and obtain specialist advice where necessary. In this regard, the Board will consider the working relationship between policy drafters and the PSNI human rights lawyer. The Policing Board will also consider the mechanisms in place for the periodic review of policies where human rights standards develop.

3.6 So far as the policies themselves are concerned, the Policing Board will itself audit all policies concerning public order, the use of force and covert policing. It will also audit twelve randomly selected policies in other areas. This will include policies drawn up by other bodies such as ACPO.

4. OPERATIONS

4.1 The PSNI aims to provide guidance to operational officers to ensure that the planning and execution of operations is human rights compliant. Various operational documents were revised by the Human Rights Unit to this end and, where necessary, the advice of counsel obtained. The aim of this exercise was to provide guidance to operational officers to ensure that decision-making addresses the key elements of legality, subsidiarity and proportionality and new operational directions were issued to cover the use of force and parades (see the Draft Programme of Action).

4.2 In monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Policing Board will examine the revisions made to operational documents by the Human Rights Unit to ensure that the planning and execution of operations is human rights compliant. The Policing Board will also review for itself the human rights considerations contained in all PSNI operational documents.

4.3 The Policing Board will also study the working arrangements put in place by the PSNI to ensure that its operations are human rights compliant and that any

guidance contained in operational documents is followed. This will include an examination of the extent to which operational officers seek and obtain specialist human rights advice where necessary. In this regard, the Policing Board will consider the working relationship between operational officers and the PSNI human rights lawyer.

4.4 So far as operations themselves are concerned, the Policing Board's human rights advisors plan to observe and monitor the planning and execution of six operations. Three of these will be in the Belfast District Command Regions and the remainder will be Derry, Newry and Fermanagh. The Policing Board's human rights advisors will also conduct an after-the-event paper audit of six further operations chosen at random and examine any other operational matters brought to their attention during the monitoring exercise. Where failings or weaknesses are identified, the Policing Board will examine the PSNI's response to those failings or weaknesses.

4.5 While not an 'operation' as such, the Policing Board will also examine the records kept of all stops and searches and other such actions taken under emergency powers in accordance with Patten Recommendation 61, and the results of any random checks to monitor the behaviour of PSNI officers in dealing with the public and their integrity in accordance with Patten Recommendation 81, to see whether these give rise any concerns about the PSNI's compliance with the Human Rights Act 1998. The Policing Board will also examine the results of the questionnaires used by District Policing Partnerships to survey local communities to identify issues of concern to see whether these raise concerns about the PSNI's compliance with the Human Rights Act 1998.

5. ADHERENCE TO THE CODE OF ETHICS.

5.1 Under s.52(1) of the Police (Northern Ireland) Act 2000, the Policing Board is required to issue a Code of Ethics laying down standards of conduct and practice for police officers and making them aware of the rights and obligations arising under the Human Rights Act 1998. The current Code of Ethics came into force on 14th March 2003. It includes international human rights standards drawn from the European Convention on Human Rights and other relevant human rights instruments.

5.2 Police officers are required to carry out their duties in accordance with the Code of Ethics, which applies to all members of the PSNI, whether on or off duty regardless of rank, and all members of the PSNI Reserve, whether part-time or full-time. A breach of its standards

can lead to disciplinary investigation either by the Police Ombudsman or the PSNI Internal Investigations Branch.

5.3 Article 1.1 of the Code of Ethics requires that all PSNI officers protect human dignity and uphold the human rights of all person as enshrined in the European Convention of Human Rights and other relevant international instruments. Where the Code of Ethics conflicts with an instruction, policy or guideline of the PSNI, officers must comply with the Code of Ethics (Preamble to Code of Ethics, para (k)).

5.4 It is the duty of the Chief Constable to take such steps as he considers necessary to ensure that all officers have read and understood the Code of Ethics and that a record is made and kept of the steps taken in relation to each officer (s.52(8) of the Police (Northern Ireland) Act 2000).

5.5 Since it came into force, the Chief Constable has required all PSNI officers to acknowledge receipt, and understanding, of the Code of Ethics by signing a form to that effect. In addition, since April 2003 the Annual Performance Review for all officers up to the rank of Chief Superintendent has included a section designed to assess officers' awareness of and compliance with human rights issues. The grading is based on standards taken from the Code of Ethics.

5.6 The Policing Board is under a duty to assess the effectiveness of the Code of Ethics (s.3(3)(d)(iv) of the Police (Northern Ireland) Act 2000). It is also under a duty to keep under review the steps taken by the Chief Constable to ensure that all officers have read and understood the Code of Ethics (s.52(9) of the Police (Northern Ireland) Act 2000). By using (i) the standards set out in the PSNI Code of Ethics and (ii) a more detailed set of criteria (which itself draws on the Code of Ethics) to carry out its duty to monitor the PSNI's compliance with the Human Rights Act 1998, the Policing Board will also be able to comply with these additional duties.

5.7 The effectiveness of the Code of Ethics will be assessed by monitoring and evaluating PSNI human rights training (in particular the 'Course for All', which is based on the Code of Ethics), complaints, discipline and civil actions against the PSNI, and human rights awareness in the PSNI. Each of these are dealt with separately in this paper. The Policing Board will also examine the steps taken by the Chief Constable to ensure that all officers have read and understood the

Code of Ethics, including the records kept of officers who have acknowledged receipt and understanding of the Code of Ethics and assess the effectiveness of those measures.

5.8 The Policing Board has noted that the Code of Ethics may be extended in the future to "designated civilians" and will examine such application. Alongside the examination of this question, the Policing Board will assess the adequacy of any human rights training provided to such civilian members of the PSNI.

5.9 The Code of Conduct does not apply to non-police personnel (such as the military) in joint operations. In her First Annual Report, the Police Ombudsman raised concern about her inability to investigate the conduct of non-police personnel where a complaint arose out of a joint operation. Therefore, in monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Policing Board will examine whether this causes difficulties in terms of the PSNI's human rights compliance and, if so, the extent of those difficulties.

6. COMPLAINTS, DISCIPLINE AND CIVIL ACTIONS

6.1 In relation to complaints about, and discipline of, PSNI officers, different procedures exist according to the type of misconduct alleged and the origins of the complaint.

6.2 The Police Ombudsman has the power to investigate complaints from members of the public but not where the complaint relates to the direction and control of the police service by the Chief Constable (Police (Northern Ireland) Act 1998, s.52(5)).

6.3 Following any such investigation, the Police Ombudsman must determine whether the report indicates that a criminal offence has been committed by a member of the police (Police (Northern Ireland) Act 1998, s.58). If so, the Police Ombudsman must submit recommendations to the DPP. Whether the DPP decides to prosecute or not, the Police Ombudsman must consider whether a recommendation should be made for disciplinary proceedings. In cases in which no recommendation is submitted to the DPP, the Police Ombudsman must also consider whether a recommendation should be made for disciplinary proceedings. The Police Ombudsman is obliged in this regard to send a memo to the relevant disciplinary authority setting out reasons and recommendations for her findings (Police (Northern Ireland) Act 1998, s.59(2)). The Police Ombudsman has the power to compel the

Chief Constable to hold a disciplinary hearing in respect of an officer of up to superintendent rank (Police (Northern Ireland) Act 1998, s.59(5)). No disciplinary proceedings can be brought by a disciplinary authority before the Police Ombudsman's memo is received. In relation to senior officers, the Policing Board is the appropriate disciplinary body, and the Police Ombudsman has no power to compel it to hold a disciplinary hearing in respect of any such officer.

6.4 Under s.55(1) of the Police (Northern Ireland) Act 1998, the Policing Board or the Secretary of State may refer to the Police Ombudsman and matter which appears to them to indicate that conduct by a police officer that may amount to a criminal offence or may justify disciplinary proceedings. In addition, all deaths in custody are referred automatically to the Police Ombudsman (Police (Northern Ireland) Act 1998 s.55(2)). Under the Police (NI) Act 1998, s.55(4), the Chief Constable may also refer any matter to the Police Ombudsman for investigation where it appears that an officer may have committed a criminal offence or breached discipline. As from February 2001, any discharge of firearms or the firing of baton rounds is referred automatically to the Police Ombudsman for investigation, even where no complaint has been made. The Police Ombudsman also has the further power under Police (Northern Ireland) Act 1998, s.55(6) to investigate a matter in the public interest, even where no complaint has been made, where it appears to the Police Ombudsman that a police officer may have committed a public offence or may have behaved in such a manner as to justify disciplinary proceedings. Following any such investigation, a report under Regulation 20 of the RUC (Complaints etc) Regulations is provided to the Secretary of State for Northern Ireland, the Policing Board and the Chief Constable.

6.7 Under s.60A of the Police (Northern Ireland) Act 1998 (inserted by s.13 of the Police (Northern Ireland) Act 2003), the Police Ombudsman now has the additional power to investigate a current practice or policy of the PSNI if the practice or policy comes to her attention and she has reason to believe that it would be in the public interest to so investigate.

6.8 Under s.54 of the Police (Northern Ireland) Act 1998, any complaint which is not deemed a serious complaint may be investigated by the Police Ombudsman or referred by her to the Chief Constable for formal investigation.

6.9 Non-complaint internal matters are dealt with differently. In relation to minor matters, line managers can take informal steps to advise and guide those for whom they are responsible. If, after preliminary enquiries, the manager/supervisor believes that the matter justifies greater action, the case can be referred to a more senior police officer. That officer can issue advice and guidance or recommend that a written warning be given. Written warnings are normally administered by a Superintendent (or in certain cases an ACC) in cases where the level of misconduct does not merit a full disciplinary hearing. Written warnings are recorded on an officers' personal record and expunged after 12 months. Where two written warnings are currently in force, any further cases must be directed to the Internal Investigation Branch and will be subject to a formal hearing. Where an officer does not admit his/her failure to meet the standards set out in the Code of Ethics and the case cannot be dealt with locally a formal investigation will be conducted. In addition, where an apparent failure to meet standards is considered too serious to be dealt with by a written warning, the Superintendent with line management responsibility (or in certain cases an ACC) should refer the case to the Internal Investigation Branch for formal investigation.

6.10 Where it has been decided that a non-complaint internal matter should be formally investigated, responsibility for the investigation will normally be assumed by Internal Investigation Branch investigators. At the end of the investigation, the investigating officer may recommend any of the following: (i) no further action (ii) words of advice/training (iii) formal written warning (iv) formal hearing or (v) criminal action.

6.11 The Police Ombudsman and the Internal Investigations Branch provide periodic statistics with some explanatory information to the Policing Board's Human Rights and Professional Standards Committee (formerly the Complaints Monitoring Committee). The Police Ombudsman also provides copies of all Regulation 20 Reports to the Committee, summarising the findings of all s.55 Police (Northern Ireland) Act 1998 investigations. Statistics and information are also provided by the PSNI's legal department in respect of civil actions brought against the PSNI in the Courts.

6.12 The Regulation 20 Reports submitted by the Police Ombudsman are sufficient to enable the Policing Board to measure the PSNI's compliance with the Human Rights Act 1998 in relation to the incidents they cover. However, in their current form, the statistics

and information provided to the Policing Board's Human Rights and Professional Standards Committee by the Police Ombudsman, the Internal Investigations Branch and the PSNI's legal department in relation to other investigations, disciplinary findings and civil actions do not provide a satisfactory basis for monitoring the performance of the PSNI in complying with the Human Rights Act 1998. Therefore, the Policing Board's human rights advisors will work with the Committee, and with the bodies providing statistics and information to the Committee, to ensure that meaningful human rights compliance data is collated. The Policing Board will then analyse this data and identify any areas of concern in terms of human rights compliance. This will then be cross-referenced to other issues being monitored by the Policing Board – for example, training, policy and/or operations to see whether there are common areas of concern.

6.13 Since human rights issues may well arise in non-complaint internal matters which are resolved without a formal written warning or formal hearing, the Policing Board will also examine the mechanisms in place for identifying and dealing with such issues. In doing so, the Policing Board will investigate how a decision whether to resolve a matter formally or informally is made and what steps, if any, are taken to correct a failure to comply with human rights standards where a matter is resolved informally.

6.14 Where matters are resolved formally – whether in the Courts, by the Police Ombudsman or internally – the Policing Board will monitor the response of the PSNI to any adverse findings. This will include follow up of individual findings.

6.15 The Policing Board is concerned that human rights issues may be raised by complaints about the Chief Constable's direction and control of the PSNI which the Police Ombudsman has no power to investigate. Therefore the Policing Board intends to examine this restriction on the Police Ombudsman's powers and determine whether it has any significant impact on the ability of the PSNI to comply with its obligations under the Human Rights Act 1998.

7. PUBLIC ORDER

7.1 Public order issues inevitably engage a number of Articles under the European Convention on Human Rights, including freedom of expression and freedom of assembly and are dealt with by a number of bodies.

7.2 The Parades Commission was established to fulfil a recommendation made in the Independent Review of Parades and Marches published in 1997 (the "North Report"). The North Report identified as the source of the public order problems associated with parades and marches an inability within Northern Ireland "to deal positively with difference and with shared time and space" (Quigley Report, chapter 3) and concluded that a legislative framework was needed to provide a means of accommodating the competing rights arising out of the UK's international legal obligations. This was met by the Public Processions (Northern Ireland) Act 1998.

7.3 The Parades Commission was established on a non-statutory basis on 27 March 1997 and acquired its statutory functions when the Public Processions (Northern Ireland) Act 1998 came into force on 16 February 1998. The Parades Commission's obligations under the Act are to: (i) issue and keep under review a Code of Conduct, procedural rules and a set of guidelines concerning the exercise of its power to impose conditions on public processions; (ii) promote greater understanding by the general public of issues concerning public processions; (iii) promote and facilitate mediation as a means of resolving disputes concerning public processions; (iv) issue determinations in respect of particular public processions where appropriate (s.8); (v) keep informed of the conduct of public processions and protest meetings; (vi) keep under review the operation of the Act and make such recommendations as it thinks fit to the Secretary of State for Northern Ireland. Under the Public Processions (Northern Ireland) Act 1998, it is the Parades Commission that, in making its determinations, has regard among other things to the possibility of public disorder or damage to property, taking into account advice received from the police.

7.4 On 27 November 2001, the Secretary of State for Northern Ireland announced the appointment of Sir George Quigley to conduct a review of the operation of the Parades Commission and the legislation under which it was established and to consider whether changes should be made to "promote further public confidence on all sides, respect for the rights of all and the peaceful resolution of disputes on parades" (Sir George Quigley's Report, Review of the Parades Commission and Public Proceedings (Northern Ireland) Act 1998, September 2002 (the "Quigley Report")). The Quigley Report made 34 recommendations, which included the proposal that "[t]he police should determine whether any restriction needs to be placed on the exercise of the right to freedom of peaceful assembly in the interests of national

security or public safety or for the prevention of disorder or crime” (Quigley Report, Recommendation 31). This proposal would require the current allocation of responsibilities to be overhauled and legislation introduced to empower the police to make public safety decisions and to impose conditions as required. The report is still being considered by the Northern Ireland Office.

7.5 The PSNI has developed its own human rights policy in relation to public events, including public processions. It aims to provide a framework to determine PSNI strategy and plans for such events as well as establishing an accountable audit trail in respect of the strategic, planning and implementation processes. In monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Policing Board will examine this policy and will critically assess its effectiveness.

7.6 In addition, the Policing Board’s human rights advisors will conduct a general review of PSNI strategy, procedure and planning for public events, and a more specific after-the-event paper audit of the planning and implementation processes in relation to four parades that took place in 2003: (i) the Ardoyne (i.e. the area known as ‘the Ardoyne shop front’), (ii) Drumcree, (iii) Dunloy and (iv) Short Strand. More generally, the Policing Board’s human rights advisors will monitor police submissions to the Parades Commissions, pre-event planning and preparation for police operations, training, command of public event operations and post-event de-briefing processes for the year March 2003 to March 2004.

7.7 It is also the intention of the Policing Board that its human rights advisors will attend at least three public processions taking place during the marching season in 2004 (including the planning stages) to review first hand the implementation of PSNI strategy, planning and preparation for such public order events.

8. USE OF FORCE

8.1 The Belfast Agreement 1998 stated that the police service “in a peaceful environment, should be routinely unarmed”. The PSNI policy on Use of Force (General Order No. 34/2001) (June 2001) provides that “[i]n carrying out our duties, police officers shall, as far as possible, apply non-violent means before resorting to the use of force. Police officers shall only resort to the use of force if other means remain ineffective and there is no realistic promise of achieving the lawful objective without exposing police officers, or anyone whom it is their duty to protect, to a real risk of harm or injury”.

Police officers are required under the General Order to apply the test of ‘no more than absolutely necessary’ when considering the use of potentially lethal force (para. 7(2)) and to have in mind the positive duties to protect life and not to take life (McCann v UK) in planned operations (para. 8(1)). Written reports must be made on the use of plastic baton rounds and firearms (General Order, para 10(1)).

8.2 The issue, use and deployment of baton rounds is dealt with under General Order 46/2000 (11 December 2000) and reflects the Association of Chief Police Officer’s Manual of Guidance on the Police Use of Firearms. The use of baton rounds by police officers must satisfy the criteria for the use of force laid down in the Criminal Law (Northern Ireland) Act 1967 as well as the more rigorous test under the Human Rights Act 1998 that potentially lethal force must be “no more than absolutely necessary” and must in any event be proportionate to the achievement of the purpose for which it is permitted to be used.

8.3 Complaints from members of the public about the use of force can be investigated in the ordinary way by the Police Ombudsman (Police (Northern Ireland) Act 1998, s.52). In addition, from February 2001, all discharges of firearms and the firing of baton rounds are automatically referred to the Police Ombudsman for investigation. In 2001, the Police Ombudsman exercised her more general power under s.55(5) of the Police (Northern Ireland) Act 1998 to investigate the use of baton rounds. The resulting Research Report (1/2002) reviewed seven incidents where 36 plastic baton rounds were discharged between April 2001 and March 2002. In six of the seven incidents, the Police Ombudsman found the use of baton rounds to be justified and lawful. In one incident, the Police Ombudsman found that the target may not have been 20 metres away and thus should not have been fired at “unless there is a serious and immediate risk to life which cannot otherwise be countered” (ACPO guidelines). No recommendations in respect of criminal or disciplinary action were made as a consequence of these investigations.

8.4 The Regulation 20 Reports on the discharge of firearms and baton rounds which are submitted to the Board’s Human Rights and Professional Standards Committee are sufficient to enable the Policing Board to monitor PSNI’s compliance with the Human Rights Act 1998 in relation to the incidents they cover. The Research Report, which covers a period before the commencement of the Policing Board formal human

rights monitoring programme, will also be examined by the Policing Board’s human rights advisors along with the PSNI’s response to it. As part of its monitoring of complaints (see above), the Policing Board will also examine the PSNI’s response to the Police Ombudsman’s determinations in relation to the use of force.

8.5 The army has also been involved in the policing of Northern Ireland for many years. Responsibility for security passed to the police in 1976 and since then the role of the army has been a subordinate one of providing ‘Military Aid to the Civil Power’ (MACP). It is the police who decide what needs to be done and whether they need to ask the military to help achieve it (Patten para.8.11). The military, in providing ‘Aid to the Civil Power’ has its own command and control structures which operate independently from the police. Nevertheless, agreed liaison procedures apply.

8.6 In his Review of Military use of Baton Rounds (Jan 2001-Oct 2002) (submitted under para. 4(3) of Schedule 11 to the Terrorism Act 2000), the Independent Assessor of Military Complaints Procedures in Northern Ireland stated that “[a]lthough Police have primacy they do not direct or control the military; rather the military are set a task and employ such tactics and resources which the military commander deems necessary to complete the task or achieve the objective”. Difficulties of assessing the human rights compliance of joint operations with the military have already been identified (see the section on PSNI Code of Ethics above). In monitoring the compliance of the PSNI with the Human Rights Act 1998, the Policing Board will scrutinise the liaison procedures in place for joint operations and the relationship between the PSNI and the military as regards use of force, deployment of firearms, including plastic baton rounds and joint training initiatives on the use of firearms.

8.7 In his Tenth Annual Report (2002), the Independent Assessor of Military Complaints Procedures in NI recorded 17 baton rounds fired by the military and 91 fired by the police in 2001 and 85 baton rounds fired by the military and 255 fired by the police in 2002 (up to 31 October 2002). All those fired by the military in 2002 were in the Belfast area as a result of several episodes of street disorder. In his Review of Military use of Baton Rounds (December 2002), the Independent Assessor recommended the development of the guidelines on the use of Baton Rounds issued to the military by the MOD in tandem with those of ACPO to achieve mutual best practice.

8.8 In monitoring the PSNI’s compliance with the Human Rights Act 1998, the Policing Board will investigate what efforts have been made to meet this recommendation. It will review PSNI guidelines on the use of baton rounds and other public order equipment for human rights compatibility and will assess the adequacy of training provided to new recruits in the use of baton rounds and other public order equipment.

8.9 Following Patten Recommendations 69 and 70, a Steering Group was set up in June 2000 by the Secretary of State for Northern Ireland to take forward a research programme into alternative policing approaches towards the management of conflict. The Steering Group is chaired by the Northern Ireland Office and consists of representatives of the Policing Board, the PSNI, HM Inspectorate of Constabulary, the Home Office, the Association of Police Officers, ACPO (Scotland), the Ministry of Defence, the Home Office Police Scientific Development Branch and the Defence Science and Technology Department. It is tasked to (i) establish whether a less potentially lethal alternative to baton rounds is available and (ii) review the public order equipment which is presently available or which could be developed in order to expand the range of tactical options available to operational commanders. The third phase of its research programme was completed at the end of 2002 culminating in its Third Report (published in December 2002). That Report concluded that “there is no single, available, item of equipment that could at this stage replace the current baton round” (p.123).

8.10 With the agreement of the Policing Board and the Northern Ireland Office, the PSNI has recently purchased six vehicle-mounted water cannons and a number of hand-held personal incapacitant sprays.

8.11 In monitoring the PSNI’s compliance with the Human Rights Act 1998, the Policing Board will audit current PSNI policy on the use of force and the use of firearms. It will review PSNI training and guidance material on the use of force and the use of firearms, scrutinise operational planning and procedures regarding the use of force and firearms and monitor the post-operational mechanisms in place for recording and reporting on the use of force and firearms. Specifically, the Policing Board’s human rights advisors will attend and observe PSNI training in the use of baton rounds and attend joint planning and training sessions carried out by the PSNI and military.

8.12 Further, the Policing Board will review PSNI policy on the use of public order equipment, including plastic baton rounds, water cannons and hand-held personal incapacitant sprays for compatibility with the Human Rights Act 1998. The Policing Board recognises at the outset that the use of such equipment is not prohibited as such under the European Convention on Human Rights, but that strict guidelines are needed for its use. Therefore the Board will assess the training, instruction and directions given to PSNI officers on the deployment of such equipment.

8.13 In addition, the Policing Board will undertake a paper audit of PSNI written reports regarding the use of force or firearms (specifically, post firing reports prepared by the person ordering the firing) and will assess whether sufficient information is collated by the PSNI on the use of force and firearms as a matter of practice. The Policing Board will also monitor the procedures in place for notification of discharges of firearms and the firing of baton rounds to the Police Ombudsman for independent investigation.

9. COVERT POLICING

9.1 The interception of communications, surveillance and the use of covert human intelligence sources by the police raise obvious issues in terms of the PSNI's compliance with the Human Rights Act 1998. The scheme adopted by Parliament to ensure compliance was the enactment of the Regulation of Investigatory Powers Act 2000 (RIPA), which extends to Northern Ireland. That Act has very specific rules (and accompanying Codes of Practice) relating to the authorisation of such policing methods which are intended to fulfil the requirements of the European Convention on Human Rights (in particular, Article 8, the right to privacy). Only certain persons are entitled to grant authorisation and (save in urgent cases) any police authorisation of intrusive surveillance must be approved by a Surveillance Commissioner.

9.2 Scrutiny of the interception of communications, surveillance and the use of covert human intelligence sources is provided for in Part IV of RIPA. This puts in place an Interception of Communications Commissioner to replace the Commissioner appointed under the Interception of Communications Act 1985, an Intelligence Services Commissioner to replace the Commissioner appointed under the Security Services Act 1989 and the Intelligence Services Act 1994, and a Chief Surveillance Commissioner to review the use of

surveillance, agents, informants, undercover officers and decryption. Each Commissioner has specific duties to report to the Prime Minister and there are provisions for such reports to be laid before Parliament. However, if it appears to the Prime Minister that the publication of any matter which might be contrary to the public interest or prejudicial to the prevention or detection of serious crime or the continued discharge of the functions of any public authority whose activities include activities that are subject to review by a Commissioner, that matter can be excluded from publication.

9.3 Part IV of RIPA also establishes a Tribunal for dealing with complaints arising from the interception of communications, surveillance and the use of covert human intelligence sources. The Tribunal is the designated (and only) forum in which individuals can raise a complaint that their rights under the European Convention on Human Rights have been breached. The Tribunal can hear, consider and investigate complaints and has a power to award compensation and to quash an interception warrant or an authorisation for surveillance or the use of a covert human intelligence source. However, once the Tribunal has determined a complaint, the only information it is authorised to provide to the complainant is a statement either that a determination has been made in his/her favour or a statement that no determination has been made in his/her favour.

9.4 It is not the intention of the Policing Board to duplicate the work of the various Commissioners or to examine any of the individual complaints determined by the Tribunal. However, in monitoring the performance of the PSNI in complying with the Human Rights Act 1998, the Policing Board will examine the mechanisms in place for ensuring that all PSNI officers comply with the requirements of RIPA in relation to covert policing. This will involve consideration of training and of policy and operational documents. It will also involve an assessment of the scrutiny provided by the PSNI's authorisation procedures, the adequacy and efficiency of record-keeping and the PSNI systems in place for improving compliance with RIPA where difficulties arise. This monitoring by the Policing Board will focus on systemic issues and, where necessary, identify strengths or weaknesses in the PSNI's existing arrangements for complying with RIPA; the Policing Board will not comment on individual cases. It is the Policing Board's intention to include all PSNI divisions within the monitoring exercise set out above, including Special Branch, CID and the other specialist units under the control of the Assistant Chief Constable for Crime.

10. VICTIMS RIGHTS

10.1 The Belfast Agreement 1998 specifically referred to the need to 'acknowledge and address the suffering of the victims of violence as a necessary element of reconciliation' (para.11). A number of significant reports have been published by a wide range of independent bodies, such as the Northern Ireland Human Rights Commission, the REAL Programme, and the Conflict Trauma Response Centre, which seek to evaluate the provision and support for victims of crime in Northern Ireland. The PSNI Code of Ethics includes a duty to 'treat all victims of crime and disorder with sensitivity and respect their dignity' and requires police officers to consider the special needs, vulnerabilities and concerns victims have (Article 2.1).

10.2 In monitoring the PSNI's compliance with the Human Rights Act 1998, the Policing Board will review the mechanisms in place for the treatment of victims by police officers, including the training, direction and guidance given to PSNI officers in this respect. The Policing Board will also consider the adequacy of the levels of communication between police and victims/victims' families as required by Article 2.1 of the PSNI Code of Ethics. The Policing Board will also assess whether the PSNI has an adequate number of suitably trained officers to deal with victims/victims' families, and their deployment.

11. TREATMENT OF SUSPECTS

11.1 The treatment of suspects inevitably raises human rights issues, now reinforced by Articles 3, 5 and 8 of the European Convention on Human Rights. In the 1970s, allegations of abuse, threats and intimidation of detained terrorist suspects culminated in the Report of the Committee of Inquiry into Police Interrogation Procedures for Northern Ireland chaired by Judge Bennett. This led to the introduction of a number of safeguards for detainees including the establishment of the office of the Independent Commissioner for the Holding Centres, which was replaced in 1993 by the Independent Commissioner for Detained Terrorist Suspects. The Commissioner's main functions are to observe, comment and report upon the conditions under which persons are detained. His remit does not include the investigation of complaints made by detained individuals, which is the function of the Police Ombudsman.

11.2 The Patten Report recommended the closure of all three holding centres where terrorist suspects are questioned and that all suspects should be detained in custody suites based in police stations. In his Ninth Annual Report (2001) to the Secretary of State, the current Independent Commissioner reported the closure of the final of the three holding centres, Gough Holding Centre.

11.3 The Custody Suite at Antrim Police Station opened in April 2003. During the 2002 calendar year, 236 terrorist suspects were detained at Lisburn Custody Suite, 170 of whom the Independent Commissioner met, several on more than one occasion. 80 detainees were subsequently charged. 7 complaints by detainees were recorded over the year (Independent Commissioner's Tenth Annual Report (2002) laid before Parliament 18 June 2003).

11.4 The Police (Northern Ireland) Act 2000, s.73 obliges the Policing Board to make and keep under review arrangements for designated places of detention to be visited by lay visitors (implementing Patten Recommendation 64). There are currently 5 custody visiting teams in Northern Ireland that cover the areas of Antrim, Belfast, Down/Armagh, Northwest and Tyrone/Fermanagh. Each custody team has four or five designated police stations to visit. A report on each visit is made to the Policing Board and the Chief Constable. Such reports deal with matters including the conditions under which persons are held in places of detention; the welfare and treatment of detained persons; and the adequacy of facilities of the places of detention.

11.5 In monitoring the PSNI's compliance with the Human Rights Act 1998, the Policing Board will continue to liaise with the Independent Commissioner and review his Annual Reports to the Secretary of State. It will also continue to keep under review the arrangements for the Independent Custody Visitors Scheme and critically assess the Reports of the custody visiting teams.

11.6 In addition, the Policing Board's human rights advisors will make three random visits to detention facilities, including Antrim Custody Suite, to monitor the treatment of detainees and the conditions in which detainees are held, in particular detainees' access to lawyers, the questioning of detainees, the treatment of juvenile detainees and the bail process.

12. HUMAN RIGHTS AWARENESS WITHIN THE PSNI

12.1 The culture and ethos of an organisation include both the way in which it sees itself and manages itself internally and the way in which it sees and interacts with its clients and others outside the organisation (Patten, para.17.1). The promotion of human rights awareness of PSNI officers at all levels is vital not only to facilitate the development of a tangible human rights culture within the PSNI but also to demonstrate the PSNI's commitment to the human rights agenda in its dealings with others external to the organisation.

12.2 Awareness training in the Human Rights Act 1998 was provided for PSNI officers during 2000. Officers received one day of training, a workbook for private study and distribution of a personal aide memoire on the Human Rights Act 1998.

12.3 As part of an evaluation of attitudes to human rights within the PSNI, the PSNI Evaluation Unit sent out a questionnaire to a representative sample of 442 operational police officers in early 2003. 200 questionnaires were returned. 61.8% of respondents stated that human rights was either Extremely or Highly Important to them, whilst 28.6% rated human rights of Average Importance. 94% agreed that human rights impacted upon their role Often or Very Often whilst only 3% suggested that it Rarely or Never impacted. 86.9% of respondents felt that human rights was not a difficult concept and 52.5% indicated that they felt that they had received Enough or More than Enough Human Rights Training.

12.4 As set out in the training section above, the Policing Board's human rights advisors will devise a follow-up questionnaire to be completed by as wide a sample of PSNI officers as possible to investigate their working knowledge of the PSNI Code of Ethics and the European Convention on Human Rights. In addition, the Policing Board's human rights advisors will set up four focus groups to assess the strength of the human rights culture within the PSNI. Each group will contain officers selected as randomly as possible. These focus groups will be set up in the following regions: (i) Belfast (ii) Derry (iii) Fermanagh and (iv) Newry.

12.5 The Policing Board will also review the internal structures put in place by the PSNI to disseminate information regarding human rights and their adequacy in supporting the development of a tangible human rights culture.

12.6 In response to Patten Recommendation 5, which stated that awareness of human rights issues and respect for human rights in the performance of duty should be an important element in the appraisal of individuals in the police service, the PSNI introduced a new appraisal system on 1 April 2003 for all regular officers in the PSNI up to and including the rank of Chief Superintendent. The Annual Performance Review now includes an appraisal of human rights awareness and compliance at Part 5. Gradings are made against the standards set in the Annual Performance Review assessment guide, itself based upon the PSNI Code of Ethics. Shortcomings in awareness are addressed through a development plan for the individual PSNI officer. In tandem with the amendment of the PSNI appraisal scheme, the PSNI Human Rights Programme of Action (January 2002) proposed to amend the existing Commendation policy in order to recognise respect for and the upholding of human rights principles and standards.

12.7 In monitoring the PSNI's compliance with the Human Rights Act 1998, the Policing Board will evaluate the comprehensiveness of the Annual Performance Review appraisal system in evaluating human rights awareness and compliance of individual officers as well as reviewing the Commendation policy and its contribution to the promotion of the human rights culture. In particular, the Policing Board will examine the PSNI's Human Resources Department application of Annual Performance Review Part 5 and the adequacy of the yardsticks against which officers are to be appraised as part of this process. The Policing Board will also conduct random interviews with appraisal officers within the PSNI.

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POLICE SERVICE OF NORTHERN IRELAND

HUMAN RIGHTS INDEX

1. GENERAL PRINCIPLES

1.1 In the performance of their duties, police officers¹ should respect and protect human dignity and maintain and uphold the human rights of all persons.² [**Code of Ethics for the PSNI (“PSNI Code of Ethics”), Article 1.3**] (UN Code of Conduct for Law Enforcement Officials (“UN Code of Conduct”)³, Article 2).

1.2 Those rights include the right to life, the prohibition on torture, inhuman or degrading treatment and punishment, the right to liberty, the right to a fair trial, the right to privacy, freedom of thought, religion, expression, association and assembly and the prohibition on discrimination (ECHR Articles 2 to 14).

1.3 The right to life, the prohibition on torture, inhuman or degrading treatment and punishment are absolute rights, which means that they cannot be restricted for any reason, including the public interest.

1.4 The right to liberty, the right to a fair trial, the right to privacy, freedom of thought, religion, expression, association and assembly and the prohibition on discrimination are qualified rights, which means that they can be restricted, but only where such restriction is for a legitimate reason and is also strictly necessary and proportionate.

1.5 Relevant in assessing whether a restriction is proportionate is the question of whether the same objective could be achieved by less restrictive alternatives.

1.6 Police officers should act with integrity, impartiality and dignity. Police officers should refrain from and vigorously oppose all acts of corruption [**PSNI Code of Ethics, Articles 1.3, 7.5**] (European Declaration on the

Police⁴, A2; Recommendation (2001) 10 on the European Code of Police Ethics⁵ (“European Code of Police Ethics”), Articles 44, 46; UN Code of Conduct, Article 7)

1.7 A police officer should carry out orders properly issued by his/her superior, but s/he shall refrain from carrying out any order he knows, or ought to know, is unlawful [**PSNI Code of Ethics, Article 1.5**] (European Code of Police Ethics, Article 39; European Declaration on the Police, A4).

1.8 Police officers should receive thorough general training, professional training and in-service training, as well as appropriate instruction, in social problems, human rights and in particular the ECHR (European Declaration on the Police, Article B3, European Code of Police Ethics, Article 26).

1.9 Police officers should enjoy the same human rights as other citizens. Restrictions to these rights may only be made when they are necessary for the exercise of the functions of the police in a democratic society, in accordance with the law and in conformity with the ECHR (European Code of Ethics, Article 31).

2. EQUALITY/NON-DISCRIMINATION

2.1 Police officers have an over-arching obligation in relation to non-discrimination and should not discriminate (or aid or incite others to discriminate) on any grounds including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [**PSNI Code of Ethics, Article 6.2**] (UDHR, Article 2; ICCPR Article 26; ECHR Article 14; CERD Article 5; CEDAW Article 2; CRC Article

2; Convention relating to the Status of Refugees⁶ Article 3; Convention relating to the Status of Stateless Persons⁷ Article 3; Northern Ireland Act 1998, s76).

2.2 The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights (European Framework Convention for the Protection of National Minorities,⁸ Article 1) and discrimination based on belonging to a national minority is prohibited (European Framework Convention for the Protection of National Minorities, Article 4.1).

2.3 No one should be subject to discrimination on the grounds of religion or other belief (Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion and Belief⁹, Article 2(1)).

3. PROTECTING THE PUBLIC

3.1 In certain well-defined circumstances, the police are under an obligation to take preventative operational measures to protect individuals whose lives are at risk from the criminal acts of others (Osman v UK (1998) 29 EHRR 245).

3.2 Bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the police (Osman v UK (1998) 29 EHRR 245).

3.3 What is required of the police is therefore that they take all steps that could reasonably be expected of them to avoid a real and immediate risk to life about which they know or ought to have known (Osman v UK (1998) 29 EHRR 245).

3.4 This obligation can also arise where the risk to life does not come from the criminal acts of others; for, example, it can extend to an obligation to take reasonable steps to prevent self-imposed risks to life (e.g. suicide) (Keenan v UK (2001) 33 EHRR 38).

3.5 Failing to pass on important information concerning a risk to an individual’s life to the appropriate person or body can breach this obligation (Edwards v UK (1992) 15 EHRR 417).

4. USE OF FORCE

Basic Provisions

4.1 Every human being has the inherent right to life (UDHR Article 3; ICCPR Article 6; ECHR Article 2; European Code of Police Ethics, Article 35).

4.2 Torture, cruel, inhuman or degrading treatment or punishment is prohibited absolutely [PSNI Code of Ethics, Article 1.4] (UDHR Article 5; ICCPR Article 7; CAT Article 2(1); CRC Article 37(a); ECHR Article 3; UN Body of Principles, Principle 6; UN Code of Conduct for Law Enforcement Officials Article 5; European Declaration on the Police, Article A3; European Code of Police Ethics, Article 36).

4.3 Torture includes deliberate inhuman treatment causing very serious and cruel suffering (Ireland v UK (1978) 2 EHRR 25, ECtHR) which has a purpose, such as the obtaining of information or confession, or the infliction of punishment (The Greek Case (1969) 12 Yearbook 1; Aksoy v Turkey (1996) 23 EHRR 553).

4.4 Treatment/punishment will be inhuman if it ‘causes intense physical or mental suffering.’ It is less severe than torture but can include threats of torture and the infliction of psychological harm (Ireland v UK (1978) 2 EHRR 25, ECtHR).

4.5 Treatment/punishment will be degrading if it arouses in the victim a feeling of fear, anguish and inferiority capable of debasing him or her and breaking his or her physical or moral resistance (Ireland v UK (1978) 2 EHRR 25, ECtHR); but only if it reaches a particular level of severity.

4.6 Arbitrary or abusive use of force and firearms by police officers is never acceptable (European Code of Police Ethics, Article 37) and is punishable as a criminal offence.

4.7 Deprivation of life will not constitute a breach of ECHR Article 2 if, but only if, it results from the use of force which is no more than absolutely necessary:

(i) in self-defence or in defence of any others where there is an imminent threat of death or serious injury (Wolfgram v Germany (1986) 49 DR 213; Diaz Ruano v Spain (1994) A/285-B);

(ii) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained (Farrell v UK (1982) 30 DR 96 and (1984) 38 DR 44; Kelly v UK (1993) (App. No. 17579/90);

⁶ In force 22 April 1954.

⁷ In force 6 June 1960. European Treaty Series No. 157, 1 February 1995.

⁸ European Treaty Series No. 157, 1 February 1995.

⁹ Proclaimed by GA Resolution 36/55 of 25 November 1981.

¹ Defined as including all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention (UN Code of Conduct for Law Enforcement Officials adopted by GA Resolution 34/169 of 17 December 1979).

² Human rights are here defined by reference to national and international law. Among the relevant international instruments are the UDHR; the ICCPR; CAT; CERD; CEDAW and the Standard Minimum Rules for the Treatment of Prisoners.

³ Adopted by GA Resolution 34/169 of 17 December 1979.

⁴ Resolution 690 of the Parliamentary Assembly of the Council of Europe (1979).

⁵ Adopted by the Committee of Ministers of the Council of Europe on 19 September 2001, together with Explanatory Memorandum.

(iii) in action lawfully taken for the purpose of quelling a riot or insurrection (ECHR Article 2; McCann v UK EHRR (1995) 21 EHRR 97).

4.8 Exceptional circumstances, such as internal political instability or any other public emergency, cannot be invoked to justify any departure from these basic principles (Principles on the Use of Force, Principle 8).

Justification

4.9 If it is possible to do so, police officers should apply non-violent means before resorting to the use of force and firearms. Force and firearms may only be used when strictly necessary (i.e. where other means would be ineffective or stand no chance of achieving the intended result) and to the minimum extent required to obtain a legitimate objective. [PSNI Code of Ethics, Article 4.1] (European Code of Police Ethics, Article 37; UN Code of Conduct for Law Enforcement Officials, Article 3; UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ("UN Principles on the Use of Force"), Principles 4 and 13; McCann v UK (1995) 21 EHRR 97).

4.10 Force can be used to effect an arrest, but it must always be strictly necessary and proportionate (Raninen v Finland (1997) 26 EHRR 563).

4.11 Handcuffing is legitimate, but only where justified as strictly necessary and proportionate (Raninen v Finland (1997) 26 EHRR 563).

4.12 Police officers should not use force against persons in custody or detention except where strictly necessary for the maintenance of security and order within the institution or when personal safety is threatened [PSNI Code of Ethics, Article 5.2] (UN Principles on the Use of Force, Principle 15).

Use of Firearms

4.13 The use of firearms should be considered an extreme measure (UN Code of Conduct, Commentary on Article 3).

4.14 Firearms should only be used against persons:

- (i) in self-defence; or in defence of others against the imminent threat of death or serious injury; or
- (ii) to prevent the perpetuation of a particularly serious crime involving great threat to life; or

(iii) to arrest a person presenting a danger to life or of serious injury and who is resisting authority; or

(iv) to prevent his or her escape.

4.15 Before firearms are employed, police officers should identify themselves and give clear warning of their intent to use firearms, affording sufficient time for the warning to be observed, unless to do so would place the law enforcement officer at risk or create a risk of death or serious harm to other persons [PSNI Code of Ethics, Article 4.5] (UN Principles on the Use of Force, Principle 10).

4.16 Whenever the use of firearms is unavoidable, police officers should

- (i) exercise restraint in such use, acting in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - (ii) minimise damage and injury and respect and preserve human life;
 - (iii) render assistance and medical aid to any injured or affected persons at the earliest opportunity;
 - (iv) notify relatives or close friends of injured or affected persons at the earliest opportunity.
- [PSNI Code of Ethics, Article 4.3] (UN Principles on the Use of Force, Principle 5).

Internal Procedures and Follow-up Investigations

4.17 Police training at all levels should include practical training on the use of force and limits with regard to established human rights principles (European Code of Police Ethics, Article 29).

4.18 Effective reporting and review procedures should be put in place regarding injuries and/or deaths resulting from the use of force and firearms by police officers. In cases of death and serious injury, a detailed report should be sent to the competent authorities (UN Principles on the Use of Force, Principles 6 and 22).

4.19 In addition, an effective official investigation is required whenever an individual is killed as a result of force being used by an agent of the state and/or when it is arguable that there has been a breach of Article 2 or Article 3 of the ECHR (Anguelova v Bulgaria, 13 June 2002; R (Wright) v Home Office (2001)

UKHRR 1399 (2002) HRLR 1; Finucane v UK Times Law Reports (18 July 2003)).

4.20 The investigation must be prompt, thorough, impartial and careful so as to ensure accountability and responsibility (Anguelova v Bulgaria, 13 June 2002).

4.21 The investigation must involve an assessment of the organisation and planning (if any) of the operation during which lethal force was used. The training, instructions and communications of those who used lethal force and those who lay behind the operation are relevant to that determination (McCann v UK (1995) 21 EHRR 97).

4.22 An effective official investigation requires the appropriate authorities to secure all the relevant evidence concerning the incident causing death and to analyse the cause of death (Anguelova v Bulgaria, 13 June 2002); it also requires a degree of public and independent scrutiny and the involvement of the family of the deceased in the procedure to the extent necessary to safeguard their legitimate interests (Anguelova v Bulgaria, 13 June 2002).

4.23 The duty to investigate suspicious deaths can arise even where there is no suggestion of any state involvement in causing death either deliberately or by omission (Menson v UK, 6 May 2003); the form of the investigation will vary with the circumstances, but must always be prompt, rigorous and impartial (Menson v UK, 6 May 2003); in order to be effective, the investigation should be conducted by individuals independent of the alleged perpetrators (Finucane v UK (2003) Times Law Reports (18 July 2003)).

4.24 The duty to investigate is a continuing one (Re McKerr Application for Judicial Review [2003] NI 117).

5. PUBLIC ORDER

5.1 Everyone has the right to freedom of peaceful assembly and of association (UDHR Article 20; ICCPR Articles 21 and 22; ECHR Article 11; CERD Article 5(d)(ix)).

5.2 These are qualified rights; they can be restricted, but only where a restriction is lawful, legitimate, necessary and proportionate.

5.3 The right to peaceful assembly is not confined to static meetings; it also covers marches and processions (Rassemblement Jurassien and Unite Jurassienne v

Switzerland (1979) 17 DR 138; Christians Against Racism and Fascism v UK (1980) 21 DR 138).

5.4 The purpose of the assembly is irrelevant, so long as it is peaceful. The mere fact that an assembly may result in disorder does not automatically preclude Article 11 ECHR protection - peaceful intent is sufficient, even if unintentional disorder results (Christians Against Racism and Fascism v UK (1980) 21 DR 138).

5.5 As with free speech under Article 10 ECHR, an assembly may annoy or give offence, but is nonetheless protected under Article 11 ECHR (Refah Partisi v Turkey (2002) 35 EHRR 56).

5.6 In particular, those opposed to official views must find a place for the expression of their views (Piermont v France (1995) 20 EHRR 301).

5.7 Where there is a threat of disruption or disorder from others, the relevant authorities (including the police) are under a duty to take appropriate steps to protect those who want to exercise their right of peaceful assembly (Plattform Ärzte Für das Leben v Austria (1988) 13 EHRR 204).

5.8 There is no absolute duty to protect those who want to exercise their right of peaceful assembly: the obligation is to take 'reasonable and appropriate measures', and a fairly wide discretion is left to the authorities responsible for regulating the assembly (Plattform Ärzte Für das Leben v Austria (1988) 13 EHRR 204).

5.9 A requirement of prior notice or authorisation for a march or meeting is not necessarily a breach of Article 11 ECHR, so long as the purpose behind the procedure is not to frustrate peaceful assemblies (Rassemblement Jurassien and Unite Jurassienne v Switzerland (1979) 17 DR 138)

5.10 But orders banning meetings and marches are justified only in extreme circumstances, where there is a real danger of disorder that cannot be prevented by other less stringent measures (Christians Against Racism and Fascism v UK (1980) 21 DR 138).

5.11 Restrictions on the political activities or police officers, including the right of assembly, can be justified under the ECHR on the basis that a politically neutral police force is in the public interest (Rekvenyi v Hungary (20 May 1999)).

6. CRIMINAL INVESTIGATIONS

Basic Provisions

6.1 Everyone has a right to respect for his/her private and family life, his home and his correspondence. No one shall be subjected to arbitrary interference with his/her privacy, family, home or correspondence. (UDHR, Article 12; ICCPR, Article 17; ECHR, Article 8).

6.2 The police shall only interfere with an individual's right to privacy when strictly necessary and for a legitimate purpose (ECHR, Article 8(2), European Code of Ethics, Article 41); all interferences with an individual's right to privacy must also be proportionate to the legitimate purpose which justifies such interference (ECHR Article 8(2)).

6.3 Police investigations shall be objective and fair. They shall be sensitive and adaptable to the special needs of persons, such as children, juveniles, women, minorities including ethnic minorities and vulnerable persons [PSNI Code of Ethics Article 2.1, 2.2] (European Code of Police Ethics, Article 49).

6.4 Collection, storage and use of personal data by the police shall be carried out in accordance with international data protection principles [including the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000 and associated Codes of Practice and the PACE (NI) Order 1989] and in particular, be limited to the extent necessary for the performance of lawful, legitimate and specific purposes [PSNI Code of Ethics, Article 3.1] (European Code of Ethics, Article 42).

6.5 Matters of a confidential nature in the possession of police officers shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise [PSNI Code of Ethics, Article 3.3] (UN Code of Conduct for Law Enforcement Officials, Article 4).

Surveillance

6.6 Surveillance is an interference with privacy and therefore must be prescribed by law, strictly necessary and proportionate (Kopp v Switzerland (1998) 27 EHRR 214) [PSNI Code of Ethics, Article 3.2]).

6.7 Intercepting telephone calls is a form of surveillance and therefore must also be prescribed by law, strictly

necessary and proportionate (Malone v UK (1984) 7 EHRR 14; Halford v UK (1997) 24 EHRR 523); intercepting pager messages is also a form of surveillance and therefore must also be prescribed by law, strictly necessary and proportionate (Taylor-Sabori v UK, 22 October 2002); each case must be justified on its own facts.

6.8 The use of CCTV cameras, even in public places, can raise privacy issues under Article 8 ECHR and therefore must be prescribed by law, strictly necessary and proportionate (Peck v UK, 28 January 2003); the use of CCTV cameras includes disclosure of the contents of any images obtained by such use (Peck v UK, 28 January 2003; Perry v UK App. No 63737/00 (17 July 2003)).

6.9 Gathering information in files about a particular individual raises privacy issues and therefore must also be prescribed by law, strictly necessary and proportionate, even where the information has not been gathered by an intrusive or covert method (Rotaru v Romania (2000) 8 BHRC 449).

6.10 There must be proper methods of accountability regarding both the authorisation and the use of police surveillance and other information-gathering activities.

6.11 Investigations into allegations of abuse must be independent (Govell v UK [1999] EHRLR 101).

Informers and undercover officers

6.12 It is legitimate for the state to use informers and undercover officers in the investigation of crime (Ludi v Switzerland (1992) 15 EHRR 173).

6.13 But informers and undercover officers should not incite an individual to commit a crime s/he would not otherwise commit (Teixira de Castro v Portugal (1998) 28 EHRR 101; R v Looseley [2001] 1 WLR 2060).

6.14 When deciding whether conduct amounts to 'state-created crime' the question is whether, in all the circumstances, the conduct of the police is so seriously improper as to bring the administration of justice into disrepute (R v Looseley [2001] 1 WLR 2060).

6.15 If an individual freely takes advantage of an opportunity to break the law given to him by a police officer, the police officer is not to be regarded as being guilty of 'entrapment' (R v Looseley [2001] 1 WLR 2060).

6.16 The right to silence cannot be invoked to exclude statements made voluntarily to informers or undercover officers, unless they deliberately manipulate the situation to elicit incriminating evidence; placing an informant in a cell with others with instructions to elicit certain information amounts to deliberate manipulation and thus breaches the right to silence (Allan v UK 5 November 2002).

Search and seizure

6.17 Search and seizure interfere with privacy and therefore must be prescribed by law, strictly necessary and proportionate [PSNI Code of Ethics, Article 3.2] (Camenzind v Switzerland (1997) 28 EHRR 458; Niemietz v Germany (1992) 16 EHRR 97).

6.18 The right to privacy can extend to business or work premises (Niemietz v Germany (1992) 16 EHRR 97).

6.19 Consent to search and seizure will not be valid unless it is genuine and informed.

Fingerprints, samples and personal data

6.20 Taking fingerprints, samples and personal data interferes with privacy and therefore must be prescribed by law, strictly necessary and proportionate (Murray v UK (1994) 19 EHRR 193).

6.21 Any consent to the taking of samples must be informed consent.

6.22 Retaining fingerprints, samples and personal data also interferes with privacy and therefore must be prescribed by law, strictly necessary and proportionate (X v Germany (1976) 3 DR 104; R (Marper) v Chief Constable of South Yorkshire [2003] 1 All ER 148)

6.23 Retaining fingerprints, samples and personal data of individuals who were charged but not subsequently convicted can be justified under the ECHR (R (Marper) v Chief Constable of South Yorkshire [2003] 1 All ER 148).

7. ARREST AND PRE-TRIAL ISSUES

Basic Provisions

7.1 Everyone has the right to liberty and security of their person. No one shall be subjected to arbitrary arrest or

detention (UDHR Articles 3 and 9, ICCPR Article 9(1); CERD Article 5(b); ECHR Article 5(1)).

7.2 Deprivation of liberty of persons shall be as limited as possible and conducted with regard to the dignity, vulnerability and personal needs of each detainee (European Code of Police Ethics, Article 54).

7.3 Arrest and detention should be carried out strictly in accordance with the law (ECHR Article 5(1); UN Body of Principles, Principle 2).

7.4 All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person [PSNI Code of Ethics, Article 5.1] (ICCPR Article 10; CRC Article 37(c); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ["UN Body of Principles"], Principle 1; Police and Criminal Evidence (NI) Order 1989 Codes of Practice C-E).

7.5 Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to, the effective control of a judicial or other authority (UN Body of Principles, Principle 4).

7.6 The unacknowledged detention of an individual is a breach of the right to liberty. Having assumed control over an individual, it is incumbent on the authorities to account for his/her whereabouts (Kurt v Turkey (1998) 27 EHRR 373).

7.7 All money, valuables, clothing and other property belonging to a detainee which he is not allowed to retain shall be placed in safe custody [PSNI Code of Ethics, Article 8.1] (Standard Minimum Rules for the Treatment of Prisoners, Rule 43)

Reasonable suspicion

7.8 There must be a reasonable suspicion that an individual has committed a criminal offence before an arrest is made [PSNI Code of Ethics, Article 2.2] (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157; European Code of Police Ethics, Article 47).

7.9 Having a 'reasonable suspicion' presupposes the existence of facts or information which would satisfy an

objective observer that the person concerned may have committed the offence (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157).

7.10 The honesty and good faith of suspicion constitute indispensable elements of its reasonableness (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157; R v Feeney (1997) 2 SCR 13).

Reasons

7.11 Everyone arrested should be informed, in a language s/he understands of the reasons for his/her arrest (ICCPR Article 9(2); ECHR Article 5(2); UN Body of Principles, Principle 10).

7.12 Notification should be at the time of arrest or as soon as practicable thereafter (Fox, Campbell and Hartley v UK (1990) 13 EHRR 157).

7.13 Sufficient details should be given to enable the person arrested to know the basis upon which s/he is being held (Kelly v Jamaica (UN HRC 253/1987; 8 April 1991; A/46/40).

7.14 Detained persons should be provided with information on and an explanation of their rights and how to avail themselves of their rights (UN Body of Principles, Principle 13; European Code of Police Ethics, Article 55).

7.15 The reasons for the arrest, the time of the arrest, the identity of the police officers concerned and the place of custody of the detained person should be recorded (UN Standard Minimum Rules for the Treatment of Prisoners, Rule 7(1)) and such record should be communicated to the detained person or his counsel, if any (UN Body of Principles, Principle 12).

7.16 Detained persons should be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of their choice of their arrest, detention or imprisonment (UN Body of Principles, Principle 16(1); European Code of Police Ethics, Article 57).

External Communication

7.17 Communication of a detained person with the outside world, in particular, his/her family and legal representative, should not be denied for more than a matter of days (UN Body of Principles, Principle 15) and

shall be allowed¹⁰ under supervision at regular intervals thereafter (UN Standard Minimum Rules for the Treatment of Prisoners, Rule 37; McVeigh, O'Neill and Evans v UK, (1981) 5 EHRR 71).

Access to a lawyer

7.18 Everybody should be informed of the right to be assisted by a lawyer upon arrest (UN Basic Principles on the Role of Lawyers, Principle 5).

7.19 Access to a lawyer is fundamental and should not be delayed (UN Basic Principles on the Role of Lawyers, Principle 5; Murray v UK (1996) 22 EHRR 29).

7.20 Communications between a suspect and his/her lawyer should be confidential (S v Switzerland (1991) 14 EHRR 667) and inadmissible as evidence unless they are concerned with a continuing or contemplated crime (UN Body of Principles, Principle 18(5)).

7.21 The right of access to a lawyer must be effective.

7.22 However, there is no right to access to a lawyer before a roadside breath test is administered (Campbell v DPP (2002) EWCA 1314); and access to a lawyer can be delayed where there is a proper basis for believing that there is a risk that such access will frustrate the arrest of other suspects (Brennan v UK (2002) 34 EHRR 18).

Questioning

7.23 No suspects while being interrogated should be subject to violence, threats or methods of interrogation which impair his/her capacity of decision or judgement (UN Body of Principles, Principle 21(2)).

7.24 All suspects have the right to remain silent during questioning (ICCPR, Article 14(3)(g); Article 40(2)(b)(iv); Funke v France (1993) 16 EHRR 297; Saunders v UK (1996) 23 EHRR 313) but adverse inferences can be drawn from silence, so long as they are fair and legitimate (Murray v UK (1996) 22 EHRR 29; Condron v UK (2000) 31 EHRR 1; Beckles v UK (2003) 36 EHRR 13); however, appropriate weight must be given to the explanation given by the defendant for exercising his right to silence (Beckles v UK, 8 October 2002, (2003) 36 EHRR 13).

7.25 Any force used during interrogation (e.g. slapping and kicking) is inhuman treatment (Ribitsch v Austria (1995) 21 EHRR 573; Tomasi v France (1992) 15 EHRR 1).

7.26 The time and place of all interrogations should be recorded (UN HRC General Comment 20; UN Body of Principles, Principle 23(1)).

7.27 Registers should be kept of all those in custody, which should be accessible to relatives and friends (UN HRC General Comment 20).

The right to be brought promptly before a court

7.28 Everyone arrested for a criminal offence has the right to be brought promptly before a court (ICCPR Article 9(3); ECHR Article 5(3); CRC Article 40(2)(b)(iii); UN Body of Principles, Principle 37; Brogan v UK (1998) 11 EHRR 117).

7.29 An assessment of 'promptness' has to be made in the light of the object and purpose of this requirement, which is to protect the individual against arbitrary interference by the state¹¹; the European Court of Human Rights works to a rule of thumb that ordinarily the period of detention before a person is brought before a court should not be longer than four days (Tas v Turkey (2001) 33 EHRR 15).

7.30 The court before which a person is brought must have power to order release (Ireland v UK (1978) 2 EHRR 25). Alternatively, a detained person may be brought before an officer authorised by law to exercise judicial power (ECHR Article 5(3)). Such an officer must have some of the attributes of a judge: s/he must be independent, impartial and must consider the facts and have power to order release (Schliesser v Switzerland (1979) 2 EHRR 417).

Bail

7.31 The general presumption is that those awaiting trial should not be detained (ICCPR Article 9(3); UN HRC General Comment 8; UN Body of Principles, Principle 39; Tokyo Rules, Rule 6; Wemhoff v Germany (1968) 1 EHRR 55).

7.33 Bail may be refused if it is necessary and for a good reason, such as fear of absconding, interference with the course of justice and protection of others, but the reasons must be relevant and sufficient (Stogmuller v Austria (1969) 1 EHRR 155; Neumeister v Austria (1968) 1 EHRR 91; Tomasi v France (1992) 15 EHRR 551; Van Alphen v Netherlands, UN HRC Communication No.305/1988, HRC 1990 Report, Annex IX.M). Bail may be conditional (Wemhoff v Germany (1968) 1 EHRR 55).

7.34 Material relevant to the decision whether to grant bail should in principle be disclosed, but may be edited to protect the identity of informants (Re Donaldson's Application for Bail [2003] NI 93).

8. DETENTION

Basic Provisions

8.1 Torture, inhuman and degrading treatment is prohibited absolutely [PSNI Code of Ethics, Article 1.4] (UDHR Article 5; ICCPR Article 7; CAT Article 2(1); CRC Article 37(a); ECHR Article 3; UN Body of Principles, Principle 6; UN Code of Conduct, Article 5; Chahal v UK (1996) 23 EHRR 413; Osifelo v R (1995) 3 LRC 602).

8.2 No justification or excuses, including state of war, threat of war, internal political instability or any other public emergency (such as combating organised terrorism and crime: Selcuk and Askar v Turkey (1998) 26 EHRR 477), may be invoked to justify the prohibition on torture, inhuman and degrading treatment (CAT Article 2(2); UN Body of Principles, Principle 6; UN HRC General Comment 20). The victim's conduct is irrelevant (Chahal v UK (1996) 23 EHRR 413).

8.3 Where an individual enters custody uninjured and is later found to have injuries, it is incumbent on the detaining authorities to explain how the injuries occurred or risk the drawing of an adverse inference (Ribitsch v Austria (1995) 21 EHRR 573; Russell v Home Office, 2 March 2001).

Conditions of detention and ill-treatment

8.4 Detained persons should be given the right to a medical examination on admission (UN Body of Principles, Principle 24). The full protection of the health of persons

¹⁰In the form of correspondence and receiving visitors.

¹¹The degree of flexibility in interpreting and applying the notion of 'promptness' is very limited (TW v Malta (1999) 289 EHRR 185). It implies a delay not exceeding a few days (UN HRC General Comment 8). A delay of over four days is too long (Brogan v UK (1998) 11 EHRR 117) and where there is no basis for an arrest, overnight is too long (Banda v Gunaratne (1996) 3 LRC 508).

in custody should be ensured and medical attention provided when required [PSNI Code of Ethics, Article 5.3] (UN Code of Conduct, Article 6; UN Standard Minimum Rules for the Treatment of Prisoners, Rule 22).

8.5 Any unnecessary and deliberate force against those in detention is inhuman (Ribitsch v Austria (1995) 21 EHRR 573); deliberately striking a defendant and handcuffing him causing real injury is capable of amounting to inhuman treatment (Egmez v Cyprus (2002) 34 EHRR 29).

8.6 Very special reasons are needed to justify solitary confinement, restrictions on wearing own clothes and eating own food for those awaiting trial (Blanchard v Minister of Justice (2000) 1 LRC 671).

8.7 Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment (UN Standard Minimum Rules for the Treatment of Prisoners, Rule 33).

8.8 Allegations¹² of ill-treatment, including all suspected cases of extra-legal, arbitrary and summary executions, must be properly, promptly and impartially investigated (CAT Articles 12 and 13; UN Body of Principles, Principle 7; UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions¹³; Assenov v Bulgaria (1998) 28 EHRR 652).

8.9 Evidence obtained by ill-treatment must be excluded at trial (CAT Article 15; Austria v Italy (1963) 6 Yearbook 740, European Commission on Human Rights).

9. CHILDREN

9.1 In all actions concerning children, the best interests of the child are the primary consideration (CRC Article 3(1)).

9.2 A child must be afforded such protection and care as is necessary for his or her well-being (CRC, Article 3(2); UN Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”)¹⁴ Rule 5).

9.3 Protecting a child’s privacy is of paramount importance (ICCPR Article 14(1); CRC Article 40(2); Beijing Rules, Rules 8 and 21). In principle, no information that may lead to the identification of a juvenile offender should be published (Beijing Rules, Rule 8.2). Records of juvenile offenders should be kept strictly confidential and closed to third parties (Beijing Rules, Rule 21.1).

9.4 Arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time (CRC Article 37(b); Beijing Rules, Rule 13.1; UN Rules for the Protection of Juveniles Deprived of their Liberty¹⁵, Rules 1 and 2).

9.5 Detention pending trial should be limited to exceptional circumstances and whenever possible be avoided and replaced by alternative measures such as close supervision (Beijing Rules, Rule 13.2; UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 17).

9.6 While in custody, children should receive care, protection and all necessary individual assistance (social, educational, vocational, psychological, medical and physical) that they require in view of their age, sex and personality (Beijing Rules, Rule 13.5; UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 28).

9.7 A child’s parents or guardian should be immediately notified of the apprehension of their child and a judge or other competent official or body should without delay consider the issue of release (Beijing Rules, Rule 10).

9.8 Police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime should be specially instructed and trained (Beijing Rules, Rule 12.1).

9.9 Adaptations to the criminal justice system are needed where children are on trial (T and V v UK (1999) 30 EHRR 121). Basic procedural safeguards¹⁶ should be guaranteed at all stages of any criminal proceedings (Beijing Rules, Rule 7.1).

9.10 The procedure should take account of the child’s age and the need to promote their rehabilitation (ICCPR Article 14(4)).

9.11 A child capable of forming his/her own views should have the opportunity to be heard and express those views freely in any judicial, administrative or other matter affecting him/her, either directly or through a representative or other appropriate body. The child’s views should be given due weight in accordance with the age and maturity of the child (CRC, Article 12).

10. VICTIMS

10.1 Victims¹⁷ should be treated with compassion and respect for their dignity [PSNI Code of Ethics, Article 2.1]. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 4).

10.2 Police officers should provide the necessary support, assistance and information to victims without discrimination (European Code of Ethics, Article 52).

10.3 Certain victims, including children and other vulnerable individuals are entitled to special protection (Stubbings v UK (1996) 23 EHRR 213).

10.4 Victims should be informed of the timing and progress of the investigation of their cases and subsequent proceedings [PSNI Code of Ethics, Article 2.1] (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Article 6).

Keir Starmer QC
Jane Gordon
3rd October 2003

¹⁷ Defined as any persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of domestic criminal law, including those laws proscribing criminal abuse of power: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by GA Resolution 40/34 of 29 November 1985.

¹² Including complaints by relatives or other reliable reports.

¹³ Recommended by Economic and Social Council Resolution 1989/65 of 24 May 1989.

¹⁴ Adopted by GA Resolution 40/33 of 29 November 1985.

¹⁵ Adopted by GA Resolution 45/113 of 14 December 1990.

¹⁶ Such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to a lawyer, the right to the presence of a parent or guardian, the right to confront or cross-examine witnesses and the right to appeal to a higher authority.

OTHER STATUTORY BODIES

DEALING WITH HUMAN RIGHTS COMPLIANCE IN NORTHERN IRELAND

1. Northern Ireland Office [www.nio.gov.uk]

The Northern Ireland Office was created as a separate department of State in 1972. Under the Secretary of State for Northern Ireland, the Northern Ireland Office forms the third element of a tripartite relationship with the Police Service and the Policing Board.

On behalf of the Government, the Northern Ireland Office is responsible for the legislative framework relating to policing in Northern Ireland, including both primary legislation such as the Police (Northern Ireland) Act 2000 which established the Policing Board, and subordinate legislation such as Police Regulations. The legislation places a range of statutory responsibilities on the Secretary of State, in addition to those in relation to the Chief Constable and the Policing Board. These include a duty to review any referral by the Chief Constable following a request by the Board to provide it with information, documents or reports on grounds of national security or for other reasons specified in the legislation.

Under separate legislation, the Northern Ireland Office established and sponsors the Northern Ireland Human Rights Commission.

2. Her Majesty's Inspector of Constabulary [www.homeoffice.gov.uk/hmic]

HMI Ken Williams

Statutory Authority

Her Majesty's Inspectorate of Constabulary (HMIC) is responsible for examining the efficiency and effectiveness of the Police Service of England and Wales and the PSNI. Inspectors advise Ministers (including the Secretary of State for Northern Ireland) and the Home Office, carry out inspections and share knowledge with police force authorities.

Role

HMIC carry out inspections on the PSNI on an annual

basis. Reports are made to the Secretary of State for Northern Ireland as required by the Police (Northern Ireland) Act 1998.

The 2000/2001 report focused on the following areas:

- Progress made to implement the wide range of recommendations (principally arising out of the Patten Report) in respect of operational, cultural, organisational and structural changes.
- Progress made towards the establishment of District Command Units.
- Impact of downsizing through severance, the introduction of the new recruitment system for regular officers and non-recruitment and natural wastage in the full-time Reserve.
- The introduction of efficiency measures.

HMIC 2001/2002 Report by Mr Dan Crompton CBE, QPM, CI Mgt identified the continued reduction in the number of officers available for deployment to operational duties as having had a significant impact upon the attempts of the Service to achieve its policing objectives. It was noted that additional pressures have been placed upon the Service as a result of unprecedented levels of rioting and public disorder experienced over recent months within the Belfast area. HMIC noted that whilst some progress towards implementation of community policing has been achieved, its delivery at district command level has been hindered by the delays in establishing District Policing Partnerships.

3. The Oversight Commissioner [www.oversightcommissioner.org]

Tom Constantine (retiring end December 2003)
Al Hutchinson, Chief of Staff
(succeeding Tom Constantine Jan 2004)

BackgroundStatutory Authority

The Office of the Oversight Commissioner was established as a result of the recommendations in the

Report of the Independent Commission on Policing for Northern Ireland (the Patten Report). Its mandate is set out in the Patten Report (Chapter 19 + Recommendations 172-175). The Police (Northern Ireland) Act 2000, ss. 67 + 68 and Schedule 4 lay down general provisions regarding the Commissioner.

Role

The Oversight Commissioner is responsible for overseeing the implementation of the changes in policing arrangements and structures resulting from the Patten Report.

The Oversight Commissioner monitors and reviews progress achieved in implementing change; receives reports, information and explanations, as required, from the agencies responsible for progress; and provides public assurance about the progress of the implementation process.

As part of the process, the Oversight Commissioner:

- is provided with periodic reports, including objectives and timetables, by the Government, the Police Service and the Policing Board covering the changes in policing arrangements and structures for which they are responsible.
- conducts periodic progress review meetings on the implementation of change in policing arrangements, structures and related areas with Government Ministers and officials, the Chief Constable, the Policing Board (and in due course the District Policing Partnerships) and with others as appropriate. Such meetings take place at least three times a year and each of the specified agencies:
 - report to the Commissioner on progress achieved in implementing the changes for which they are responsible.
 - provide explanations for any delays or failures to achieve objectives for which they are responsible.
- provides a report to the Secretary of State after each periodic review. The Secretary of State places these reports before Parliament and the Reports are then published. The reports include:
 - an account of the progress which has been achieved in implementing the required changes;
 - the Commissioner's observations on the extent to which any delays or failures are the responsibility of the agencies themselves or due to matters beyond their control.

In his first Report (November 2000), the Oversight Commissioner stated that he would "review, act upon, oversee progress and report on" human rights in the following terms:

- Review the:
 - New Police Oath
 - Code of Ethics (published and released on 13 February 2003. Came into effect 14 March 2003.)
- Assess the HR Training Curriculum
 - for police officers and civilian staff as it relates to the Training, Education and Development Strategy (Recommendation 129).
 - for new recruits and police officers already in service as it relates to Recommendations 137-139 and 141-144.
- Review the human rights-cased approach programme of action
- Monitor performance in HR.

On 13 February 2003, the remit of the Oversight Commissioner was extended for 2 years.

4. Criminal Justice Oversight Commissioner. Rt Hon Lord Clyde (June 2003)

Background [JJ]Statutory Authority

The Criminal Justice Review Group was set up on 27 June 1998 under the Belfast Agreement 1998. It was tasked with undertaking a wide-ranging review of criminal justice (other than policing and those aspects of the system relating to emergency legislation). The Review of the Criminal Justice System in Northern Ireland was published in March 2000. The Review made 294 recommendations for change across the criminal justice system. The following a period of consultation, the Government accepted 293 of the recommendations and published its response to the Review, comprising an Implementation Plan and a draft Justice (Northern Ireland) Bill in November 2001.

The Justice (Northern Ireland) Act 2002 received Royal Assent on 24 July 2002. and a revised Implementation Plan was published on 18 June 2003, setting out the progress that had been made in implementing the 294 recommendations of the Criminal Justice Review, together with detailed plans and timescales for the continuing implementation process.

The appointment of a Justice Oversight Commissioner was not a specific recommendation of the Review but received "substantial and continuous support" throughout the Review consultation process. There was cross-party support in the Northern Ireland Assembly for the appointment of a commissioner with a remit to oversee the implementation of the reform of the criminal justice system.

Role

The Justice Oversight Commissioner provides independent scrutiny of the implementation of the changes in criminal justice arrangements and structures flowing from the Government's decisions on the Criminal Justice Review and the provisions of the Justice (Northern Ireland) Act 2002. These changes are set out in the revised Implementation Plan.

The Commissioner monitors and reviews progress achieved in implementing change; receives information, as required, from the agencies responsible for progress; and provides public assurance about the implementation process.

In pursuit of these functions, the Oversight Commissioner:

- Is provided with information, including objectives and timetables as appropriate, on the implementation of the changes to the criminal justice system. This information will be provided by the Department of the Director of Public Prosecutions (Northern Ireland) (DPP), the Court Service, the Probation Board, the Prison Service, the PSNI, and the Northern Ireland Office. Provision of information on issues covering the criminal justice system as a whole will be coordinated by the Criminal Justice Board (comprising the heads or senior representatives of the agencies listed above). Information may also be provided by other bodies as appropriate.
- Conducts progress review meetings with the agencies and, as appropriate, the Criminal Justice Board on the implementation of the criminal justice changes. Meetings also take place with Ministers and officials and with other office-holders and bodies as appropriate. These meetings provide a forum to discuss issues arising from implementation and to enable the written information to be supplemented.
- Provides a report to the responsible Ministers (the Secretary of State, Lord Chancellor and Attorney General) every six months. The Ministers place these reports before Parliament and publish them (subject to the omission of any parts whose laying or publication would, in their opinion, be against the public interest or which might jeopardise the safety of any person). Such reports include:
 - an account of the progress which has been achieved in implementing the planned changes; and
 - the Commissioner's observations on how any delays in implementation have arisen and how they might be addressed.
- Meets (at the Commissioner's discretion) with other relevant organisations or agencies, including the

political parties and community leaders, to discuss progress in the implementation of the criminal justice changes.

5. The Chief Inspector of Criminal Justice. Kit Chivers (June 2003)

Statutory Authority

The post of Chief Inspector of Criminal Justice was created by s.45 of the Justice (Northern Ireland) Act 2002. The Chief Inspector is established under the Act as a corporation sole.

Role

The functions of the Chief Inspector are set out in ss. 46-49 and Schedule 8 of the Justice (Northern Ireland) Act 2002. The Inspector is obliged to carry out inspections of organisations within the Criminal Justice System including the PSNI and PSNI (Reserve).

The Chief Inspector will assist in the establishment of the new independent Criminal Justice Inspectorate for Northern Ireland in the Criminal Justice Review. The Criminal Justice Inspectorate's role will be to ensure:

- individual criminal justice agencies in Northern Ireland are meeting their objectives.
- the criminal justice system works effectively in a joined up way and as a coherent whole.
- the proper expenditure of public resources.

6. The Police Ombudsman [www.policeombudsman.org] Nuala O'Loan

Statutory Authority

The Office of the Police Ombudsman was established (further to Recommendation 38 of the Patten Report) in November 2000 as a corporation sole under the Police (Northern Ireland) Act 1998, s.51 (replacing the Independent Commission for Police Complaints which was formally abolished).

The statutory remit of the Police Ombudsman is laid down in the Police (Northern Ireland) Act 1998 ss. 51-65 and Schedule 8; the Police (Northern Ireland) Act 2000 ss. 62-66; the Police (Northern Ireland) Act 2003, s. 3 and a number range of statutory rules. which can be found on the website of the Police Ombudsman [NOL].

Role

The Police Ombudsman has the power to investigate complaints from members of the public but not where the

complaint relates to the direction and control of the police service by the Chief Constable (Police (Northern Ireland) Act 1998, s.52(5)). Where here a public complaint is received by the Policing Board or by the Secretary of State, it must be referred immediately to the Police Ombudsman (Police (Northern Ireland) Act 1998, s.52).

Following any such investigation, the Police Ombudsman must determine whether the report indicates that a criminal offence has been committed by a member of the police (Police (Northern Ireland) Act 1998, s.58). If so, the Police Ombudsman must submit recommendations to the DPP. Whether the DPP decides to prosecute or not, then, after the prosecution of the officer, the Police Ombudsman must consider whether a recommendation should be made for disciplinary proceedings. If the DPP decides not to prosecute the officer then the Police Ombudsman must consider whether a recommendation should be made for disciplinary proceedings. In cases in which no recommendation is submitted to the DPP, the Police Ombudsman must also consider whether a recommendation should be made for disciplinary proceedings. If not, the Police Ombudsman must consider disciplinary proceedings. The Police Ombudsman is obliged in this regard to send a memo to the relevant disciplinary authority setting out reasons and recommendations for her findings (Police (Northern Ireland) Act 1998, s.59(2)).

The Police Ombudsman has the power to compel the Chief Constable to hold a disciplinary hearing in respect of an officer of up to superintendent rank (Police (Northern Ireland) Act 1998, s.59(5)). No disciplinary proceedings can be brought by a disciplinary authority before the Police Ombudsman's memo is received. In relation to senior officers, the Policing Board is the appropriate disciplinary body, and the Police Ombudsman has no power to compel it to hold a disciplinary hearing in respect of any such officer.

Under s.55(1) of the Police (Northern Ireland) Act 1998, the Policing Board or the Secretary of State may refer to the Police Ombudsman any matter which appears to them to indicate that conduct by a police officer that may amount to a criminal offence or may justify disciplinary proceedings. In addition, all deaths in custody are referred automatically to the Police Ombudsman (Police (Northern Ireland) Act 1998 s.55(2)). Under the Police (NI) Act 1998, s.55(4), the Chief Constable may also refer any matter to the Police Ombudsman for investigation where it appears that an

officer may have committed a criminal offence or breached discipline. As from February 2001, any discharge of firearms or the firing of baton rounds is referred automatically to the Police Ombudsman for investigation, even where no complaint has been made.

The Police Ombudsman has the further power under Police (Northern Ireland) Act 1998, s.55(6) to investigate a matter in the public interest, even where no complaint has been made, where it appears to the Police Ombudsman that a police officer may have committed a public offence or may have behaved in such a manner as to justify disciplinary proceedings. Following any such investigation, a report under Regulation 20 of the RUC (Complaints etc) Regulations is provided to the Secretary of State for Northern Ireland, the Policing Board and the Chief Constable.

Under s.60A of the Police (Northern Ireland) Act 1998 (inserted by s.13 of the Police (Northern Ireland) Act 2003), the Police Ombudsman now has the additional power to investigate a current practice or policy of the PSNI if the practice or policy comes to her attention and she has reason to believe that it would be in the public interest to so investigate.

Under s.54 of the Police (Northern Ireland) Act 1998, any complaint which is not deemed a serious complaint may be investigated by the Police Ombudsman or referred by her to the Chief Constable for formal investigation.

The Police Ombudsman's Second Annual Report is now available and this shows that 38% of complainants were Catholic, 20% Church of Ireland, 26% Presbyterian, 3% Methodist and 13% other or non. 72% of complainants were male, 28% were female. 27 reports were issued during the period to the Chief Constable, Secretary of State and Policing Board respectively under Regulation 20 of the RUC (Complaints etc) Regulations. Four of the reports related to death, 11 to the discharge of firearms, ten to the discharge of a total of 89 baton rounds, one to the discharge of baton rounds and firearms and one to an allegation of serious assault. A further 27 matters remain under investigation.

In total, 1430 complaints were carried forward from April 2002, 3193 new complaints were received and 330 cases were transferred from the Independent Commission for Police Complaints. 48 Forth-eight referrals were made by the Chief Constable and one referral was made by the Policing Board during the reporting year. 1651 complaints

were closed following enquiries, 281 complaints were informally resolved, 1254 were closed following investigation, 185 allegations of criminal conduct were referred to the Director of Public Prosecutions for direction and 41 allegations of misconduct were referred to the Chief Constable. "The Police Ombudsman also published a number of research reports during the period. during the reporting year. First Annual Report: Nov 2000-Mar 2002: 49% of complaints made came from Protestants, 41% from Catholics, 10% from others. 5129 complaints handled over the Reporting Period. Over 60% of complaints were resolved without the need for formal investigation. 4 deaths in custody, or of persons recently released from custody, in the course of the Reporting Period.

7. Internal Investigations Branch

D/Supt Guy Thompson
D/Ch Insp. Mark Dornan

From 3 March 2003, Internal Investigations Branch (IIB) adopted a policy of publishing the results of all formal hearings for which they are responsible where an officer is found guilty of misconduct (IIB is responsible for conducting hearings for all ranks up to an including Chief Superintendent). The results will be published in Weekly Order. However, the publication will not name the officer except where s/he is dismissed, required to resign or reduced in rank.

8. The Equality Commission [www.equalityni.org]

Joan Harbison, Chief Commissioner
Anne O'ReillyBronagh Hinds, Deputy Chief Commissioner
13 other Commissioners.
Evelyn Collins, Chief Executive (143 staff).

Statutory Authority

The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998, ss. 73 + 74 and Schedule 9. On 1 October 1999, the Equality Commission took over the functions previously exercised by the Commission for Racial Equality for Northern Ireland, the Equal Opportunities Commission for Northern Ireland, the Fair Employment Commission and the Northern Ireland Disability Council.

Role

The Equality Commission's general duties include:

- (i) working towards the elimination of discrimination;

- (ii) promoting equality of opportunity;
- (iii) promoting affirmative/positive action;
- (iv) promoting good relations between people of different racial groups;
- (v) overseeing the implementation and effectiveness of the statutory duty on public authorities; and
- (vi) keeping the relevant legislation under review.

9. The Northern Ireland Human Rights Commission [www.nihrc.org]

Prof. Brice Dickson, Chief Commissioner
9 other Commissioners
Paddy Sloan, Chief Executive

Statutory Authority

The Northern Ireland Human Rights Commission (NIHRC) was established under the Northern Ireland Act 1998, ss. 68-71 and Schedule 7.

Role

The NIHRC's remit includes:

- (i) keeping under review the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights (s.69(1) of the Northern Ireland Act 1998);
- (ii) advising the Secretary of State and the Executive Committee of the Northern Ireland Assembly of legislation and other measures which ought to be taken to protect human rights;
- (iii) advising the Secretary of State on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights;
- (iv) power to give assistance to individuals who apply to it for help in relation to proceedings involving law or practice concerning the protection of human rights;
- (v) power to bring proceedings involving law or practice concerning the protection of human rights;
- (vi) conducting such investigations as it considers necessary or expedient for the purpose of exercising its other functions;
- (vii) promoting understanding and awareness of the importance of human rights in Northern Ireland by for example, undertaking or commissioning research and educational activities;
- (viii) publishing its advice and the outcome of its research and investigations.

10. The Parades Commission [www.paradescommission.org]

Tony Holland, Chairman (since February 2000)

Statutory Authority

The Parades Commission operates as a body corporate under the Public Processions (Northern Ireland) Act 1998 (in force 16 February 1998).

Role

The Parades Commission's obligations under the Public Processions (Northern Ireland) Act 1998 are to:

- issue and keep under review a Code of Conduct, procedural rules and a set of guidelines concerning the exercise of its power to impose conditions on public processions;
- promote greater understanding by the general public of issues concerning public processions;
- promote and facilitate mediation as a means of resolving disputes concerning public processions;
- issue determinations in respect of particular public processions;
- keep informed of the conduct of public processions and protest meetings;
- keep under review the operation of the Act and make such recommendations as it thinks fit to the Secretary of State.

Any person proposing to organise a public procession is required to give notice (Form 11/1) to a PSNI officer not below the rank of sergeant at the police station closest to the proposed starting point of the procession. The PSNI is required to forward a copy of Form 11/1 to the Parades Commission upon receipt.

The Parades Commission has no power to prohibit a public procession: this is a matter for the Secretary of State. The Secretary of State may also, upon the application of the Chief Constable, review a determination of the Parades Commission and substitute his own judgement.

The Parades Commission has no powers in relation to protest meetings. The imposition of conditions on such meetings is a matter for the PSNI under the Public Order (Northern Ireland) Order 1987.

Sir George Quigley was appointed on 27 November 2001 to conduct a review of the operation of the Parades Commission and the legislation under which it was established. 34 recommendations were made, including recommendation 31 which states that: the police should determine whether any restriction needs to be placed on the exercise of the right to freedom of peaceful assembly in the interests of national security or

public safety or for the prevention of disorder or crime. (i.e. the current allocation of responsibilities should be overhauled and legislation introduced to empower the police to make the public safety decision and to impose such conditions as that decision required) (Recommendation 31).

11. Independent Commissioner for Detained Terrorist Suspects

Dr Bill Norris

Statutory Authority

The Office of the Independent Commissioner for Detained Terrorist Suspects was established in 1993, replacing the Independent Commissioner for the Holding Centres (established in December 1992). The Independent Commissioner is appointed by the Secretary of State for Northern Ireland.

Role

The Independent Commissioner for Detained Terrorist Suspects oversees the detention process for terrorist suspects. Since 1994, the Commissioner has had the authority to attend as an observer at police interviews with suspects, subject to certain conditions. Under the Terrorism Act 2000, detention commences from the time of arrest until the detainee leaves the Custody Suite on being charged or released. The temporary Dual Custody Suite at Lisburn Police Station is due to be replaced by the new purpose-built Custody Suite (the "Serious Crime Suite") which opened at Antrim Police Station in April 2003 (implementing Patten Recommendation 62).

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The Independent Commissioner's main functions are to observe, comment and report upon the conditions under which persons are detained. Since 1994, the Independent Commissioner has had the authority to attend as an observer at police interviews with suspects, subject to certain conditions.

His remit includes:

- identification of safeguards and/or refinements necessary in relation to the detention process;
- scrutiny of custody records to ensure the minimum standards required by the Code of Practice on the detention, treatment, questioning and identification of persons detained;
- keeping under review the Codes of Practice governing the detention, treatment, questioning and identification of persons detained and, when necessary, making recommendations for revision to the Secretary of State;
- conducting interviews with detained persons;
- attending as an observer at police interviews with suspects (Secretary of State amendment to terms of reference (1994)).

The Independent Commissioner also has a networking role vis-à-vis a wide range of relevant organisations and individuals.

The Independent Commissioner's remit does not include the investigation of complaints made by detained individuals, which is the function of the Police Ombudsman. Complaints made in the Custody Suite by detainees or their legal representatives are recorded by the Commissioner and notified to the Office of the Police Ombudsman.

The Independent Commissioner is required to report to the Secretary of State annually. The Commissioner's Tenth Annual (2002) Report was laid before Parliament 18 June 2003.

12. Independent Assessor of Military Complaints Procedures in Northern Ireland

James McDonald

Statutory Authority

The Office of the Independent Assessor of Military Complaints Procedures was established under s. 98 and Schedule 11 of the Terrorism Act 2000 (fully in force 19 February 2001). The Independent Assessor is appointed by the Secretary of State for a term not exceeding 3 years (but may be reappointed) (Schedule 11, s. 1(2)). He submits an annual report on the performance of his functions to the Secretary of State and may additionally report on any matter which comes to his attention in the course of the performance of his functions (Schedule 11, s4(3)).

Role

The Independent Assessor of Military Complaints Procedures "provides independent oversight of those

areas falling outside the accountability structures of the criminal law and compensation legislation" (Tenth Annual Report (2002)). The Independent Assessor keeps under review the procedures adopted by the General Officer Commanding Northern Ireland (currently Lieutenant General Philip Trousdell CB) for receiving, investigating and responding to complaints about the behaviour of members of Her Majesty's forces (Terrorism Act 2000, s. 98(3)(a)). He receives and investigates representations made regarding such procedures, and has the power to investigate the operation of those procedures in relation to a particular complaint or class of complaint.

The Independent Assessor can require the General Officer Commanding Northern Ireland to review a particular case or class of cases in which he has concluded the procedures to have operated inadequately and may make recommendations regarding inadequacies in procedures (s. 98(3)(d) and (e)). The General Officer Commanding Northern Ireland is required under the Terrorism Act 2000 to provide such information, disclose such documents and provide such assistance to the Independent Assessor as he may reasonably require in the performance of his functions under the Act (s. 98(5)).

At the end of December 2002, there were 13,400 members of the armed forces serving in Northern Ireland. In his Tenth Annual Report (2002), the Independent Assessor reported a 21% reduction in the number of complaints (both formal and informal), from 676 in 2001 to 534 in 2002. The 25 formal non-criminal complaints recorded for 2002 represented 4.7% of total complaints. 95.3% of complaints (509) were resolved informally. Amongst the recommendations made in the Annual Report, the Independent Assessor urged that greater efforts should be made to deal with formal non-criminal complaints within the target time of 4 weeks.

The Independent Assessor recorded 17 baton rounds fired by the military and 91 fired by the police in 2001 and 85 baton rounds fired by the military and 255 fired by the police in 2002 (up to 31 October). All those fired by the military in 2002 were in the Belfast area as a result of several episodes of street disorder. The Report noted the purchase by the military of a Baton Round Judgmental Training System (a computerised target trainer capable of producing a wide variety of riot scenarios) in early 2003 to facilitate training of baton gunners before the onset of the marching season.

In 2002, the Independent Assessor also conducted a Review of Military use of Baton Rounds (Jan 2001-Oct 2002) (submitted to the Secretary of State under para 4(3) of Schedule 11 to the Terrorism Act 2000). He examined in detail the selection and training of baton gunners and concluded that "the training, informed by the criminal law and Human Rights legislation, is thorough" although he raised the concern at the number of strikes to the upper torso area (9 strikes were recorded as 'strikes to the torso' with no additional detail). The Independent Assessor reviewed every firing of a baton round by the military between January 2001 and 31 October 2002 and was satisfied that the systems and procedures in place were sound. His recommendations included the proposal that guidelines on the use of baton rounds issued by the Ministry of Defence should be developed in tandem with those of ACPO to achieve mutual best practice.

13. Independent Custody Visitors Scheme

Statutory Authority

The Police (Northern Ireland) Act 2000, s. 73 obliges the Policing Board to make and keep under review arrangements for designated places of detention to be visited by lay visitors (implementing Patten Recommendation 64). Designated police stations are those which are equipped with a custody suite to the standard specified by the Codes of Practice for the detention, treatment and questioning of persons by the police. The Codes of Practice are linked to the Police and Criminal Evidence (Northern Ireland) Order 1989.

Role

Custody visitors visit places of detention in pairs and operate as part of a custody visiting team. There are currently 5 custody visiting teams in Northern Ireland that cover the areas of Antrim, Belfast, Down/Armagh, North-West and Tyrone/Fermanagh. Each custody team has 4 or 5 designated police stations to visit.

A report on each such visit must be made to the Policing Board and the Chief Constable. Such reports must deal with matters including:

- the conditions under which persons are held in places of detention;
- the welfare and treatment of detained persons;
- the adequacy of facilities of the places of detention.

In line with Patten Recommendation 64, the role of custody visitors has been extended to cover visits to terrorist detainees. In addition, structures are currently being put in place to allow custody visitors to observe interviews on camera.

Keir Starmer QC
Jane Gordon
3 October 2003